

1 Mark Holscher (SBN 139582)
2 Diana Torres (SBN 162284)
3 Ashley Neglia (SBN 298924)
4 Steven Czak (SBN 355040)
5 KIRKLAND & ELLIS LLP
6 2049 Century Park East
7 Los Angeles, CA 90067
8 Tel: (310) 552-4200
9 Fax: (310) 552-5900
10 Email: mark.holscher@kirkland.com
11 Email: diana.torres@kirkland.com
12 Email: ashley.neglia@kirkland.com
13 Email: steven.czak@kirkland.com

14 *Attorneys for Plaintiff,*
15 *VILLAGE ROADSHOW FILMS (BVI)*
16 *LIMITED; VILLAGE ROADSHOW*
17 *FILMS NORTH AMERICA INC.;*
18 *VILLAGE ROADSHOW PICTURES*
19 *NORTH AMERICA INC.; VILLAGE*
20 *ROADSHOW DISTRIBUTION (BVI)*
21 *LIMITED; and VILLAGE ROADSHOW*
22 *DISTRIBUTION USA INC.*

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

24 **COUNTY OF LOS ANGELES**

25 VILLAGE ROADSHOW FILMS
26 (BVI) LIMITED; VILLAGE
27 ROADSHOW FILMS NORTH
28 AMERICA INC.; VILLAGE
ROADSHOW PICTURES NORTH
AMERICA INC.; VILLAGE
ROADSHOW DISTRIBUTION
(BVI) LIMITED; and VILLAGE
ROADSHOW DISTRIBUTION USA
INC.,

Plaintiffs,

v.

WARNER BROS.
ENTERTAINMENT INC.;
WARNER BROS. PRODUCTION
LIMITED; and WAV
DISTRIBUTION LLC, and Does 1-
20,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR
DECLARATORY AND
PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF**

1. Plaintiffs Village Roadshow Films (BVI) Limited, Village Roadshow Films North America Inc., Village Roadshow Pictures North America Inc., Village Roadshow Distribution (BVI) Limited, and Village Roadshow Distribution USA Inc. (collectively, “Village Roadshow”), by and through its undersigned counsel, brings this action against Defendants Warner Bros. Entertainment Inc., Warner Bros. Productions Limited, and WAV Distribution LLC (collectively, “WB”) for declaratory relief and preliminary and permanent injunctive relief. The allegations herein are made based on knowledge of Village Roadshow and its own actions and interactions, and upon information and belief as to all other matters.

INTRODUCTION

2. This case is about the deliberate and consistent coordinated efforts of WB to eviscerate the significant value of Village Roadshow's intellectual property in order to prop up the new HBO Max streaming service owned by WarnerMedia, the ultimate parent of WB, without providing any accounting, and shut Village Roadshow out of its legal and contractual rights to co-own and co-finance the sequels, prequels, spinoffs, and other derivative works of the nearly 100 films that Village Roadshow funded and co-owns.

A. Village Roadshow Has Paid WB Billions To Develop And Distribute Blockbuster Hits For Which It Co-Owns The Copyrights

3. Over the past 25 years, Village Roadshow has paid WB over \$4.5 billion to produce and distribute nearly 100 films. Village Roadshow co-owns all intellectual property rights to these films and is listed as a co-owner on each film's copyright registration.

4. Village Roadshow established a close relationship with WB beginning in 1997 that would ultimately result in Village Roadshow investing toward the successful co-financing of 91 titles. That depth and length of relationship—with not a single litigation between them (until now)—was unique in the entertainment industry.

1 5. Many of the films Village Roadshow co-owns with WB are now household
2 names and tent-pole franchises—the type of films that have become the hallmark of
3 financial success in Hollywood. *The Matrix* trilogy, *Joker*, the *Ocean’s* series, *Charlie*
4 *and the Chocolate Factory*, and *Edge of Tomorrow*, all co-owned by Village Roadshow
5 and WB, are among them. Aside from financial profitability, the success of these initial
6 properties, which Village Roadshow both co-created and co-financed, elevated brand
7 awareness for the copyright holders as well as provided a launchpad for the development
8 of not only typical derivative products (e.g. reboots, sequels, spin-offs, television series,
9 etc.) but highly sought after and lucrative shared cinematic universes (e.g., Marvel
10 Cinematic Universe, DC Extended Universe) as well as meta-verses.

11 6. Indeed, *The Matrix* trilogy is one of the most successful and iconic film
12 franchises of all time, with the original three films earning over \$2 billion roughly two
13 decades ago. *Joker* was a critically acclaimed hit and also tremendously successful,
14 earning more than \$1 billion at the box office in its 2019 release worldwide.

15 7. Village Roadshow’s copyright ownership gives it the most sought-after
16 rights in Hollywood: the perpetual right to co-create, co-invest and co-own the derivative
17 rights to extremely successful tent pole films and franchises as well as the right to honest
18 accounting from its copyright co-owner. As the distributor and co-copyright owner, WB
19 has a fiduciary duty to account to Village Roadshow for *all* earnings from the
20 exploitation of the films’ copyrights, not just those it cannot hide. Under the parties’
21 contracts, WB is also required to provide a Marketing Plan for each film and to distribute
22 each film in a manner “*consistent with industry standards*” and “*consistent with*
23 *customary commercial practices in the motion picture industry.*” And, WB expressly
24 agreed not to make sweetheart deals with its affiliates: it could not enter agreements with
25 related entities unless it could show that the economic terms of those agreements “are not
26 less favorable” than a “*comparable, arm’s length agreement*” involving unaffiliated
27 entities.
28

B. WB Is Giving Away Village Roadshow’s Tent Pole Films To Boost Its Sister Company’s Paid Subscriber Base, And Refusing To Account For Any Of That Revenue

8. But “customary commercial practices,” “industry standards,” and “comparable arms-length agreement[s]” are a far cry from WB’s actions. Nor does WB’s conduct remotely resemble an honest accounting. Instead, WB and its parent, WarnerMedia, devised “Project Popcorn,” the internal code name for its clandestine plan to materially reduce box office and correlated ancillary revenue generated from tent pole films that Village Roadshow and others would be entitled to receive in exchange for driving subscription revenue for the new HBO Max service, for which only WarnerMedia would be the sole beneficiary. WarnerMedia and WB effectively enticed movie-going audiences away from the theaters by streaming these tent pole films day and date on HBO Max for no additional charge, a practice that is completely inconsistent with “industry standards” and “customary commercial practices in the motion picture industry.” Additionally, WarnerMedia benefits by driving up the value of its subsidiary, just as WarnerMedia prepares to spin off and merge with Discovery, all while providing *zero* benefit to Village Roadshow, talent and other partners.

9. This surprise announcement shocked the entire motion picture community, sparking outrage from talent and partners with long-standing histories with WB. As part of WB’s scheme, *The Matrix Resurrections*—what should have been an incredibly valuable sequel to *The Matrix* trilogy—WB rushed its release date from 2022 to 2021 precisely so that it could release the film on HBO Max on the same “day and date” as its theatrical release as part of Project Popcorn. Andy Forssell, head of HBO Max, acknowledged that new releases, such as *The Matrix Resurrections*, have helped the service “acquire subscribers, reduce churn and drive viewers to other content on HBO

1 Max. ‘These films have been very helpful in acquisition and more helpful in retention
2 than we ever could have seen or hoped,’ Forssell said.”¹

3 10. WB’s sole purpose in moving the release date of *The Matrix Resurrections*
4 forward was to create a desperately needed wave of year-end HBO Max premium
5 subscriptions from what it knew would be a blockbuster film, despite knowing full well
6 that it would decimate the film’s box office revenue and deprive Village Roadshow of
7 any economic upside that WB and its affiliates would enjoy, especially as compared to a
8 2022 exclusive theatrical release. *Literally, WB agreed to allow its sister company to*
9 *stream Village Roadshow’s tent pole film, on the same day of its theatrical release, for no*
10 *additional revenue so that its sister company could increase its subscribers and*
11 *subscription revenues with the additional benefit of boosting its parent company’s stock.*
12 No other studio did anything of the sort.

13
14 REVIEWED

15 HBO Max has a blockbuster deal for 16 fans looking to stream 'The Matrix Resurrections'

Christine Persaud Reviewed

Published 12:22 p.m. ET Dec. 12, 2021 | Updated 12:22 p.m. ET Dec. 12, 2021



Stream The Matrix Resurrections on Wednesday, December 22 exclusively on HBO Max Warner Bros.

27 ¹ Ryan Faughnder, *Theaters or HBO Max? Warner Bros. movie plans take shape as Discovery merger*
28 *looms*, Los Angeles Times (June 8, 2021, 5:00 AM), <https://www.latimes.com/entertainment-arts/business/story/2021-06-08/can-warner-bros-keep-movie-dreams-alive>.

11. What's more, WB is using Village Roadshow's films to drive subscribers to the ad-free tier, i.e., the premium subscription level, of the HBO Max streaming service, creating billions of dollars in enterprise value to WarnerMedia, but refusing to account to Village Roadshow for any of that value, earned by exploiting Village Roadshow films in a way that destroys the value of the films and their Derivative Works. Not surprisingly, WB provided Village Roadshow with no notice and WB made no mention of this strategy, as the parties' contracts require.



C. WB Well Knew That Its Conduct Would Decimate *The Matrix Resurrections*' Box Office

12. The hit to *The Matrix Resurrections*' box office returns was not the result of just the cannibalization from streaming but from the rampant piracy it knew would come by distributing this marquee picture on a streaming platform on the same day as its theatrical release. The cumulative result was devastating. To date, *The Matrix Resurrections* has earned substantially less than any of the prior films and well below budget, even though the last of them was released almost 20 years ago:

	<i>The Matrix</i>	<i>The Matrix Reloaded</i>	<i>The Matrix Revolutions</i>	<i>The Matrix Resurrections</i>
Box Office Revenue from Initial Release	\$783,209,536 (in 2021 dollars) ²	\$1,127,112,652 (in 2021 dollars)	\$ 645,767,838 (in 2021 dollars)	\$148,681,748
Year Released	1999	2003	2003	2021

13. WB knew this would happen: the Hollywood trades had been full of headlines warning about this problem for months:

HOME / BOX OFFICE / BREAKING NEWS

Piracy Is Biggest Problem For Day-And-Date Releases, Say International Film Distrib & Exhib Chiefs – CinemaCon



By Anthony D'Alessandro
August 23, 2021 2:59pm

14. The warnings were clear even earlier. As Fortune magazine explained, streaming “big-budget films” “has made it easier for pirates to illegally copy and share new releases, with an estimated loss of millions of potential customers for the production companies.”³

15. WB’s strategy not only ensured that *The Matrix Resurrections* would be a bust at the box office, but it also inflicted serious harm to the entire *Matrix* franchise. There can be no doubt that the abysmal theatrical box office sales figures from *The Matrix Resurrections* dilute the value of this tent pole franchise as a film’s lack of profitability generally prevents studios from investing in additional sequels and derivative films in the near term.

² All figures listed as “in 2021 dollars” are inflation-adjusted numbers calculated using US Bureau of Labor Statistics CPI inflation calculator and month and year of films’ original release date compared to December, 2021.

³ Richard Chess and Bloomberg, *Movie piracy is on the rise as studios bypass theatrical releases*, Fortune (October 6, 2020, 8:00 AM), <https://fortune.com/2020/10/06/movie-piracy-digital-streaming-releases-2020-coronavirus-pandemic/>.

1 16. Village Roadshow formally exercised its right to co-own and co-finance *The*
2 *Matrix Resurrections* in 2019, long before any of WB’s sharp deviation from customary
3 release plans had come to light. But, with WB having gutted the value of the film for the
4 benefit of its sister company, Village Roadshow has not—and cannot rationally—tender
5 to WB the substantial payment to do so. Absent a declaration that WB is in breach of its
6 contractual obligations and thus that Village Roadshow’s payment is excused, Village
7 Roadshow stands to lose the invaluable rights to what should have been a blockbuster hit
8 and the continued deprivation of its rights going forward, including potentially the rights
9 to characters first appearing in this film.

10 **D. WB’s Sweetheart Deal with Its Affiliate Streaming Service Has**
11 **Generated Billions in Enterprise Value for WarnerMedia**

12 17. For its own selfish purposes, however, WB’s efforts to trade off Village
13 Roadshow’s copyrights have been successful. As it recently reported, HBO Max closed
14 2021 with 46.8 million domestic subscribers, an increase of 5.3 million over the prior
15 year. Globally, subscriber levels increased even more, *i.e.*, by 13.1 million, to 73.8
16 million, almost 18% year over year growth. “Aside from putting the company ahead of
17 its internal forecasts, the growth was the biggest subscriber increase in a single year in
18 HBO’s 50-year history,” according to a company press release.⁴

19 18. The increased subscription revenues WarnerMedia earned by making them
20 available for free on HBO Max is just a fraction of the ultimate enterprise value
21 WarnerMedia is earning from Village Roadshow intellectual property. By building the
22 HBO Max streaming service, WarnerMedia is building a formidable competitor to
23 standalone streaming services, whose value is driven by adding subscribers. Netflix, for
24 example, has 222 million subscribers and a market capitalization of \$180 billion. Thus,
25 by using Village Roadshow films to drive the HBO Max subscriber base to nearly 74

26
27 ⁴ Dade Hayes, *HBO And HBO Max Reach 46.8M Domestic Subscribers, With Average Revenue Of*
28 *\$11.15 As Parent (For Now) AT&T Beats O4 Estimates*, DEADLINE (January 26, 2022, 4:11 AM),
 <https://deadline.com/2022/01/hbo-hbo-max-reach-46-8m-domestic-subscribers-average-revenue-1234920025/>.

1 million, WB has enabled its HBO Max service to have a valuation of \$60 billion on a
2 standalone basis, just in time for WarnerMedia's spinoff. In doing so, on information and
3 belief, WB executives were rewarded well, with bonuses based on overall enterprise
4 success.

5 **E. WB Has Acted In Bad Faith to Deprive Village Roadshow of Its Legal**
6 **and Contractual Rights To Invest in and Co- Own Valuable Derivative**
7 **Works**

8 19. WB's efforts to promote its own interests at the expense of Village
9 Roadshow are not limited to its attempts to prop up HBO Max. WB has also been
10 devising various schemes to deprive Village Roadshow of its continuing rights to co-own
11 and co-invest in the Derivative Works from the films it co-owns. Recently, after
12 acknowledging—in writing—that its tellingly named upcoming film, *Wonka*, was a
13 prequel to Village Roadshow's *Charlie and the Chocolate Factory*, WB did an about-
14 face, claiming the prequel was not a prequel and the original picture, *Charlie and the*
15 *Chocolate Factory*, was not one in which Village Roadshow had unqualified Derivative
16 Rights. WB's tortured excuses do not hold up to even the lightest scrutiny.

17 20. More recently, WB made the decision to go forward with a television series
18 based on *Edge of Tomorrow*, another Village Roadshow film. But it insisted that Village
19 Roadshow relinquish its co-finance and co-ownership rights voluntarily. When Village
20 Roadshow refused, WB said the quiet part out loud: it will not allow Village Roadshow
21 to benefit from any of its Derivative Rights going forward, despite the over \$4.5 billion it
22 has paid WB to make and distribute 91 films. In other words, if Village Roadshow won't
23 give up its rights, WB will make sure they are worth nothing.

24
25 **From:** Brown, Dave
26 **Sent:** Monday, November 22, 2021 10:40 AM
27 **To:** Kevin Berg <kevin.berg@vreg.com>
28

Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>; Glick, Adam <Adam.Glick@warnerbros.com>; O'Brien, Diana <Diana.O'Brien@warnerbros.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

Kevin,

Thank you for your email below. In our initial conversation I confirmed that we recognize Village Roadshow's rights but are unable to proceed on any project with Village Roadshow as a co-financier. However, our desire is to develop this title (and others) and are hopeful that Village Roadshow is comfortable functioning as "producers" on the project. If VR is unwilling to make any deal unless co-financing, please advise. If your response to my offer is to tell me that we are not recognizing Village Roadshow's stature or co-ownership, I can only conclude that you feel the offer is too low. To that I can only urge you to counter to determine if there's any possible middle ground where we can make a deal.

We have been in this situation before with other companies that co-own underlying rights, and our response is consistent – we invite them to function as an A-level production company. However, that does not necessarily mean that VR is going to get the best deal of any producer on the show. Particularly since those producers will be on-the-ground, rendering day-to-day producing services. And some of them have very high stature and quotes. If that is the final position of Village Roadshow (that no one is to get better), then please let us know. But without a substantive response, it's very difficult to know what the expectation is.

21. WB's admission leaves no doubt that its conduct is simply a thinly-veiled effort to eliminate Village Roadshow's rights going forward so that it can keep for itself valuable Derivative Rights to tent pole films and use those films (and future creative derivative products arising from those films) to steer would-be theatergoers to HBO Max, thereby gaining billions in enterprise value.

F. Village Roadshow Seeks An Accounting Of Diverted Revenues From HBO Max Subscriptions, a Declaration of Its Rights, Including Its Rights To Derivative Works, And Injunctive Relief

22. Village Roadshow does not bring this complaint lightly. It has valued its quarter-century-long relationship with WB and has stood ready and willing to continue that relationship. But, Village Roadshow co-owns those films, and has paid WB and its affiliates over \$4.5 billion to make and distribute those films. Village Roadshow cannot stand by while WB prevents it from receiving the benefit of its bargain and strips Village Roadshow of the valuable intellectual property it owns.

23. Village Roadshow therefore asks the Court for a declaration that WB is in breach of its fiduciary duties to Village Roadshow and owes Village Roadshow an honest accounting of all earnings, *including the enterprise value earned using Village Roadshow's intellectual property to steer subscribers to HBO Max*, and that Village

1 Roadshow is entitled to the Derivative Rights and all other rights it would have received
2 in *The Matrix Resurrections* but for WB's breaches.

3 24. Village Roadshow also asks the Court for a declaration that WB is in
4 violation of its contractual obligations to allow Village Roadshow to co-invest and co-
5 own the derivative works from the films that Village Roadshow co-owns, and for an
6 injunction against further efforts seeking to deprive Village Roadshow of those rights.

7 25. Finally, Village Roadshow asks the Court to demand of WB that it perform
8 its obligations under the parties' agreements, including by consulting with Village
9 Roadshow on marketing and distribution plans, providing prior notice of departures from
10 those plans, and abiding by its obligations to enter contracts that are "consistent with
11 industry standards" and "customary commercial practices in the motion picture industry"
12 and, with affiliates, that are at least equivalent to arm's-length transactions.

13 **THE PARTIES**

14 26. Village Roadshow Films (BVI) Limited is a British Virgin Islands
15 corporation with its principal place of business in Los Angeles, California.

16 27. Village Roadshow Films North America Inc. is a Delaware corporation with
17 its principal place of business in Los Angeles, California.

18 28. Village Roadshow Pictures North America Inc. is a Delaware corporation
19 with its principal place of business in Los Angeles, California.

20 29. Village Roadshow Distribution (BVI) Limited is a British Virgin Islands
21 corporation with its principal place of business in Los Angeles, California.

22 30. Village Roadshow Distribution USA Inc. is a Delaware corporation with its
23 principal place of business in Los Angeles, California.

24 31. On information and belief, defendant Warner Bros. Entertainment, Inc. is a
25 Delaware corporation with its principal place of business in Burbank, California.

26 32. On information and belief, defendant Warner Bros. Productions Limited is
27 an English corporation with its principal place of business in Burbank, California.
28

1 worldwide president of business affairs for further negotiation.⁷ Neither party was
2 allowed to file a demand for arbitration within the 30 days following such submission.

3 40. On January 6, 2022, Village Roadshow informed WB that it intended to seek
4 a determination of its rights. In an attempt to preempt this authorized declaratory relief
5 action and avoid the public learning of Village Roadshow's contractual rights and
6 derivative rights that WB will be required to honor going forward, WB filed a
7 confidential arbitration demand on at least one of their disputes less than 30 days after the
8 parties had both submitted the dispute to their respective designees.

9 **BACKGROUND**

10 **II. VILLAGE ROADSHOW IS A PILLAR OF THE MOTION PICTURE** 11 **INDUSTRY.**

12 41. Established in 1997, Village Roadshow is one of Hollywood's leading
13 independent producers and financiers.

14 42. Village Roadshow has produced and financed over 100 films, including
15 some of the biggest box office successes like *The Matrix* trilogy, the *Ocean's* series,
16 *Joker*, *Sully*, *Mad Max: Fury Road*, *American Sniper*, and the *Sherlock Holmes* franchise.
17 For example, *Joker* is the highest-grossing R-rated movie of all time, netting nearly \$1.07
18 billion in earnings worldwide. And *The Matrix* trilogy, one of the most successful film
19 trios in history, grossed more than \$1.6 billion in worldwide box office receipts.
20 Including home entertainment sales, video game revenue, soundtrack album sales, and
21 merchandising, the *Matrix* franchise raked in more than \$3 billion in revenue. Other box
22 office hits and award-winning films that Village Roadshow co-owns with WB include
23 *Miss Congeniality*, *Training Day*, *Mystic River*, *Happy Feet*, *I Am Legend*, *The Great*
24 *Gatsby*, and *San Andreas*. In total, Village Roadshow's library of films has generated
25 more than \$19 billion in global box office receipts.

26 43. Village Roadshow has achieved 34 number one U.S. box office openings, a
27 total that represents nearly a third of Village Roadshow's entire library.

28 ⁷ *Id.*

1 44. Village Roadshow’s films have not only been a financial success—they have
2 also been recognized for their artistic value, having received 50 Academy
3 Award nominations, 19 Academy Awards and six Golden Globe Awards.

4 45. Unlike many other co-financiers in Hollywood, Village Roadshow’s relation
5 with major production studios extends beyond financing. Instead, Village Roadshow is a
6 co-owner in the intellectual property in the films that it finances and produces.

7 **III. VILLAGE ROADSHOW HAS A 25 YEAR CONTRACTUAL**
8 **RELATIONSHIP WITH WB.**

9 **A. The Parties’ Early Co-Ownership Agreements and Omnibus**
10 **Amendment**

11 46. The relationship between Village Roadshow and WB is governed in part by
12 several related agreements. From 1998 until 2009, Village Roadshow and WB had a
13 series of agreements, titled Qualified Cost Sharing Agreements (“QCSA”), through
14 which they co-developed, co-financed, and co-produced multiple films and acquired
15 foreign rights. In 2009, they entered the first Motion Picture Rights Purchase Agreement
16 (“MPRPA”), amended and restated in 2012 (the “2012 MPRPA”), through which Village
17 Roadshow co-financed and acquired the foreign copyrights to 15 films. In 2014, Village
18 Roadshow and WB entered into another MPRPA, through which Village Roadshow and
19 Warner Bros. shared domestic and foreign copyrights for the first time.

20 47. The parties amended certain of their agreements in 2017 through the
21 Omnibus Agreement to Co-Ownership Agreements, effective August 29, 2017 (the “2017
22 Omnibus Amendment”), which altered the balance of rights between Village Roadshow
23 and WB as to three schedules of films: QCSA Pictures, 2012 MPRPA Pictures, and 2014
24 MPRPA Pictures. Going forward, for most pictures, rather than have Village Roadshow
25 own all foreign rights and WB own all domestic rights, two Village Roadshow entities,
26 Village Roadshow Films (BVI) Limited (VRF) and Village Roadshow Films North
27 America Inc. (VRFNA), would generally each own 25% of the Derivative Rights
28

1 “throughout the entire universe,” meaning that Village Roadshow would own 50% of the
2 rights, while WB would own the remaining 50%.

3 48. *Charlie and the Chocolate Factory*, *The Matrix*, *The Matrix Reloaded*, and
4 *The Matrix Revolutions* are QCSA Pictures per Schedule A of the Omnibus Amendment.⁸
5 Accordingly, under Section 1 of the Omnibus Amendment, Village Roadshow and WB
6 each own 50% of the Derivative Rights of those films worldwide.⁹ Per Schedule E, for
7 *Edge of Tomorrow*, a film developed under the 2012 MPRPA, Village Roadshow owns
8 33.3% of the copyrights and worldwide Derivative Rights of the film, while WB owns
9 the remaining 66.7% of those rights.¹⁰

10 **B. The Parties’ Current Rights and Responsibilities With Respect To**
11 **Derivative Works**

12 49. The 2014 MPRPA was amended multiple times and ultimately amended and
13 restated on November 10, 2020 (the “2020 MPRPA”).

14 50. Under the parties’ current agreements, the Derivative Rights to produce
15 Derivative Works, defined as “theatrical and television remakes, sequels, prequels, series,
16 spin-offs or any other audio-visual works based on any of the Pictures or any of the
17 characters therein,”¹¹ were “reserved jointly” by WB and Village Roadshow or its
18 permitted assignees. If a Derivative Work were based on a film “subject to this
19 Agreement” that was within WB’s existing library (i.e., a “Library Film”), however,
20 Village Roadshow’s ownership rights would be triggered only if the Derivative Work met
21 certain criteria, in which case it would be considered a Qualifying Derivative Work that
22 Village Roadshow would co-finance and co-own.¹² The parties in no way intended the
23 term “Library Film” to apply to films co-financed prior to the 2014 MPRPA, a fact
24 expressly stated in the parties’ negotiation correspondence and reflected in the list of
25

26 ⁸ See Omnibus Amendment at Schedule A.

27 ⁹ See *id.* at §1.

28 ¹⁰ See *id.* at Schedule E.

¹¹ See 2014 MPRPA at 4.

¹² See *id.* at § 6.4(a); 2020 MPRPA at § 6.4(a).

1 films developed under the 2014 MPRPA that could potentially fall within the definition
2 but that were expressly excluded.

3 **From:** Greg Bassler

4 **Sent:** Wednesday, September 10, 2014 2:39 PM

5 **To:** Steve Spira

6 **Cc:** David Sagal; Dave Womack (dave.womack@warnerbros.com); Matthew Velkes

7 **Subject:** Warner Village Films

8 Dear Steve

9 As per our discussions yesterday, I wanted to set out where it would appear we are landing

10 **Derivative Rights**

11 Changes to apply from future films only – query whether that should be with those films agreed after we decided to move to domestic/foreign
12 VRPG to have perpetual rights as per current arrangements subject to the following “Library Film” considerations

13

14 The communication went on to state:

15 To confirm, these new arrangements would not apply to any of the Warner Village films up to
16 and including at least EDGE OF TOMORROW, and possibly, MAD MAX FURY ROAD, where the
17 current terms of the Co-Ownership Agreements will continue.

18 Let’s discuss once you have had a chance to consider further.

19 Warmest regards

20 Greg

21 51. If the Derivative Work were based on a film that was not a Library Film,
22 including any film that had already been developed by the parties under any of their
23 agreements, Village Roadshow automatically had the right to co-own and co-finance.¹⁴

24 52. If WB proposed to make a sequel, prequel or otherwise exploit Derivative
25 Rights co-owned by Village Roadshow, it was obligated to serve written notice
26 delineating the project, including the latest draft of the screenplay, the most recent budget
27 net of any anticipated rebates, and the proposed director and principal cast.¹⁵ This
28 requirement applies to all works that Village Roadshow had already co-financed as of the

24 ¹³ The quote is truncated on the right because of space constraints, but the omitted portion is not
25 relevant to this dispute. For full disclosure, the sentences read, in full: “Changes to apply from
26 future films only – query whether that should be with those films agreed after we decided to move to
27 domestic/foreign (ie from KNIGHTS and TARZAN) given the others were all greenlit on the basis
28 of foreign only and with the then existing derivative rights arrangements (for discussion) VRPG to
have perpetual rights as per current arrangements subject to the following “Library Film”
considerations.”

¹⁴ See 2020 MPRPA at § 6.4(a).

¹⁵ See Omnibus Amendment, Attachment 1-1; 2020 MPRPA at § 4(a).

1 2017 Omnibus Amendment, including *Charlie and the Chocolate Factory*, the *Matrix*
2 series, and *Edge of Tomorrow*.

3 53. The notice from WB would constitute an offer to acquire the applicable
4 percentage of domestic and foreign rights and participate in the co-financing and co-
5 ownership of the film. If Village Roadshow accepted the offer and the film were made,
6 the parties were then to execute a Rights Purchase Agreement in the form already agreed
7 upon.¹⁶

8 **C. The Distribution Agreements**

9 54. Each film to which Village Roadshow owned rights was also subject to
10 distribution agreements whereby defendants WAV Distribution LLC and Warner Bros.
11 Production Limited (WBPL) would distribute the film domestically and abroad,
12 respectively.¹⁷

13 55. The distribution agreements grant WAV and WBPL (the WB affiliates
14 responsible for distributing the films domestically and abroad, respectively) wide
15 discretion in the marketing of a co-financed film; however, each of them “shall at all
16 times comply with its affirmative obligations and negative covenants contained” in the
17 respective ODA Agreements.¹⁸

18 56. The operative distribution agreements contain important affirmative
19 obligations on the part of WB. Among those affirmative obligations were that WAV and
20 WBPL were required to distribute each film “substantially in conformity with the
21 Marketing Plan” for such film and that “[s]ubject always to prior consultation with”
22

23 ¹⁶ See Omnibus Amendment, Attachment 1-1 at ¶ 4(b)(i)-(ii).

24 ¹⁷ For purposes of this dispute, the relevant distribution agreements are the Second Amended and
25 Restated Output Distribution Agreement (“ODA”) (Domestic) (“ODA Domestic”) between Village
26 Roadshow Distribution USA Inc. and WAV Distribution LLC; the Second Amended and Restated
27 Output Distribution Agreement (Foreign) (“ODA Foreign”) between Village Roadshow Distribution
28 (BVI) Limited and WBPL; and the Amended and Restated Consolidated Output Distribution
Agreement (Foreign) between Village Roadshow Distribution (BVI) Limited and Warner Bros.
Productions Limited, all three dated November 2020 (Consolidated Foreign ODA)—all dated the
same day as the 2020 MPRPA.

¹⁸ See ODA Domestic at § 6(e); ODA Foreign at § 6(e).

1 Village Roadshow, WB “shall use all reasonable efforts consistent with industry
2 standards to distribute each Picture consistent with customary commercial practices in the
3 motion picture industry.”¹⁹

4 57. In addition, Village Roadshow waived its right to object to agreements
5 between and among WB affiliates *but only if the economic terms of those agreements*
6 *(taken as a whole) were not less favorable to WAV or WBPL than comparable arm’s-*
7 *length agreements with non-affiliates.*²⁰ In other words, WAV and WBPL could not enter
8 sweetheart distribution deals with their affiliates but were obligated to obtain at least as
9 beneficial terms as they would from unaffiliated third parties in an arm’s-length
10 negotiation.

11 **D. The Contractual Arbitration Clause and the Carve-out for Injunctive**
12 **and Other Non-monetary Relief**

13 58. The parties’ agreements referenced herein are “governed by and construed in
14 accordance with the laws of the State of California.”²¹

15 59. Claims or disputes arising from the agreements are to be resolved via
16 arbitration.²²

17 60. This complaint is expressly allowed, however, as the parties agreed that the
18 arbitration clause “shall not prevent any party from seeking injunctive relief and other
19 forms of non-monetary relief in the state or federal courts located in Los Angeles County,
20 California.”²³

21
22
23
24
25
26 ¹⁹ See *id.*

27 ²⁰ See ODA Domestic at Ex. A, ¶ 9(d); ODA Foreign at Ex. A, ¶ 9(d).

28 ²¹ See, e.g., Omnibus Amendment § 5(e)(i).

²² See *id.* at § 5(e)(ii).

²³ See *id.*

1 **IV. WB IS ENGAGING IN A PATTERN OF BEHAVIOR INTENT ON**
2 **SYSTEMATICALLY DEPRIVING VILLAGE ROADSHOW OF ITS**
3 **RIGHTS.**

4 **A. WB Released *The Matrix Resurrections* Simultaneously On Its Sister**
5 **Company Streaming Platform In A Way That Necessarily Destroyed Its**
6 **Potential For Financial Success**

7 61. One of the films that Village Roadshow had the right to co-finance and co-
8 own is *The Matrix Resurrections*, the fourth film in the iconic *Matrix* series. On August
9 21, 2019, pursuant to the 2017 Omnibus Amendment to Co-Ownership Agreements,
10 Village Roadshow exercised its right to participate in *The Matrix Resurrections*'
11 production.

12 **B. WB Knowingly Cannibalized The Box Office Sales of *The Matrix***
13 ***Resurrections* By Releasing It on Its Sister Company's HBO Max**
14 **Streaming Service on The Same Day of Its Theatrical Release**

15 62. Announced in late 2019, *The Matrix Resurrections* was to be the first *Matrix*
16 film in nearly two decades. With its enormous fan base and A-list talent, *The Matrix*
17 *Resurrections* quickly became one of the most hyped blockbusters of 2021. Originally
18 scheduled for a theatrical release at the start of the 2021 summer blockbuster season, WB
19 initially postponed the film's release to April 1, 2022, because it knew that the box office
20 would suffer tremendously due to the global Covid-19 pandemic. While the 10-month
21 delay was lengthy, it made sense and other studios were also delaying the release of
22 major films so that they could benefit from the anticipated greater return by moviegoers
23 to theaters post pandemic and thereby improve the film's box office success and
24 profitability.

25 63. *The Matrix Resurrections*' box office success, particularly its early box
26 office success, was critically important. Since the dawn of the big screen, the financial
27 success of a feature film has been measured by theatrical revenue, with opening weekend
28 box office receipts being a nearly infallible measure of ultimate financial returns as it
directly and positively correlated with ancillary revenue streams. Some revenue streams
are contractually driven off of box office levels achieved, including international

1 television (the single largest ancillary revenue stream) as well as domestic pay television.
2 For that reason, it has been an industry-wide practice to release films exclusively in
3 theaters for a significant period of time before allowing distribution in other media. It is
4 during this exclusive theatrical window that films typically generate the greatest revenue,
5 thus why box office receipts are a historic measure of a film’s success. As one industry
6 analyst explained, “Theatrical exclusivity is important. It mitigates the potential of being
7 cannibalized, not only at home on streaming but also with piracy.”²⁴

8 64. In what initially seemed to be a move designed to maximize theatrical
9 revenue, WB announced in October 2020 that it was *advancing* the theatrical release of
10 *The Matrix Resurrections* by four months, to December 2021, another historically
11 popular time for the theatrical release of major blockbuster films because of the high
12 number of holiday moviegoers.

13 65. Two months later, however, WB made a surprise and very different
14 announcement—without notice, prior consultation (despite being contractually obligated
15 to do so), or Village Roadshow’s consent—that it planned to distribute each film in its
16 entire 2021 slate, including *The Matrix Resurrections*, on HBO Max simultaneously with
17 its theatrical release—a dramatic departure from any past distribution practice by WB or
18 any other studio. On information and belief, at the time that WB decided to advance the
19 release of *The Matrix Resurrections*, it knew full well that the movie would be swept into
20 the day-and-date scheme but made the announcements separately to give the false
21 impression that the decisions were independent of one another.

22 66. Village Roadshow learned of the studio’s radical shift in its release plan
23 *from public press breaks*. When Village Roadshow Pictures CEO Bruce Berman raised
24 the issue with Toby Emmerich, the Chairman of Warner Bros. Pictures, Emmerich
25

26
27 ²⁴ See Joseph Williams, *Billion-dollar movies return, signaling shift in studios’ streaming strategy*,
28 S&P Global Market Intelligence (January 20, 2022),
<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/billion-dollar-movies-return-signaling-shift-in-studios-stream-strategy-68226552>.

1 explained that “he wasn’t allowed to tell” Berman about the HBO Max day-and-date
2 release strategy but that, if he could have, he “would have done things differently.”

3 67. Notably, while WB moved up the release of *The Matrix Resurrections* so
4 that it would be included in the 2021 slate provided for day and date release on HBO
5 Max, it *pushed back* the release of *Black Adam* and *The Batman*, two films wholly owned
6 by WB, into 2022, thus strategically positioning its own, wholly-owned films to be
7 released in 2022 and avoiding the disastrous effects of the day and date release strategy
8 for the 2021 films. Given the unproven nature of the day-and-date release strategy, WB
9 effectively used *The Matrix Resurrections* as a test case while maintaining a tried and
10 true release strategy for its own wholly-owned films, *Black Adam* and *The Batman*.

11 68. The decision to release films on the same “day and date” in theaters and on
12 its streaming platform had precisely the impact on the financial success of those films
13 that one would expect: it was devastating. For example, WB released *Wonder Woman*
14 *1984* simultaneously in theaters and on HBO Max in mid-December 2020. That film,
15 like *The Matrix Resurrections*, was a highly anticipated sequel with an avid fanbase.
16 Despite the near certainty of being a financial success given that its predecessor, *Wonder*
17 *Woman*, achieved a domestic box office (United States and Canada) of \$469.6 million (in
18 2021 dollars), *Wonder Woman 1984* grossed only \$49.7 million (in 2021 dollars) in the
19 United States and Canada, making it a financial disaster.

20 69. The decision to release *The Matrix Resurrections* had the same ruinous
21 impact: it cannibalized the film’s box office receipts. Domestically, *The Matrix*
22 *Resurrections* earned just \$12 million in its opening weekend and just \$36 million
23 domestically thus far, leaving it substantially in the red.²⁵ Such paltry revenue stands in
24 stark contrast to the previous three *Matrix* movies, which earned an average of
25

26 ²⁵ John F. Trent, *After Abysmal Opening Weekend Box Office, The Matrix Resurrections Producer Says*
27 *No Plans For More Matrix Movies*, Bounding Into Comics, (December 13, 2021),
28 <https://boundingintocomics.com/2021/12/30/after-abysmal-opening-weekend-box-office-the-matrix-resurrections-producer-says-no-plans-for-matrix-movies/> and Box Office Mojo by IMDbPro, *The Matrix Resurrections*, <https://www.boxofficemojo.com/title/tt10838180/>.

1 approximately \$88 million in 2021 dollars per film during their domestic openings. Why
2 go to a theater when you can watch a blockbuster film at home on the same day for free?

3 **C. WB Knew That Its “Day and Date” Release Strategy Would Lead to**
4 **Enormous Piracy**

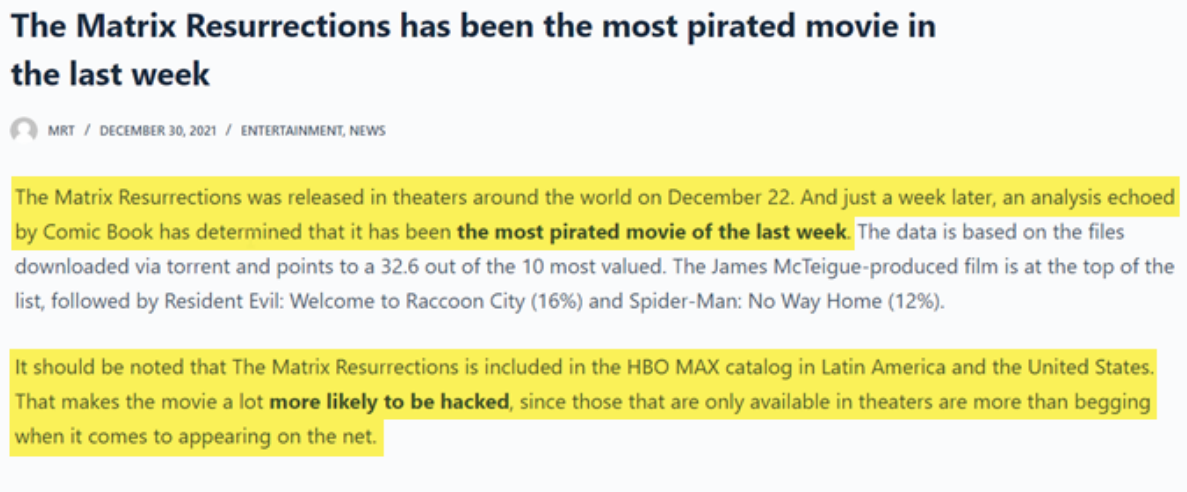
5 70. But the cannibalization of theatrical revenues is not the only downside of
6 “day and date” releases. Another significant downside—well known in the industry—is
7 the ease with which films can be pirated from streaming platforms.²⁶ According to an
8 August 23, 2021 article, “the worst takeaway from dynamic windows is piracy, plain and
9 simple.”²⁷ As the CEO of Cinépolis, a Mexican movie theater chain, explained, “Day
10 and date allows pristine copies to be made in all available languages. Pirates are making
11 a lot of money with day-and-date releases.” *Id.* Thus, box office receipts are depressed
12 not only by the simultaneous release on a streaming platform, but also by the increased
13 piracy.²⁸ For example, whereas *Woman Woman* grossed over \$105 million (in 2021
14 dollars) during its opening weekend, *Woman Woman 1984* earned less than \$17 million
15 (in 2021 dollars). Similarly, whereas the previous three *Matrix* films earned an average
16 of almost \$88 million (in 2021 dollars) per domestic opening, *The Matrix Resurrections*
17 earned less than \$11 million in its domestic opening.

23 ²⁶ See, e.g., Alex Hern, *Streaming was supposed to stop piracy. Now it is easier than ever*, The
24 Guardian (October 2, 2021, 3:00 EDT), [https://www.theguardian.com/film/2021/oct/02/streaming-](https://www.theguardian.com/film/2021/oct/02/streaming-was-supposed-to-stop-piracy-now-it-is-easier-than-ever)
25 [was-supposed-to-stop-piracy-now-it-is-easier-than-ever](https://www.theguardian.com/film/2021/oct/02/streaming-was-supposed-to-stop-piracy-now-it-is-easier-than-ever).

26 ²⁷ Anthony D’Alessandro, *Piracy is Biggest Problem For Day-And-Date Releases, Say International*
27 *Film Distrib & Exhib Chiefs - Cinema Con*, DEADLINE, (August 23, 2021, 2:59 PM),
28 [https://deadline.com/2021/08/black-widow-disney-theatrical-day-and-date-piracy-cinemacon-](https://deadline.com/2021/08/black-widow-disney-theatrical-day-and-date-piracy-cinemacon-international-box-office-1234820193/)
[international-box-office-1234820193/](https://deadline.com/2021/08/black-widow-disney-theatrical-day-and-date-piracy-cinemacon-international-box-office-1234820193/).

²⁸ See Anthony D’Alessandro, “*Matrix Resurrections’ Ranks Behind ‘Godzilla Vs. Kong’ In*
Streaming Viewership; Pic Is Most Pirated Of The Week, DEADLINE, (December 27, 2021 11:31
AM), [https://deadline.com/2021/12/the-matrix-resurrections-box-office-bomb-hbo-max-viewership-](https://deadline.com/2021/12/the-matrix-resurrections-box-office-bomb-hbo-max-viewership-piracy-1234902062/amp/)
[piracy-1234902062/amp/](https://deadline.com/2021/12/the-matrix-resurrections-box-office-bomb-hbo-max-viewership-piracy-1234902062/amp/).

71. And as WB well knew it would, piracy took its toll on *The Matrix Resurrections*. As DEADLINE reported, *The Matrix Resurrections* was the “most pirated feature according to MUSO for the week of Dec. 20-26” due to its availability online.²⁹ The film represented a staggering 32.6% share of the top ten torrents for that week, statistics that were noted by many news outlets.



See MRT, *The Matrix Resurrections has been the most pirated movie in the last week*, Market Research Telecast, (December 30, 2021), <https://marketresearchtelecast.com/the-matrix-resurrections-has-been-the-most-pirated-movie-in-the-last-week/236615/>.

72. All this has resulted in the lowest five-day opening in the franchise’s history—an abysmal \$22.5 million worldwide. *The Matrix*, *The Matrix Reloaded*, and *The Matrix Revolutions* grossed approximately \$50 million, \$139 million, and \$74 million (in 2021 dollars) during their respective opening weekends.³⁰ The global figures paint an even sharper divergence. Whereas the first three films earned \$835 million, \$1.13 billion, and \$649 million, respectively, in worldwide box office revenue, *The Matrix Resurrections* has earned only \$153 million (all figures in 2021 dollars).

²⁹ *Id.*

³⁰ Chris Eggertsen, *The Matrix By the Numbers: A Box Office History of The Wachowskis' Game-Changing Techno-Action Franchise*, Boxoffice Pro, (December 22, 2021), <https://www.boxofficepro.com/the-matrix-box-office-history/>.

1 73. WB’s actions have devalued not only *The Matrix Resurrections* but will
2 have devaluing effects on Village Roadshow’s rights related to sequels and other
3 derivative works of the *Matrix* franchise, in which Village Roadshow also has vested
4 interests. As the producer of *The Matrix Resurrections* stated after the film’s abysmal
5 release, “We’ve got no prequel in mind. We’ve got no sequel in mind. We’ve got no
6 further trilogy.”³¹

7 74. At the time that Village Roadshow accepted WB’s offer to partner on *The*
8 *Matrix Resurrections*, WB did not consult with Village Roadshow or give any indication
9 whatsoever of its plan to shift the traditional release pattern for the film dramatically.
10 Nor did WB consult with or obtain Village Roadshow’s consent, despite its contractual
11 obligation to do so. Warner Bros. reached acceptable accommodations, without resorting
12 to litigation, with talent like Keanu Reeves, Carrie-Anne Moss and Lana Wachowski on
13 *The Matrix Resurrections*, and with co-finance partners like Legendary on *Dune*, but shut
14 down negotiations with one of its longest-term relationships. And, on information and
15 belief, WAV and WBPL did not market or distribute the film according to the Marketing
16 Plan, as also contractually required. Indeed, when Village Roadshow requested the
17 Marketing Plan, WAV and WBPL provided nothing. Instead, according to WB, WAV
18 and WBPL licensed *The Matrix Resurrections* to its affiliate to premier on its streaming
19 service on the same day and date as in theaters in the sweetest of sweetheart deals: for
20 nothing. Nonetheless, WB continues to expect Village Roadshow to provide it with
21 substantial payment for its share of production expenses. In light of WB’s failure to meet
22 its contractual obligations, however, and the easily predictable consequences of WB’s
23 day-and-date strategy on the financial success of *The Matrix Resurrections*, however,
24 Village Roadshow considers WB’s in breach, rendering any further performance by
25 Village Roadshow with respect to *The Matrix Resurrections* excused.

26
27 ³¹ John F. Trent, *After Abysmal Opening Weekend Box Office, The Matrix Resurrections Producer Says*
28 *No Plans For More Matrix Movies*, Bounding Into Comics, (December 20, 2021),
<https://boundingintocomics.com/2021/12/30/after-abysmal-opening-weekend-box-office-the-matrix-resurrections-producer-says-no-plans-for-matrix-movies/>.

D. WB's Day-and-Date Release Strategy Is Designed to Funnel Revenues Away From Profit Participants and Village Roadshow, a Copyright Co-Owner

75. WB's sudden change in distribution strategy was designed solely to prop up HBO Max and thereby generate revenue that it believed it could shield from those entitled to a share of the films' distribution proceeds. And WB's parent company made no effort to hide that motivation and intent. In connection with the announcement of its strategy, Jason Kilar, CEO of WarnerMedia (ultimate parent of WB, WAV, and WBPL, and the new HBO Max service) stated: "[W]e believe that what we announced today is going to optimize the economics. And the reason why is twofold: The revenues that are generated by the box office, of course, *and the other is the value of the consumption on HBO Max from existing subscribers and what we anticipate to be more subscribers coming into HBO Max who choose to do so because of the presence of these films.*"³² And, although films released pursuant to this strategy performed abysmally at the box office, WarnerMedia touted the "ratings win" it achieved *on HBO Max*.³³

76. Similarly, Warner Bros. Pictures Group's COO Carolyn Blackwood has stated, "The decision was made to apply this strategy to all of the 2021 slate not only because we were unable to predict the continued impact of the pandemic, *but also because of the importance and value in having and marketing a full film slate for HBO Max.*"³⁴ At the same time, other films with high potential box office return for WB like *The Batman* with Robert Pattinson, *Black Adam* starring Dwayne Johnson, *The Flash*

³² Anthony D'Allessandro, *WarnerMedia CEO Jason Kilar On How Groundbreaking HBO Max Theatrical Window Strategy Will Optimize Revenues*, DEADLINE (December 3, 2021, 1:12 PM), <https://deadline.com/2020/12/hbo-max-warner-bros-movies-deal-jason-kilar-explains-move-1234649871/> (emphasis added).

³³ See Joe Flint, *'Wonder Woman 1984' Delivers Rating Win for HBO Max*, The Wall Street Journal (January 29, 2021 10:53 AM), <https://www.wsj.com/articles/wonder-woman-84-delivers-rating-win-for-hbo-max-11611935261>.

³⁴ Ryan Faughnder, *Wide Shot: Inside Warner Bros.'s risky streaming movie strategy*, Los Angeles Times, (June 8, 2021, 6:00 AM), <https://www.latimes.com/entertainment-arts/business/newsletter/2021-06-08/warnerbros-streaming-release-strategy-the-wide-shot>.

1 with Ezra Miller, the animated feature *DC Super Pets* and James Wan's *Aquaman* have
2 been slated for 2022 exclusive theatrical release.³⁵

3 77. But while its executives often referred to the pandemic as at least part of the
4 reason for its changed distribution model, WB's unilateral decision, in violation of
5 Village Roadshow's express contractual rights and in breach of its fiduciary duty to
6 Village Roadshow, cannot be justified by pointing to the pandemic. By December 2021,
7 theaters were open and moviegoers were going to them. For example, *Spider-Man: No*
8 *Way Home*, like *The Matrix Resurrections*, is a sequel to a blockbuster series that had
9 originally been slated for release in the summer of 2021 but was delayed for theatrical
10 release until December 2021 due to the pandemic. It was released domestically one week
11 before *The Matrix Resurrections* in over 4300 theaters, earning \$253 million at theaters in
12 North America during its opening weekend. Within 10 days, it went on to gross \$1.05
13 billion worldwide. As of January 30, 2022, the film has earned a staggering \$1.74 billion
14 worldwide.³⁶ Notably, *Spider-Man* was not a day-and-date release. Instead, Sony, and
15 Marvel (Disney) released the film exclusively in theaters, as has been the industry's
16 practice for decades. That film's starkly different financial success speaks volumes about
17 WB's day and date release strategy.³⁷

18
19
20
21
22
23 ³⁵ See Ryan Faughnder, *Theaters or HBO Max? Warner Bros. movie plans take shape as Discovery*
24 *merger looms*, Los Angeles Times (June 8, 2021, 5:00 AM),
[https://www.latimes.com/entertainment-arts/business/story/2021-06-08/can-warner-bros-keep-](https://www.latimes.com/entertainment-arts/business/story/2021-06-08/can-warner-bros-keep-movie-dreams-alive)
25 [movie-dreams-alive](https://www.latimes.com/entertainment-arts/business/story/2021-06-08/can-warner-bros-keep-movie-dreams-alive).

26 ³⁶ Nancy Tartaglione, *'Spider-Man: No Way Home' Swings Past \$1B Overseas: Global Now \$1.74 B -*
27 *International Box Office*, DEADLINE (January 30, 2022 8:48 AM),
28 [https://deadline.com/2022/01/spider-man-no-way-home-one-billion-overseas-scream-sing-2-belfast-](https://deadline.com/2022/01/spider-man-no-way-home-one-billion-overseas-scream-sing-2-belfast-global-international-box-office-1234922668/)
[global-international-box-office-1234922668/](https://deadline.com/2022/01/spider-man-no-way-home-one-billion-overseas-scream-sing-2-belfast-global-international-box-office-1234922668/).

³⁷ See Pamela McClintock, *Box Office: 'Spider-Man: No Way Home' Soars to Record to Record*
\$260M U.S. Opening, \$600.8M Globally, The Hollywood Reporter (December 20, 2021, 8:25 AM),
[https://www.hollywoodreporter.com/movies/movie-news/spider-man-no-way-home-box-office-](https://www.hollywoodreporter.com/movies/movie-news/spider-man-no-way-home-box-office-opening-1235065128/)
[opening-1235065128/](https://www.hollywoodreporter.com/movies/movie-news/spider-man-no-way-home-box-office-opening-1235065128/).

HOME > MOVIES > MOVIE NEWS

Box Office: 'Spider-Man: No Way Home' Soars to Record \$260M U.S. Opening, \$600.8M Globally

The superhero pic scored the No. 2 domestic debut of all time as moviegoing returned to pre-pandemic levels for the first time despite omicron. But not all are celebrating: 'Nightmare Alley' found coal in its Christmas stocking.

BY PAMELA MCCLINTOCK DECEMBER 20, 2021 8:25AM



Sony and Marvel's *Spider-Man: No Way Home* spun a record-breaking web in its box office debut, grossing \$260 million from 4,336 theaters to secure the second-biggest domestic opening of all time at the box office despite growing worries over the COVID-19 omicron variant.

Monday's final number of \$260 million came in ahead of Sunday's estimate of \$253 million to supplant *Avengers: Infinity War* as the No. 2 launch even, not adjusted for inflation.

The New York Times

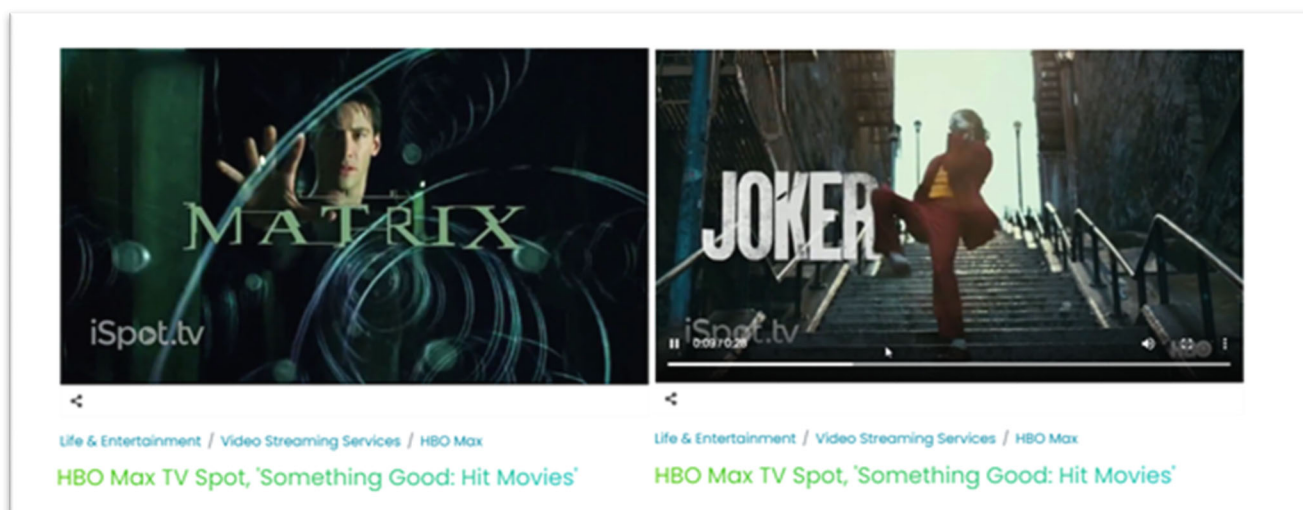
'Spider-Man: No Way Home' Ensnarers Audiences and Refills Studio Cooffers

After nearly two years of lackluster box office sales for theatrical releases, Spidey breaks through to do what superheroes are supposed to do.



Tom Holland in "Spider-Man: No Way Home," which brought in the third-highest opening weekend box-office receipts in Hollywood history. Matt Kennedy/Sony Pictures

78. WB not only violated its contractual obligations concerning *The Matrix Resurrections* in order to increase the number of subscriptions for HBO Max, it also used other co-owned Village Roadshow films as advertisements for the streaming service to attract new subscribers. For example, both *Joker* and the original *The Matrix* trilogy were prominently displayed in advertisements for HBO Max, both in print and video form.



See HBO Max TV Spot, 'Something Good: Hit Movies', <https://www.ispot.tv/ad/tLDJ/hbo-max-something-good-hit-movies> (last visited February 4, 2022) (commercial advertisement for HBO Max prominently featuring *The Matrix* and *Joker*).

79. The self-dealing strategy has worked. WarnerMedia reported that HBO and HBO Max had 67.5 million customers at the end of the second quarter of 2021, an increase of 12 million subscribers over the past year.³⁸ And, the forecast for global HBO Max subscribers was revised upward to between 70 million and 73 million by the end of 2021.³⁹ In fact, the strategy outperformed even these upwardly revised expectations: by January 2022, the HBO Max subscriber base had ballooned to 73.8 million. As WarnerMedia CEO Jason Kilar explained, 2021 was “the year that HBO Max broke

³⁸ See Todd Spangler, *WarnerMedia CEO Jason Kilar is Disappointed He Will Probably Lose His Job*, Variety (September 28, 2021, 4:29 PM), <https://variety.com/2021/digital/news/warnermedia-ceo-jasonkilar-losing-job-discovery-merger-1235076376/>.

³⁹ See Shella Dang and Eva Mathews, *AT&T raises forecast for revenue, HBO Max as business recovers from pandemic*, yahoo!finance (July 22, 2021), <https://finance.yahoo.com/news/t-beats-wireless-subscriber-additions-103041148.html>; see also Ryan Faughnder, *Wide Shot: Inside Warner Bros.'s risky streaming movie strategy*, Los Angeles Times (February 4, 2022, 3:43 PM) (WB's COO stating, “I’m both happy and relieved, because it has ultimately played out almost exactly as we hoped it would . . . our partners at HBO Max are thrilled.”), <https://www.latimes.com/entertainment-arts/business/newsletter/2021-06-08/warner-bros-streaming-release-strategy-the-wide-shot>.

through”⁴⁰ and that “We’d make the same decision again.”⁴¹

Why WarnerMedia CEO and HBO Max head don't regret angering Hollywood with 2021 movie strategy: 'We'd make the same decision again'

Natalie Jarvey Jan 19, 2022, 6:30 AM



Timothée Chalamet stars in Warner Bros. film “Dune.” Courtesy of Warner Bros. Pictures and Legendary Pictures

80. While WB has used tent pole films co-owned by Village Roadshow to garner for itself a huge payout by driving up subscriptions of HBO Max, WB has shared none of that with Village Roadshow.

81. Village Roadshow has received no additional revenue for the release of its films on HBO Max.

82. In March 2021, WarnerMedia’s CEO noted that “[t]he economics of HBO Max’s growth are compelling To use the U.S. as one example, we currently earn 90% in margin from each retail subscriber that we add.”⁴² Such margins are possible only if WB is not requiring its sister company streaming service to pay market value rates

⁴⁰ Movieguide® Staff, HBO Max’s Day and Date Release Strategy Lands More Subscribers Than Expected, (January 5, 2022, last visited February 4, 2022), <https://www.movieguide.org/news-articles/hbo-maxs-day-and-date-release-strategy-lands-more-subscribers-than-expected.html#:~:text=HBO%20Max%E2%80%99s%20Day%20And%20Date%20Release%20Strategy%20Lands,company%20projections%20for%2070%20million%20to%2073%20million>.

⁴¹ See Natalie Jarvey, *Why WarnerMedia CEO and HBO Max head don’t regret angering Hollywood with 2021 movie strategy: ‘We’d make the same decision again’*, Insider (January 19, 2022, 6:30 AM), <https://www.businessinsider.com/warnermedia-movie-strategy-boosted-hbo-max-subscribers-retention-project-popcorn-2022-1>.

⁴² Dade Hayes, *WarnerMedia Chief Jason Kilar Addresses HBO Max AVOD Plans And Progress So Far: “It’s Working”*, DEADLINE (March 12, 2021, 11:08 AM), <https://deadline.com/2021/03/hbo-max-warnermediastreaming-jason-kilar-1234713108/>.

1 for premium content such as *The Matrix Resurrections*. There is no question that if WB
2 were to market *The Matrix Resurrections* to an established, third party streaming service,
3 the property would garner significant, and substantially greater, streaming revenues that
4 WB would be obligated to share. WB's decision to give its content to its sister entity
5 below market violates express provisions of the Domestic and Foreign Output
6 Distribution Agreements and the fiduciary duties it owes to its copyright co-owner,
7 Village Roadshow.

8 83. Even more troubling than the obvious below market deal is the fact that WB
9 appears to be providing HBO Max with this valuable content (content owned in part by
10 Village Roadshow) *for free*. Indeed, when asked to explain why there were no additional
11 revenues reported for *Joker*'s run on HBO Max, WB stated that it receives only the
12 generic "pay television" fees, and charges its sister company nothing more for streaming
13 on the new HBO Max streaming service. In other words, it has allowed its sister
14 company to exploit Village Roadshow's valuable intellectual property to earn premium
15 subscription revenues that it refuses to share with Village Roadshow.

16 84. Under the parties' contracts and under the obligations owed by WB to
17 Village Roadshow as a co-owner of the copyrights to the films WB has allowed to be
18 streamed on HBO Max, WB owes Village Roadshow an accounting of the subscription
19 revenues received.

20 **E. WB Has Refused to Recognize Village Roadshow's Right to Co-finance**
21 ***Wonka***

22 85. In 2021, WB announced production of the film, *Wonka*, starring Academy
23 Award-nominated actor Timothée Chalamet as Willie Wonka.

24 86. As WB itself admitted in correspondence to Village Roadshow, *Wonka* is a
25 prequel to *Charlie and the Chocolate Factory*, which was developed by the parties
26 pursuant to one of their QCSAs, not pursuant to an MPRPA. In a letter dated December
27 17, 2021, WB's chief counsel, Wayne Smith wrote to Village Roadshow, "As you know,
28 the previously released motion picture 'CHARLIE AND THE CHOCOLATE

1 FACTORY’ is a QCSA Picture and the upcoming motion picture ‘WONKA’ is a ‘Sequel
2 or Remake Project’ (as defined in Attachment 1) thereto.”

3 87. Pursuant to the Co-Ownership Agreement for *Charlie and the Chocolate*
4 *Factory*, WB must provide Village Roadshow with a Project Notice, which is to include
5 the most recent budget and the proposed director and cast, among other things.⁴³

6 88. There is no dispute that *Wonka* is a Derivative Work of *Charlie and the*
7 *Chocolate Factory*, as it falls squarely within the definition of a “theatrical and television
8 remakes, sequels, prequels, series, spin-offs or any other audio-visual works based on
9 [*Charlie and the Chocolate Factory*] or any of the characters therein.”⁴⁴

10 89. Despite Village Roadshow’s rights to the Derivative Works of *Charlie and*
11 *the Chocolate Factory*, however, WB failed to provide Village Roadshow with a Project
12 Notice for *Wonka*.

13 90. WB argued that *Charlie and the Chocolate Factory* was a Library Film and,
14 accordingly, Village Roadshow’s rights to co-finance and co-own Derivative Works was
15 limited to those that fell within the definition of Qualified Derivative Works, which WB
16 claimed it did not. WB made this argument *despite* the fact that Village Roadshow had
17 numerous discussions with WB executives about this prequel and was actively involved
18 during the creative development process, right up to the sudden denial of Village
19 Roadshow’s rights.

20 91. By its express terms, however, a “Library Film” must be a film that is
21 *subject to* the 2020 MPRPA.

22 92. *Charlie and the Chocolate Factory* was not a film *subject to* the 2020
23 MPRPA. Indeed, it is not subject to *any* MPRPA. The co-ownership agreement for the
24 film dates back to 2005, and arises from one of the parties’ QCSAs, not a MPRPA.
25 Accordingly, Village Roadshow is entitled to co-finance and co-own *all* Derivative
26 Works, not just the subset of Qualifying Derivative Works.

27
28 ⁴³ See 2017 Omnibus Agreement at Attachment 1, ¶ 4(a).

⁴⁴ 2014 MPRPA at §6.4.

1 93. Moreover, even if Village Roadshow’s co-finance and co-ownership rights
2 were limited to Qualifying Derivative Works (rather than any Derivative Work), *Wonka*
3 falls within that definition.

4 94. The Parties defined Qualifying Derivative Work broadly, to include any film
5 that is “a clear continuation of the story of the Prior Production, whether by the title
6 including a series number . . . or by the content constituting a clear continuation of the
7 story of the Prior Production, whether as a prequel or a sequel.”⁴⁵

8 95. *Wonka* is a “clear continuation” of *Charlie and the Chocolate Factory* as its
9 content constitutes “a clear continuation of the story of [*Charlie and the Chocolate*
10 *Factory*] . . . as a prequel.”

11 96. The eponymous character of the film was the primary focus of *Charlie and*
12 *the Chocolate Factory*.

13 97. WB admits that, in *Wonka*, Willie Wonka is a younger version of the Willie
14 Wonka from *Charlie and the Chocolate Factory*, sharing both name and profession,
15 which is indeed the foundation of both movies.⁴⁶

16 98. Indeed, images of production from late 2021 show Timothée Chalamet
17 sporting the same signature dark-colored top hat and dark purple overcoat as did Johnny
18 Depp in *Charlie and the Chocolate Factory*.



26
27
28

⁴⁵ See *id.* at Article 1.

⁴⁶ See Exhibit A (06/14/2021 W. Smith Ltr. to S. Rosenberg) at 2 (“*Wonka* is the story of how young Willy Wonka comes to be a successful chocolatier.”).

1 99. WB also admits to Village Roadshow that *Wonka* will feature the iconic
2 Oompa Loompas.⁴⁷

3 100. Nonetheless, WB attempts to distinguish *Wonka* from *Charlie and the*
4 *Chocolate Factory* to avoid allowing Village Roadshow to exercise its rights. For
5 example, WB argues that there will be no reference to Willie Wonka's father in *Wonka*
6 and that the Oompa Loompas begin working for Willie Wonka at a different period. *See*
7 *id.* WB well knows that any prequel, sequel or remake is bound to take certain artistic
8 liberties in editing and revamping the plot. For example, the film *Creed*, a sequel to the
9 *Rocky* film series, centers on a character not even mentioned in the original *Rocky* film.⁴⁸
10 Similarly, in the film *Joker*, the characters of Joker and Batman are revealed to have the
11 same father, Thomas Wayne; a fact that was never mentioned in prior Batman movies or
12 elsewhere in the DC Universe. Indeed, WB's arguments that *Wonka* is not a prequel to
13 *Charlie and the Chocolate Factory* because of the different working lives of the Oompa
14 Loompas and the Willy Wonka character's lack of a father would be funny if the
15 intended consequences of WB's argument were not so outrageous.

16 **F. WB Forwent a Spin-Off of *Edge of Tomorrow* When Village Roadshow**
17 **Asserted Its Rights—and Has Threatened to Refuse to Proceed With**
18 **Any Project if Village Roadshow Exercises Its Rights**

19 101. WB's efforts to deprive Village Roadshow of its co-ownership and co-
20 finance rights are not limited to *Wonka* but extend to *all* Derivative Works for which
21 Village Roadshow has rights. In October 2021, WB contacted Village Roadshow about a
22 television spin-off of the movie *Edge of Tomorrow*.⁴⁹

23 102. Under the co-ownership agreement for *Edge of Tomorrow*, dated May 23,
24 2014, and the 2017 Omnibus Amendment, Village Roadshow owns 33.3% of the rights
25 of the work, while WB owns the remaining 66.7%.⁵⁰

26 ⁴⁷ See Exhibit A at 3.

27 ⁴⁸ See Dan Peeke, *10 Of The Biggest Retcons In Film History*, SCREENRANT (January 6, 2020),
<https://screenrant.com/film-movie-retcons-retroactive-continuity-best-biggest/>.

28 ⁴⁹ See 10/14/2021 D. Brown Email to M. Linowes attached hereto as Exhibit B.

⁵⁰ See Omnibus Amendment at Schedule E.

1 103. Village Roadshow also has the right to co-finance any Derivative Work of
2 the film.⁵¹

3 104. However, instead of treating Village Roadshow as co-owner of the film and
4 as the long-standing partner it is, WB proposed a financing deal that would have had
5 Village Roadshow forgo its contractual rights and be relegated to a second-class
6 participant.⁵²

7 105. After Village Roadshow advised WB of its rights, WB executive, Dave
8 Brown, responded, “[W]e recognize Village Roadshow’s rights but are unable to proceed
9 on **any project** with Village Roadshow as a co-financier.”⁵³

10 106. Instead, WB proposed that Village Roadshow “function[] as ‘producers’ on
11 the project.”⁵⁴

12 107. Village Roadshow responded that it was “unwilling to waive its rights to co-
13 finance this proposed *Edge of Tomorrow* series.”⁵⁵

14 108. In retaliation, despite having obviously already made the decision to
15 proceed, WB stated that it would now refuse to proceed with the project because Village
16 Roadshow refused to waive its rights. As Brown, on behalf of WB, wrote in a January
17 10, 2022 email, “Given VR’s unwillingness to waive its rights to co-finance, as discussed
18 in our initial conversation, we will forgo further development of this title.”⁵⁶

19 109. WB has made clear that its effort to deprive Village Roadshow of its co-
20 ownership and co-finance rights is not limited to *Edge of Tomorrow*. Not only did WB’s
21 Dave Brown expressly say, in an email dated November 22, 2021, that WB would not
22 “proceed on **any project** with Village Roadshow as a co-financier,”⁵⁷ Brown made clear
23 to Village Roadshow even earlier, in an October 19, 2021 email, that this would be an
24

25 ⁵¹ See Omnibus Amendment, Attachment 1 at ¶ 4(a).

26 ⁵² See Exhibit B at 10/19/2021 D. Brown Email to M. Linowes.

27 ⁵³ See *id.* at B 11/22/2021 D. Brown Email to K. Berg (emphasis added).

28 ⁵⁴ *Id.*

⁵⁵ See *id.* at 12/13/2021 K. Berg Email to D. Brown.

⁵⁶ See *id.* at 01/10/2022 D. Brown Email to K. Berg

⁵⁷ *Id.* at 11/22/2021 D. Brown Email to K. Berg (emphasis added).

1 ongoing situation: “I know there may be more titles to come where we want to go down
2 this path. So, while this isn’t a template, I’d like to get to a place where we are setting
3 expectations.”⁵⁸

4 110. Such a course of action allows WB to build billions in enterprise value while
5 depriving Village Roadshow of the long-term, ongoing benefits of co-investing in and co-
6 owning many entertainment properties, including potentially numerous films, television
7 series, and other derivative works, in direct contravention of Village Roadshow’s legal
8 and contractual rights.

9 FIRST CAUSE OF ACTION

10 DECLARATORY RELIEF

11 111. Village Roadshow repeats and incorporates the foregoing allegations of this
12 Complaint as if fully set forth herein.

13 112. A controversy has arisen between Village Roadshow and WB relating to the
14 rights, duties, and obligations of the Parties concerning works that Village Roadshow co-
15 owns and has co-financed, and in which Village Roadshow shares in the Derivative
16 Rights, in that Village Roadshow contends that:

- 17 a. WB is in breach of its affirmative covenants and obligations with
18 respect to *The Matrix Resurrections* in the marketing and distribution
19 of the film, including by entering sweetheart deals with WarnerMedia
concerning distribution via HBO Max;
- 20 b. WB must provide a Project Notice to Village Roadshow for the
21 production of a Derivative Work, such as a prequel, sequel, remake,
or spinoff in which the Parties co-own the copyright;
- 22 c. WB must always consult with Village Roadshow concerning whether
23 its plan to distribute the films that Village Roadshow co-owns and has
co-financed is consistent with industry standards and customary
commercial practices in the motion picture industry;
- 24 d. WB’s refusal to account to Village Roadshow *at all* for profits derived
25 from the distribution of films, including the value earned to HBO Max
26 through the exploitation of Village Roadshow’s intellectual property,
violates WB’s contractual and fiduciary duties to Village Roadshow;
- 27 e. WB’s breaches of its obligations with respect to *The Matrix*

28 ⁵⁸ See *id.* at 10/19/2021 D. Brown Email to M. Linowes.

Resurrections excuse Village Roadshow's obligations;

- f. Village Roadshow is entitled to the Derivative Rights and all other rights it would have received in *The Matrix Resurrections* but for WB's breaches;
- g. WB is wrongfully depriving Village Roadshow of its right to co-own and co-finance *Wonka*; and
- h. WB's refusal to move forward with a Derivative Work based on the film *Edge of Tomorrow* or any Derivative Work for which Village Roadshow has the right to co-own and co-finance, unless Village Roadshow relinquishes its co-ownership and co-finance rights, wrongly deprives Village Roadshow of those contractual rights and the benefit of the bargain of those contracts.

113. Village Roadshow is informed and believes that WB denies Village Roadshow's contentions.

114. Village Roadshow desires a judicial determination of the Parties' rights, duties, and obligations with respect to the aforementioned issues, as the resolution of such disputes will provide certainty with respect to the parties' ongoing relationship.

PRAYER FOR RELIEF

WHEREFORE, Village Roadshow prays for judgment as follows:

1. That the Court issue a declaration as follows:

- a. WB is in breach of its affirmative covenants and obligations with respect to *The Matrix Resurrections* in the marketing and distribution of the film, including by entering sweetheart deals with WarnerMedia concerning distribution via HBO Max;
- b. WB must provide a Project Notice to Village Roadshow for the production of a Derivative Work, such as a prequel, sequel, remake, or spinoff in which the Parties co-own the copyright;
- c. WB must always consult with Village Roadshow concerning whether its plan to distribute the films that Village Roadshow co-owns and has co-financed is consistent with industry standards and customary commercial practices in the motion picture industry;
- d. WB's refusal to account to Village Roadshow at all for profits derived from the distribution of films, including the enterprise value earned by driving subscribers to HBO Max through the exploitation of Village Roadshow's intellectual property, violates WB's contractual and fiduciary duties to Village Roadshow;
- e. WB's breaches of its obligations with respect to The Matrix

Resurrections excuse Village Roadshow's obligations;

- f. Village Roadshow is entitled to the Derivative Rights and all other rights it would have received in The Matrix Resurrections but for WB's breaches;
- g. WB is wrongfully depriving Village Roadshow of its right to co-own and co-finance Wonka; and
- h. WB's refusal to move forward with a Derivative Work based on the film Edge of Tomorrow or any Derivative Work for which Village Roadshow has the right to co-own and co-finance, unless Village Roadshow relinquishes its co-ownership and co-finance rights, wrongly deprives Village Roadshow of those contractual rights and the benefit of the bargain of those contracts.

2. That the Court grant preliminary and permanent injunctive relief:

- a. Enjoining WB from conditioning the development of Derivative Works on Village Roadshow's relinquishment of its rights and otherwise interfering with Village Roadshow's right to co-finance and co-own films pursuant to the parties' agreements;
- b. Requiring WB to provide Village Roadshow with a Project Notice for all films in which the Parties share the copyright;
- c. Requiring WB to consult with and provide Village Roadshow with Marketing Plans as required by the parties' agreements and to confirm that its marketing and distribution plans would adhere to industry standards of an exclusive theatrical release;
- d. Requiring WB to include in its accounting to Village Roadshow all value earned by exploiting Village Roadshow's intellectual property; and

3. That the Court order specific performance of WB's contractual and fiduciary obligations to Village Roadshow.

1 DATED: February 7, 2022

KIRKLAND & ELLIS LLP

3 

4 Mark Holscher (SBN 139582)

5 *Attorneys for Plaintiff,*

6 *VILLAGE ROADSHOW FILMS (BVI)*
7 *LIMITED; VILLAGE ROADSHOW*
8 *FILMS NORTH AMERICA INC.;*
9 *VILLAGE ROADSHOW PICTURES*
10 *NORTH AMERICA INC.; VILLAGE*
11 *ROADSHOW DISTRIBUTION (BVI)*
12 *LIMITED; and VILLAGE*
13 *ROADSHOW DISTRIBUTION USA*
14 *INC.*

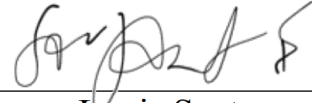
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Louis Santor, Chief Operating Officer of Village Roadshow, a party to this action, am authorized to make this verification on its behalf. I have read the foregoing complaint and know its contents. I am informed and believe and on that ground allege that the matters stated in the complaint are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Los Angeles, California on the 7th day of February, 2022.



Louis Santor

EXHIBIT A

Wayne M. Smith
Head of Legal Affairs



June 14, 2021

VIA EMAIL: srosenberg@shappardmullin.com

Stacey L. Rosenberg
Sheppard Mullin Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071

Re: WONKA

Dear Ms. Rosenberg:

This responds to your letter of June 8, 2021. As detailed below, we disagree with your contention that *Wonka* is a “Qualifying Derivative Work.”

As you note in your letter, per the MPRPA, “Qualifying Derivative Work” is defined as follows:

“Qualifying Derivative Work” means a Derivative Work based on a Prior Production that (a) commenced development not more than two years after the initial theatrical release of the Prior Production, (b) has the same director as any Prior Production, (c) has a lead actor who appeared as a lead actor in any Prior Production and/or (d) is a clear continuation of a Prior Production, whether by the title including a series number (e.g., *I Am Legend 2*) or by the content constituting a clear continuation of the story of the Prior Production, whether as a prequel or a sequel (e.g., *Cats & Dogs: The Revenge of Kitty Galore*).

As the above definition indicates, as a threshold matter a “Qualifying Derivative Work” must be a “Derivative Work.” That term is defined in the MPRPA as follows:

“Derivative Work” means “theatrical and television remakes, sequels, prequels, series, spin-offs or any other audio-visual works based on any of the Pictures or any of the characters therein.”

A WARNERMEDIA Company

Thus, while you assert that “*Wonka* is clearly a prequel to *Charlie and the Chocolate Factory*, featuring the lead character, Willy Wonka,” even assuming this is the case, the fact that the movie must be a prequel, sequel or remake it is implicit in the inquiry and thus begs the question as to whether *Wonka* constitutes a “Qualifying Derivative Work” by satisfying, as it must, one or more of the sub-criteria in the definition.

With regard to those sub-criteria, it is clear that (a) through (c) are not met. *Wonka* did not commence development within two years after the release of *Charlie*, it does not have the same director as *Charlie*, and it does not have any lead actor who appeared in *Charlie*. Thus, *Wonka* (because it is not titled as a sequel to *Charlie*) can only can be a “Qualifying Derivative Work” if it “is a clear continuation of a Prior Production . . . by the content constituting a clear continuation of the story of the Prior Production, whether as a prequel or a sequel (e.g., *Cats & Does: The Revenge of Kitty Galore*).”

The reference to *Cats & Dogs: The Revenge of Kitty Galore* is instructive. As many contemporary news stories noted, the movie “continues the story of the battle between cats and dogs for control of Earth.”¹ Significantly, there are no inconsistencies between the story and narrative of the two films; and they both inhabit the same world. In addition, *Kitty Galore* features a number of supporting characters from *Cats & Dogs* (e.g., Lou, Mr. Tinkles, Calico, Butch, Peek, Sam), who are depicted in the same way, and in several instances voiced by the same actor as the earlier film (e.g., Sean Hayes, Joe Pantoliano, Michael Clarke Duncan). These characters and their consistent depiction help to create clear linkage and narrative coherence between the two films.

In contrast, *Wonka* is an entirely new take based on Roald Dahl’s seminal work and, as your client is aware, is being developed, produced and positioned as a reboot with no connection whatsoever to *Charlie*. There will be no lead acting or directing talent involved from the prior film. Moreover, and perhaps most significantly, the stories and narratives of the two films are entirely and demonstrably inconsistent.

Wonka is the story of how young Willy Wonka comes to be a successful chocolatier. In the story of the film, Willy grows up in a gypsy caravan. His mother makes chocolate for his birthday and tells Willy that the world’s best chocolate is sold at the shops in the Palais Gourmet. It becomes Willy’s dream to sell chocolates made from

¹ <https://www.traileraddict.com/cats-dogs-the-revenge-of-kitty-galore/trailer>; see also <https://www.comingsoon.net/movies/news/49260-odonnell-mcbrayer-in-cats-dogs-sequel> (same); <https://www.filmjabber.com/movie-synopsis/cats-dogs-the-revenge-of-kitty-galore.html> (same); <https://childrenandmedia.org.au/movie-reviews/movies/cats-and-dogs-2-the-revenge-of-kitty-galore> (“The second film in the Cats and Dogs series continues the story of several canine and feline secret agents.”).

his mother's recipe in a shop there, and to share them with the world. However, one day he comes home to find his mother and other family members gone, and soldiers torching the caravan. He flees, and survives the war hidden under a magician's shop. Willy's dream to share his mother's recipe for chocolates with the world is his primary goal in *Wonka* and propels the narrative. Notably, Willy's father is neither seen nor referenced anywhere in the film.

Willy's backstory as laid out in *Charlie* is entirely different and inconsistent with the narrative of *Wonka*. In the story of that film, he is the son of Wilbur Wonka, a dentist and very strict father who despises sweets. Wilbur refuses to let Willy eat any candy, even on Halloween, and throws the candy into the fire. When Willy declares his ambition to travel, sample the world's best chocolate, and become a chocolatier, his father disowns him. When Willy returns home from a trip to a museum to begin his research, his house has vanished. These childhood traumas have shaped Willy, who as a result cannot even say the word "parents."

These are not the only significant differences. Oompa Loompas appear in the stories of both films, but again their stories (and timelines) are entirely different. In *Wonka*, and obviously before Willy has established a chocolate factory, Willy picks cocoa beans owned by the Oompa Loompa tribe without knowing of the Oompa Loompas' existence, believing the beans are free for the picking. A particular Oompa Loompa whose job is to guard the beans is asleep on the job. He is subsequently compelled by his tribe to stalk Willy and steal back enough chocolate such that the theft is compensated a thousand-fold. In contrast, in *Charlie*, Willy does not meet the Oompa Loompas until *after* his factory is already established. Willy is traveling the world in search of exotic flavors/ingredients when he happens upon the Oompa Loompas. The Oompa Loompas crave cocoa beans to make their slimy green food taste better. Willy strikes a deal with the Oompa Loompa Chief to employ them in his factory in exchange for payment in beans. In addition to these narrative differences, in *Wonka* the Oompa Loompas will also be depicted very differently than they were in *Charlie*.

The foregoing is not intended as an exhaustive description of all of the major differences in narrative, backstory and depiction between the two films, but suffices to illustrate that *Wonka* is in no way a "clear continuation of the story" of *Charlie*. Indeed, the intent behind *Wonka*, as evidenced by the script that was provided to your client, is to present an entirely new story of how Willy Wonka becomes a chocolatier, which happens to be one that is wholly inconsistent with the backstory of Willy presented in *Charlie*.

Stacey L. Rosenberg, Esq.
June 14, 2021
Page 4

Because, as demonstrated above, *Wonka* is not a Qualifying Derivative Work under the MPRPA, Warner is not required to submit the project to Village.

Very truly yours,



Wayne M. Smith

cc: Jodi Levinson

EXHIBIT B

Subject: Edge of Tomorrow - Village Roadshow

From: Brown, Dave <Dave.Brown@warnerbros.com>

Sent: Monday, January 10, 2022 9:59 AM

To: Kevin Berg <kevin.berg@vreg.com>

Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>; Glick, Adam <Adam.Glick@warnerbros.com>; O'Brien, Diana <Diana.O'Brien@warnerbros.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

Kevin,

Thanks for your response. Given VR's unwillingness to waive its right to co-finance, as discussed in our initial conversation, we will forgo further development on this title.

Best,

Dave Brown

From: Kevin Berg <kevin.berg@vreg.com>

Sent: Monday, December 13, 2021 5:44 PM

To: Brown, Dave <Dave.Brown@warnerbros.com>

Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>; Glick, Adam <Adam.Glick@warnerbros.com>; O'Brien, Diana <Diana.O'Brien@warnerbros.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

David,

Village Roadshow is unwilling to waive its right to co-finance this proposed *Edge of Tomorrow* series (the "Series"). Warner Bros.' situation with other companies who co-own underlying properties is irrelevant, particularly, if those other companies do not possess a contractual right to co-finance derivative works, which Village Roadshow has, along with a shared ownership in derivative rights in the underlying properties, which Village Roadshow also has. Further, Village Roadshow would be involved as a fully active co-producer in the development and production of the Series.

Village Roadshow expects that Warner Bros. will offer Village Roadshow the right to co-finance and acquire 50% of the Series on the basis that Village Roadshow bears its 50% portion of the cost of such Series. Village Roadshow will need Warner Bros. to provide with a Project Television Notice and, among other things, (i) the most recent drafts of written material on which the Series will be based, such as teleplays, outlines and look-books, (other than written material for the original film); (ii) the budget of the Series (on an overall and per episode basis); (iii) list of proposed cast, showrunners, director and producers; (iv) schedule of third-party participations; (v) anticipated number of episodes per order from HBO Max; and (vi) any distribution plans with HBO Max and any other anticipated distributor, if any.

Without the benefit of the above-referenced information, Village Roadshow cannot make an appropriately-informed decision regarding its co-financing position with respect to the Series, therefore, Village Roadshow requests that Warner Bros. provide a complete set of the above-referenced information as soon as possible. If such information is not complete and/or not readily available, Village Roadshow will make a decision on its participation, including co-financing, in the Series when such information is available and received in full by Village Roadshow

All rights and remedies are hereby reserved.

Kind regards,
Kevin



VILLAGE ROADSHOW ENTERTAINMENT GROUP

KEVIN P. BERG (*he/him/his*)

General Counsel
Director, Creative Diversity and Inclusion
Village Roadshow Entertainment Group USA Inc.

kevin.berg@vreg.com

O +1 310 385 4333

M +1 310 418 9925

10100 Santa Monica Boulevard, Suite 200. Los Angeles, California 90067

www.vreg.com

From: Brown, Dave <Dave.Brown@warnerbros.com>

Sent: Monday, December 6, 2021 12:27 PM

To: Kevin Berg <kevin.berg@vreg.com>

Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>; Glick, Adam <Adam.Glick@warnerbros.com>; O'Brien, Diana <Diana.OBrien@warnerbros.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

Hi Kevin,

I just wanted to follow up to see if we would be receiving a counter.

I'm available to discuss on the phone if you like.

Thanks,

Dave

From: Brown, Dave

Sent: Monday, November 22, 2021 10:40 AM

To: Kevin Berg <kevin.berg@vreg.com>

Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>; Glick, Adam <Adam.Glick@warnerbros.com>; O'Brien, Diana <Diana.OBrien@warnerbros.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

Kevin,

Thank you for your email below. In our initial conversation I confirmed that we recognize Village Roadshow's rights but are unable to proceed on any project with Village Roadshow as a co-financier. However, our desire is to develop this title (and others) and are hopeful that Village Roadshow is comfortable functioning as "producers" on the project. If VR is unwilling to make any deal unless co-financing, please advise. If your response to my offer is to tell me that we are not recognizing Village Roadshow's stature or co-ownership, I can only conclude that you feel the offer is too low. To that I can only urge you to counter to determine if there's any possible middle ground where we can make a deal.

We have been in this situation before with other companies that co-own underlying rights, and our response is consistent – we invite them to function as an A-level production company. However, that does not necessarily mean that VR is going to get the best deal of any producer on the show. Particularly since those producers will be on-the-ground, rendering day-to-day producing services. And some of them have very high stature and quotes. If that is the final position of Village Roadshow (that no one is to get better), then please let us know. But without a substantive response, it's very difficult to know what the expectation is.

As to the other points below, WB Features gets a purchase price and a rights royalty. What I have offered VR far exceeds what WB Features receives.

To address your point about HBO Max, there was an arms-length negotiation that established the license fee that HBO Max pays to WBTV for the shows it licenses from us. I'm happy to explain what that template looks like and how it compares to our other streaming deals that we do with practically every outlet in town. I can say in no uncertain terms, it is not a free license nor do we believe that it is under market value.

So, for us the path here is clear. We have made a good faith offer based on all of the information you have provided. Please counter with what you think the deal should be with all things considered. We will evaluate and attempt to find a path to making a deal which can potentially serve as a guide for future deals. But absent counter, respectfully there really isn't anything for us to respond to or rethink.

Best,
Dave Brown

From: Kevin Berg <kevin.berg@vreg.com>
Sent: Friday, November 19, 2021 2:25 PM
To: Brown, Dave <Dave.Brown@warnerbros.com>
Cc: Louis Santor <Louis.Santor@vreg.com>; Michael Linowes <michael.linowes@vreg.com>
Subject: RE: Edge of Tomorrow - Village Roadshow

Dear David:

While appreciate the offer made, this offer fails to take into account that Village Roadshow has a right to co-finance this work as a principal co-owner of the derivative rights of *Edge of Tomorrow* under the terms the Co-Ownership Agreement dated as of May 23, 2014, as amended, restated or otherwise modified, including, as further amended by the Omnibus Amendment and exhibits and attachments attached thereto dated as of August 29, 2017 (the "Agreement").

Clearly, any deals offered to third-party individual producers (like Doug Liman and Tom Cruise), the showrunner or any other work-for-hire talent should not be equated to any offer made to Village Roadshow as a rightsholder and a long-standing partner of Warner Bros. Also, any offer to WB Features is irrelevant as such a transaction is an interested party transaction with an affiliated entity or division, of WB Features, here WBTV. And, while WB Features may be comfortable not taking a license fee for its share of the derivative rights and a non-writing executive producer fee on par with talent deals, that is not a market-rate, arms-length deal which Village Roadshow has to accept.

And, just as disconcerting is the fact that we believe that this *Edge of Tomorrow* television series, which is highly valuable content, will be distributed on the HBO Max platform for either no fee or at a significantly less than market value fee, which further de-values Village Roadshow's interest in this property.

While WBTV has previously expressed the desire to not have any co-financing partners, WBTV cannot ignore Village Roadshow's standing as a co-owner of rights in this title with a legal right to co-finance this derivative work.

Village Roadshow expects that WBTV will re-think its approach, honor the rights of Village Roadshow under the Agreement, and address the economic disadvantages faced by Village Roadshow due to the interested, non-market transactions inherent in this project.

All rights and remedies are hereby reserved.

Kevin



VILLAGE ROADSHOW ENTERTAINMENT GROUP

KEVIN P. BERG (*he/him/his*)

General Counsel

Director, Creative Diversity and Inclusion

Village Roadshow Entertainment Group USA Inc.

kevin.berg@vreg.com

O +1 310 385 4333

M +1 310 418 9925

10100 Santa Monica Boulevard, Suite 200. Los Angeles, California 90067

www.vreg.com

From: Brown, Dave <Dave.Brown@warnerbros.com>

Sent: Tuesday, October 19, 2021 10:31 AM

To: Michael Linowes <michael.linowes@vreg.com>

Cc: Louis Santor <Louis.Santor@vreg.com>; Kevin Berg <kevin.berg@vreg.com>

Subject: RE: Edge of Tomorrow - Village Roadshow

Given the amount of A+ level producers involved, we were thinking of:

\$65K/ep reducible to \$50K/ep to the extent over \$150K/ep in the EP category.

Life lock with 5% bumps

On backend, again because of the parties involved (Liman, Cruise, Stoff, rights/Masi Oka, WB Features, showrunner), I think we will only be able to put 5% on the table. And while we don't make MFN deals, this is the same I'm planning to offer to Liman, Cruise, Stoff and features.

10/10 definition

I know there may be more titles to come where we want to go down this path. So while this isn't a template, I'd like to get to a place where we are setting expectations. Without so many people involved, the backend can be more.

But hopefully this gets our discussion going.

Best,

Dave

From: Michael Linowes <michael.linowes@vreg.com>

Sent: Saturday, October 16, 2021 6:06 AM

To: Brown, Dave <Dave.Brown@warnerbros.com>
Cc: Louis Santor <Louis.Santor@vreg.com>; Kevin Berg <kevin.berg@vreg.com>
Subject: RE: Edge of Tomorrow - Village Roadshow

[CAUTION]

This email originated outside Warner Bros.

Hi Dave:

Sorry about the delay in responding. Nice to e-meet you.

Why don't you send over a proposal first so we can get a sense of what you're thinking and then we can follow up from there.

Thanks.

Mike



VILLAGE ROADSHOW ENTERTAINMENT GROUP

MICHAEL J. LINOWES
EVP, Business Affairs
Village Roadshow Entertainment Group USA Inc.

Michael.Linowes@vreg.com

O +1 310 432 1036

M +1 424 322 0196

10100 Santa Monica Boulevard, Suite 200. Los Angeles, California 90067

www.vreg.com

This email (including any attachments thereto) is intended only for use by the addressee(s) named herein and may contain proprietary and/or confidential information. If you are not the intended recipient of this email, or you otherwise received this email in error, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (310) 432-1036 and permanently delete the original email (and any copy of any email) and any printout thereof.

=====

From: Brown, Dave <Dave.Brown@warnerbros.com>
Sent: Thursday, October 14, 2021 11:13 AM
To: Michael Linowes <michael.linowes@vreg.com>
Subject: Edge of Tomorrow - Village Roadshow

Hi Mike,

I wanted to find out if you wanted to have a conversation about the VR deal on this project or if you just want me to send you a proposal to get things started.

Also, please let me know the best number to reach you. My home office is [REDACTED] and my cell is [REDACTED].

Thanks,

Dave