

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Loew's Inc., Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corp. (formerly known as Vitagraph, Inc.), Warner Bros. Circuit Management Corp., Twentieth Century-Fox Film Corp., National Theatres Corp., Columbia Pictures Corp., Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Universal Corp., Universal Pictures Co., Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and United Artists Corp., U.S. District Court, S.D. New York, 1950-1951 Trade Cases ¶62,573, (Feb. 8, 1950)

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United States v. Loew's Inc., Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corp. (formerly known as Vitagraph, Inc.), Warner Bros. Circuit Management Corp., Twentieth Century-Fox Film Corp., National Theatres Corp., Columbia Pictures Corp., Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Universal Corp., Universal Pictures Co., Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and United Artists Corp.

1950-1951 Trade Cases ¶62,573. U.S. District Court, S.D. New York. Equity No. 87-273. Filed February 8, 1950.

Sherman Antitrust Act

Motion Picture Industry—Final Judgment—Divestiture, Compliance and Inspection —Admission Prices, Clearances, Pooling and Circuit Licensing.—In a final decree entered against motion picture distribution, production and theatre-operating corporations, prohibitions are directed against agreements relating to the fixing of admission prices, the fixing of clearances, the buying or leasing of films on a circuit basis, the pooling of management or licenses, or the integration of functions, and divestiture is required in companies vertically integrated in the industry. Plans for divestiture are required to be submitted, and provisions are made for the filing of compliance reports by the defendants and inspection is permitted by government authorities.

For earlier decisions! in the same case, see [1946-1947 TRADE CASES ¶ 57,470](#), [57,526](#), and [1948-1949 TRADE CASES ¶62,244](#).

Before Augustus N. Hand, Circuit Judge; Henry W. Goddard and Alfred C. Coxe, District Judges.

Final Decree

[*Loew's, Warner Bros., Twentieth Century-Fox, and National Theatres*]

The plaintiff, having filed its petition herein on July 29, 1938, and its amended and supplemental complaint on November 14, 1940; the defendants having filed their answers to such complaint, denying the substantive allegations thereof; the court after trial having entered a decree herein, dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the defendants having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this case to this court for further proceedings in conformity with its opinion dated May 3, 1948; this court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this court; a consent decree having been entered on November 8, 1948, against the defendants Radio-Keith-Orpheum Corporation, RKO Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation, and Keith-Albee-Orpheum Corporation; orders having been entered on stipulation against the Fox, Loew, and Warner defendants respectively, and Loew having further stipulated in the record, with respect to certain theatre interests held jointly with others; and a consent judgment having been entered on March 3, 1949 against defendants Paramount Pictures; Inc. and Paramount Film. Distributing Corporation; and an order having been

entered on April 21, 1949, severing and terminating, as of March 3, 1949, this action as against defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation; and an order having been entered on January 18, 1950 severing and terminating as of November 8, 1948; the action as against defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation;

Now, having considered the proposals of the parties, having duly received additional evidence and heard further arguments after entry of the consent decree against the RKO defendants, and having rendered its opinion on July 25, 1949, and having filed its findings of fact and conclusions of law in accordance with said opinion:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the decree heretofore entered by this court on December 31, 1946 is hereby amended to read as follows:

I.

[*Application of Decree*]

1. The findings of fact and conclusions of law heretofore made are superseded by the findings and conclusions now entered in support of this decree.
2. The complaint is dismissed as to all claims made against the defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

II.

[*General Prohibitions*]

Each of the defendant distributors, Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation, and the successors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.
2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.
3. From granting any clearance between theatres not in substantial competition.
4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.
5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant or with theatres in new circuits which may be formed as a result of divorcement. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.
6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's

national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal," covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

III.

[*Contract and Agreements Outlawed*]

Each of the defendant exhibitors, Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation; and the successors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined and restrained:

1. From performing or enforcing agreements, if any, referred to in Paragraphs 5 and 6 of the foregoing Section II hereof to which it may be a party.
2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to pre arranged percentages.
3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.
4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share in the profits.
5. From continuing to own or acquiring any beneficial interests in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company resulting from divorcements provided for in decrees entered in this cause.
6. From acquiring a beneficial interest in any additional theatre unless the acquiring company shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures, provided, however, that the acquisition of a theatre as a replacement for a theatre, held or acquired in conformity with this decree, which may be lost through physical destruction, conversion to non-theatrical purposes, disposition (other than the disposition of a theatre in compliance with this decree) or expiration or cancellation of the lease under which such theatre is held, shall not be deemed to be the acquisition of an additional theatre.
7. From operating, booking, or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

IV.

[*Plans for Divestiture*]

1. Within six months from the entry of this decree each of the major defendants named in Sections II and III of this decree shall submit a plan for the ultimate separation of its distribution and production business from its

exhibition business. Upon the filing of such a plan, the Government shall have three months within which, to file objections thereto and propose amended or alternative plans for accomplishing the same result. Such further proceedings with respect to such plans as the court may then order shall then be had. Such plans shall, in any event, provide for the completion of such separation within three years from the date of the entry of this decree.

2. Within one year from the entry of this decree the Government and each of the defendant exhibitors named in Section III of this decree shall submit respectively such plans for divestiture of theatre interests, other than those heretofore ordered to be divested, which they believe to be adequate to satisfy the requirements of the Supreme Court decision herein with respect to such divestiture. Upon the filing of such a plan the Government and the affected defendant shall have six months within which to file objections thereto and propose amended or alternative plans for accomplishing the same result. Such further proceedings with respect to such plans may then be had as the court may then order.

3. No defendant distributor named in Section II of this decree, and no distributor company resulting from the divorcement ordered herein, shall engage in the exhibition business; and no defendant exhibitor named in Section III of this decree, and no exhibitor company resulting from the divorcement ordered herein, shall engage in the distribution business, except that permission to a distributor company resulting from divorcement to engage in the exhibition business or to an exhibitor company resulting from divorcement to engage in the distribution business may be granted by the court upon notice to the United States and upon a showing that any such engagement shall not unreasonably restrain competition in the distribution or exhibition of motion pictures.

4. No exhibitor company resulting from the divorcement ordered herein shall acquire directly or indirectly any interest in any theatre divested by any other defendant pursuant to any plan ordered under Paragraph 2 of Section IV hereof or pursuant to Paragraph C 1 of Section III of the Consent Judgment as to the Paramount defendants entered March 3, 1949.

V.

Nothing contained in this decree shall be construed to limit, in any way whatsoever, the right of each major defendant bound by this decree, during the three years allowed for the completion of the plan of reorganization provided for in Section IV, to license, or in any way to provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which such defendant has a proprietary interest, either directly or through subsidiaries.

VI.

[*Arbitration Permitted*]

The defendant distributors named in Section II of this decree and any others who are willing to file with the American Arbitration Association their consent to abide by the rules of arbitration and to perform the awards of arbitrators, are hereby authorized to set up an arbitration system with an accompanying Appeal Board which will become effective as soon as it may be organized, upon terms to be settled by the court upon notice to the parties to this action.

VII.

The provisions of the existing consent decree are hereby declared to be of no further force or effect, except in so far as may be necessary to conclude arbitration proceedings now pending and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, incurred in the establishment of the consent decree arbitration systems. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable.

VIII.

[*Compliance*]

1. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant

Attorney General, and on notice to any defendant bound by this decree, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (a) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this decree any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

2. Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX.

[Jurisdiction Retained]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree, and no others, to apply to the court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Final Decree

[Columbia Pictures, Screen Gems, Universal, and Big U Film Exchange]

The plaintiff, having filed its petition hereon on July 20, 1938, and its amended and supplemental complaint on November 14, 1940; the defendants having filed their answers to such complaint, denying the substantive allegations thereof, the court after trial having entered a decree herein, dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the defendants having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this case to this court for further proceedings in conformity with its opinion dated May 3, 1948; this court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this court;

Now, having considered the proposals of the parties, having duly received additional evidence and heard further arguments, and having rendered its opinion on July 25, 1949, and having filed its finding of fact and conclusions of law in accordance with said opinion:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the decree heretofore entered by this court on December 31, 1946, as to the defendants Columbia Pictures Corporation, Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Universal Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and United Artists Corporation, is hereby amended to read as follows:

I.

[Application of Decree]

1. The findings of fact and conclusions of law heretofore made are superseded by the findings and conclusions now entered in support of this decree.
2. The complaint is dismissed as to the defendants Screen Gems, Inc., and the corporation named as Universal Pictures Company, Inc., merged during the pendency of this case into the defendant Universal Corporation. The

complaint is also dismissed as to all claims made against the remaining defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

II.

[*General Prohibitions*]

The defendants Columbia Pictures Corporation, Columbia Pictures of Louisiana, Inc., Universal Corporation, Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and United Artists Corporation, and the successors of each of them, and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty percent, are hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.
2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specific theatres.
3. From granting any clearance between theatres not in substantial competition.
4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.
5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant or with theatres in new circuits which may be formed as a result of divorcement. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.
6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.
7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.
8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

III.

[*Arbitration Permitted*]

The defendants named, in Section II of this decree and any others who are willing to file with the American Arbitration Association their consent to abide by the rules of arbitration and to perform the awards of arbitrators, are hereby authorized to set up or participate in an arbitration system with an accompanying Appeal Board which

will become effective as soon as it may be organized, upon terms to be settled by the court upon notice to the parties to this action.

IV.

The provisions of the consent decree of November 20, 1940, are hereby declared to be of no further force or effect.

V.

[*Compliance*]

1. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant bound by this decree, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to, any legally recognized privilege (a) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this decree any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

2. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

VI.

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree, and no others, to apply to the court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.