

[¶ 68,137] United States v. Twentieth Century-Fox Film Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation; RKO Radio Pictures, Inc.; Republic Pictures Corporation; Republic Productions, Inc.; Columbia Pictures Corporation; Screen Gems, Inc.; Universal Pictures Company, Inc.; United World Films, Inc.; and Pictorial Films, Inc.

In the United States District Court for the Southern District of California, Central Division. Civil Action No. 14354-Y (14354-HW). Filed September 12, 1955.

Case No. 1140 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Licensing of Films.—A motion picture producer and a distributor were ordered by a consent decree (1) to license or offer for licensing to Government and other outlets eighty per cent of the number of feature films available for 16 mm. exhibition which were

released for 35 mm. national theatrical exhibition during a specified year and (2) to license or offer for licensing, within ninety days, for television a number of feature films available for television which, including those feature films heretofore so licensed, shall aggregate at least eighty per cent of all feature films available for television heretofore released by the defendants for 35 mm. national theatrical exhibition, the production of which commenced prior to a specified date. The decree also required the defendants to license or offer for licensing, for television, films produced or distributed by the defendants, the production of which commenced subsequent to the specified date.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8301.50, 8421.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Refusal To License Films—Restrictive Licensing.—A motion picture producer and a distributor were prohibited by a consent decree from (1) refusing to license Government or other outlets to exhibit feature films available for 16 mm. exhibition required to be licensed here under the decree, (2) restricting licenses for exhibition of feature films for 16 mm. exhibition by limitations which would have the effect of restraining competition with 35 mm. theatres, or (3) refusing to license for television any feature film available for television and required to be licensed for television under the decree. They were further prohibited from entering into any agreement or concerted plan of action with any other defendant in the action to do any of the things which they are each enjoined from doing under the decree.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.785.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Licensing of Films.—A consent decree which prohibited a motion picture producer and a distributor from refusing to license films, which were required to be licensed under the decree, did not prohibit the defendants from withdrawing films from licensing, refusing to license, restricting licenses, and entering into agreements with third parties under specified conditions.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8321.48.

Department of Justice Enforcement and Procedure—Consent Decrees—Modification.—A consent decree provided that if any final judgment is entered in the action against any defendant other than the consenting defendants and is more favorable to any such other defendant than the instant decree is to the consenting defendants, the consenting defendants are entitled to a modification of the decree to substitute the more favorable provisions for corresponding provisions in the instant decree. Also, the consent decree provided that in the event that the defendants are unable, without financial hardship, to license for television or for 16 mm. exhibition the minimum number of feature films specified in the decree, the defendants have the right to apply to the court for a modification of the decree.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8361.37.

Department of Justice Enforcement and Procedure—Consent Decrees—Contingent Provisions.—A consent decree entered against a motion picture producer and a distributor provided that on condition that neither of the defendants shall have violated any of the provisions of the decree, and that a substantial number of certain feature films released for 35 mm. theatrical distribution have been licensed for television by the defendants, the defendants may apply to the court for an order terminating certain provisions of the decree, provided, that this provision shall not be construed to limit the right of the Government to oppose the granting of any such application.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8341.20.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; W. D. Kilgore, Jr.; James M. McGrath; Samuel Flatow, Special Assistant to the Attorney General; Maurice Silverman, Leonard R. Posner, and Daniel H. Margolis, Trial Attorneys.

For the defendants: Loeb and Loeb, by Laurence M. Weinberg, for Republic Pictures Corporation and Republic Productions, Inc.

Final Judgment

LEON R. YANKWICH, District Judge [*In full text*]: The United States of America, plaintiff, having filed its complaint herein on July 22, 1952, and having filed an amended complaint on January 20, 1953, and the Court having ordered a further amendment of the complaint on February 9, 1955, and defendants Republic Pictures Corporation and Republic Productions, Inc., hereinafter referred to as "said defendants," having appeared and filed their answers to the complaint, as amended, denying the substantive allegations thereof, and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission in respect of any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the plaintiff and said defendants, it is hereby

Ordered, adjudged and decreed as follows:

I**[Sherman Act]**

The Court has jurisdiction of the subject matter hereof and of the plaintiff and said defendants, and the complaint states a cause of action against said defendants and each of them under section 1 of the Act of Congress of July 2, 1890, entitled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, commonly known as the Sherman Act (15 U. S. C. sec. 1).

II**[Definitions]**

A. As used in this Final Judgment:

(a) "Government outlets," means the Armed Forces of the United States, Veterans Hospitals and various other Government agencies, the American Red Cross, and United Services Organization, Inc. (USO);

(b) "other outlets," means all other places at which 16 mm. feature films can now be exhibited, including but not limited to theatreless towns, hotels, clubs, camps, road-showmen, drive-in theatres, and merchant-

free shows, schools, churches and charitable organizations, hospitals, sanatoria, homes of the aged or disabled and convents, non-profit organizations, prisons or other places of detention, ships, trains and planes, but excluding home exhibitions and television;

(c) "Feature films," means sound motion picture photoplays, four or more reels in length other than motion picture photoplays of strictly educational, religious or commercial character, and not including serial motion pictures;

(d) "Feature films available for 16 mm. exhibition" shall mean feature films with respect to which said defendants shall, at any time after the effective date of this Final Judgment, possess in the United States at least 20 positive prints on 16 mm. width film for distribution (other than prints made only for television exhibition), and with respect to which said defendants shall have the right to license the same for 16 mm. exhibition in both Government and other outlets;

(e) "Feature Films available for television," shall mean feature films which said defendants shall have the legal right to license for exhibition on or by means of television, and with respect to which the exercise of such right by said defendants will not give rise to a right of cancellation of any agreement with any Guild, Union or other labor organization to which either of said defendants is a party.

B. Whenever said defendants are required under this judgment to license or offer for licensing a number of feature films arrived at by taking a percentage of a described category of feature films such number of feature films shall be the nearest whole number resulting from such computation.

III**[Applicability of Judgment]**

The provisions of this Final Judgment applicable to either of said defendants shall apply to such defendant, each officer, director, agent, employee, successor, assignee, and to any other person acting under, through, or for such defendant.

IV**[Licensing of Films Ordered]**

Said defendants are ordered and directed to license or offer for licensing in good

faith during each calendar year, directly or through distributors, to Government and other outlets 80% of the number of feature films available for 16 mm. exhibition which were released for 35 mm. national theatrical exhibition in the United States during the second preceding calendar year.

V

[Refusal To License Films Prohibited]

Said defendants and each of them are enjoined and restrained from

(a) refusing to license or offer to license Government or other outlets to exhibit feature films available for 16 mm. exhibition required to be licensed or offered for license hereunder, or

(b) restricting licenses for exhibition of feature films for 16 mm. exhibition by limitations which would have the effect of restraining competition with 35 mm. theatres.

Nothing in paragraphs IV and V of this Final Judgment shall be construed to prevent said defendants from

(1) withdrawing from licensing or refusing to offer to license to either Government or other outlets, or both, any feature film available for 16 mm. exhibition after it has been licensed or offered for license to 16 mm. outlets (other than Government outlets) for a period of three years;

(2) failing or refusing to license the 16 mm. exhibition of any feature film or films available for 16 mm. exhibition to any particular 16 mm. exhibitor because of the inability in good faith to agree with said exhibitor on the film rental or other terms and conditions of license of such feature film or films not inconsistent with the provisions of the preceding subdivision (b) of this paragraph V, or because said defendants in good faith determine it would be inconsistent with their best business interests to license said exhibitor on account of said exhibitor's character, reputation or credit rating;

(3) restricting or limiting the conditions on which licenses for exhibition of feature films available for 16 mm. exhibition may be granted to schools, churches and charitable organizations, hospitals, sanatoria, homes of the aged or disabled and convents, nonprofit organizations, prisons or other places of detention, in consideration of special reduced film rentals to be paid for such licenses;

(4) entering into agreements with any Government outlet in the form customarily employed by such Government outlet for the licensing of 16 mm. feature films;

(5) entering into agreements with third parties granting to them the right or license to distribute and license for exhibition at any one or more of the Government or other outlets any or all feature films available for 16 mm. exhibition provided the provisions of such agreements are not inconsistent with the provisions of paragraphs IV and V of this Final Judgment.

In the event that, by reason of any fact or condition substantially adversely affecting the business of said defendants of licensing feature films available for 16 mm. exhibition, said defendants shall be unable without financial hardship to license for 16 mm. exhibition the minimum number of feature films specified in paragraph IV hereof, said defendants shall have the right, at any time after the expiration of three years from the date of entry of this Final Judgment, to apply to this Court, on thirty days notice to the plaintiff, for such modification of said paragraph IV hereof as to the Court shall appear to be just and proper.

VI

[Licensing of Films for TV Ordered]

Said defendants are ordered and directed:

(a) Within 90 days from the date of the entry of this Final Judgment, to license or offer for licensing in good faith, directly or through distributors, for television, a number of feature films available for television which, including those feature films heretofore so licensed or offered for license by said defendants, shall aggregate at least eighty per cent of all feature films available for television heretofore released by said defendants for 35 mm. national theatrical exhibition, the production of which commenced prior to August 1, 1948. The 123 feature films listed in Schedule A [not reproduced] hereto annexed and made a part hereof and heretofore licensed to MCA TV, Ltd. for television distribution are deemed to have been licensed or offered for licensing to television in accordance with the provisions of this subdivision (a);

(b) to negotiate and attempt in good faith to make available for television a majority of the feature films produced or

distributed by said defendants, production of which commenced subsequent to August 1, 1948 which said defendants have the legal right to license for exhibition on or by means of television, provided, however, that the failure or refusal of said defendants to negotiate with respect to less than a majority of such feature films shall not be deemed to be in violation of this subdivision (b);

(c) within 2 years after any feature film released by said defendants for 35 mm. national theatrical exhibition in the United States the production of which commenced subsequent to August 1, 1948, becomes a feature film available for television pursuant to an agreement or agreements entered into by said defendants as a result of the negotiations referred to in the preceding subdivision (b) hereof (regardless of the number of feature films covered by such agreement or agreements), to license or offer for licensing in good faith, directly or through distributors, for television, at least 25% of all feature films which said defendants shall have the legal right to license on or by means of television, production of which commenced subsequent to August 1, 1948 and which were so released three or more years prior to the date upon which said two year period commenced;

(d) thereafter, in each complete calendar year following said two year period referred to in the preceding subdivision (c), to license or offer for licensing for television a number of feature films which number shall be at least 50 per cent of the number of feature films which said defendants shall have the legal right to license on or by means of television and which were released for 35 mm. national theatrical exhibition in the United States in the third preceding calendar year, provided, however, that no feature film need be so licensed or offered for licensing prior to the expiration of three years following the 35 mm. national theatrical release date in the United States of such feature film.

VII

*[Refusal To License Films for TV
Prohibited]*

Said defendants, and each of them, are enjoined and restrained from refusing to license or offer for licensing for television in the United States any feature film avail-

able for television, and required to be licensed or offered for licensing for television under the terms of paragraph VI of this Final Judgment.

Nothing in paragraph VI or VII of this Final Judgment shall be construed to prevent said defendants from:

(a) withdrawing from licensing or refusing to offer for licensing for television any feature film available for television after it has been licensed or offered for licensing for television for a period of at least three years;

(b) failing or refusing to license for television any feature film or films available for television to any particular licensee or proposed licensee because of the inability in good faith to agree with said licensee or proposed licensee on the license fee or other terms and conditions of license of such feature film or films, or because said defendants in good faith determine it would be inconsistent with their best business interests to license said licensee or proposed licensee on account of said licensee's or proposed licensee's character, reputation or credit rating;

(c) entering into agreements with third parties granting to them the right or license to distribute and license for television any or all feature film available for television provided the provisions of such agreements are not inconsistent with the provisions of paragraph VI and VII of this Final Judgment.

In the event that, by reason of the release by any one or more motion picture producers or distributors of a substantial number of feature films for television, or by reason of any other fact or condition substantially adversely affecting the business of said defendants of licensing feature films for television, said defendants shall be unable without financial hardship to license for television the minimum number of feature films specified in paragraph VI hereof, said defendants shall have the right to apply to this Court, on thirty days notice to the plaintiff, for such modification of said paragraph VI hereof as to this Court shall appear to be just and proper.

VIII

[Concerted Practices Prohibited]

Said defendants are jointly and severally enjoined and restrained from entering into,

maintaining or furthering, or claiming any right under any contract, agreement, combination, conspiracy or concerted plan of action with any other defendant or alleged co-conspirator in this action to do any of the things which said defendants are each enjoined or restrained from doing pursuant to paragraphs V and VII hereof.

IX

[Modification]

If any Final Judgment entered or hereafter entered in this case with respect to any defendant or defendants other than Republic Pictures Corporation, Republic Productions, Inc., Films, Inc., Pictorial Films, Inc. or Warner Bros. Pictures Distributing Corporation should be more favorable in any respect to such other defendant or defendants than this Final Judgment is to the defendants Republic Pictures Corporation or Republic Productions, Inc. said defendants Republic Pictures Corporation or Republic Productions, Inc. shall be entitled, on application to this Court, with thirty days notice thereof to the plaintiff, to a modification of this Final Judgment to substitute herein such more favorable provision or provisions for the corresponding provision or provisions included in this Final Judgment, and the plaintiff hereby waives any objection to such application and consents to such modification, and will cooperate, upon the request of either of said defendants, in obtaining a suitable order pursuant to such application.

X

[Contingent Provision]

On condition that neither of said defendants shall have violated any of the provisions of this Final Judgment and that a substantial number of feature films released for 35 mm. theatrical distribution in the United States, production of which commenced after August 1, 1948, have been licensed or offered for licensing for television by said defendants, said defendants at any time after the expiration of seven years from the date of entry of this Final Judgment or five years after the licensing or offering for licensing for television of the minimum number of feature films available for television required so to be licensed or offered for licensing for television under the provisions of paragraph VI (c), which ever shall first occur, may apply to this

Court on thirty days notice thereof to the plaintiff, for an order terminating paragraphs VI, VII and VIII of this Final Judgment, provided, however, that nothing in this paragraph X shall be construed to limit the right of the plaintiff to oppose the granting of any such application.

XI

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the principal office of either of said defendants, be permitted access during the business or office hours of such defendant so notified, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to the matters contained in this Final Judgment and subject to the reasonable convenience of such defendant, and without restraint or interference from such defendant to interview officers or employees of such defendant, who may have counsel present, regarding any such matters, and, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to its principal office, any such defendant shall submit such written reports with respect to any such matters as may from time to time be necessary for the enforcement of this Final Judgment; provided, however, that information obtained by the means permitted in 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XII

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions

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Court Decisions

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as may be necessary or appropriate for the construction of or the carrying out of this Final Judgment, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.