

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 80 Civ 4438
)
 v.) Filed: August 4, 1980
)
) Judge Goettel
 COLUMBIA PICTURES INDUSTRIES, INC.;)
 GETTY OIL COMPANY;)
 MCA, INC.;)
 PARAMOUNT PICTURES CORPORATION; and)
 TWENTIETH CENTURY-FOX FILM)
 CORPORATION,)
)
 Defendants.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. §4), as amended, commonly known as the Sherman Act, to prevent and restrain the continuing violation by defendants, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. §1).

2. Columbia Pictures Industries, Inc. and Paramount Pictures Corporation are located in, transact business in, and are found within the Southern District of New York. Getty Oil Company, MCA, Inc., and Twentieth Century-Fox Film Corporation transact business in and are found within the Southern District of New York.

DEFINITIONS

3. "Premiere" means the non-corporate entity formed by defendants to provide a network program service.

4. "Network program service" means an entity which (a) assembles programming, including motion pictures, specials and sports and (b) engages in the simultaneous transmission by satellite of that programming on a regular basis to more than one pay television system not under common ownership or control.

5. "Cable television" means the use of coaxial cables to transmit the signals of television broadcast stations and non-broadcast services, including news, weather, and other entertainment, to subscribers for a basic fee.

6. "Pay television" means the transmission through a designated channel of programming, including motion pictures, specials and sports, to subscribers for a fee. When pay television is supplied to subscribers by cable television, the pay television fee is in addition to and separate from the basic fee.

7. "Pay television system" means the supplier of pay television to subscribers by any means, including, among others, cable television.

8. "Motion picture" means the version of a film produced and distributed initially for exhibition in theaters.

9. "License" means the grant of the right or privilege to exhibit a print of a motion picture, whether under copyright or not, on pay television without transferring title to either the print or the motion picture to a pay television system or a network program service.

DEFENDANTS

10. Columbia Pictures Industries, Inc. (hereinafter referred to as "Columbia") is made a defendant herein. Columbia is a corporation organized and existing under the laws of the State of Delaware with its principal executive office in New York, New York. Columbia had total revenues of approximately \$613 million in the year ended June 30, 1979, and total assets of approximately \$456 million as of the same date. Columbia is engaged in the business of licensing motion pictures to pay television systems and network program services. It is also engaged in the production, financing, and distribution of motion pictures for theatrical exhibition and the production and distribution of television programming. Columbia is a participant, with the other defendants, in the formation, establishment and operation of Premiere.

11. Getty Oil Company (hereinafter referred to as "Getty") is made a defendant herein. Getty is a corporation organized and existing under the laws of the State of Delaware with its principal executive office in Los Angeles, California. Getty had total revenues of approximately \$5.1 billion in 1979 and total assets of approximately \$6 billion at year-end 1979. Getty is a fully integrated oil company engaged in the exploration for and development of oil and gas, the production, purchase, and sale of crude oil, the transportation of crude oil and refined products, the refining of crude oil into various petroleum products, and the distribution of refined petroleum products through wholesale and retail outlets. Getty also has an 85 percent interest in Entertainment and Sports Programming Network, Inc., which offers sports programming to cable television. Getty is a participant, with the other defendants, in the formation, establishment and operation of Premiere.

12. MCA, Inc. (hereinafter referred to as "MCA") is made a defendant herein. MCA is a corporation organized and existing under the laws of the State of Delaware with its principal executive office in Universal City, California. MCA had total revenues of approximately \$1.3 billion in 1979 and total assets of approximately \$1.3 billion at year-end 1979. MCA, through its wholly-owned subsidiary Universal Studios, is engaged in the business of licensing motion pictures to pay television systems and network program services. It is also engaged in the production, financing, and distribution of motion pictures for theatrical exhibition and the production and distribution of television programming. MCA is a participant, with the other defendants, in the formation, establishment and operation of Premiere.

13. Paramount Pictures Corporation (hereinafter referred to as "Paramount") is made a defendant herein. Paramount is a corporation organized and existing under the laws of the State of Delaware with its principal executive office in New York, New York. It is a wholly-owned subsidiary of Gulf & Western Industries, Inc., which had total revenues of approximately \$5.3 billion in the year ended July 31, 1979, and total assets of approximately \$5.2 billion as of the same date. Paramount is engaged in the business of licensing motion pictures to pay television systems and network program services. It is also engaged in the production, financing, and distribution of motion pictures for theatrical exhibition and the production and distribution of television programming. Paramount is a participant, with the other defendants, in the formation, establishment and operation of Premiere.

14. Twentieth Century-Fox Film Corporation (hereinafter referred to as "Fox") is made a defendant herein. Fox is a corporation organized and existing under the laws of the State of Delaware with its principal executive office in Los Angeles, California. Fox had total revenues of approximately \$658

million in 1979 and total assets of approximately \$633 million at year-end 1979. Fox is engaged in the business of licensing motion pictures to pay television systems and network program services. It is also engaged in the production, financing, and distribution of motion pictures for theatrical exhibition and the production and distribution of television programming. Fox is a participant, with the other defendants, in the formation, establishment and operation of Premiere.

IV.

TRADE AND COMMERCE

15. Motion pictures have been responsible in substantial part for the growth of pay television in the United States. Pay television allows the subscriber to view, among other things, recent motion pictures without deletion or commercial interruption.

16. The distribution of motion pictures is a major industry in the United States. Defendants Columbia, Fox, MCA, and Paramount are four of the nation's largest distributors of motion pictures. Motion pictures are first distributed for exhibition in motion picture theaters. Thereafter, a motion picture is typically made available to network program services and pay television systems, where it is shown without deletion or commercial interruption. The motion picture is then customarily licensed to broadcast television, where it is usually shown with such deletions and interruptions.

17. Defendants Columbia, Fox, MCA, and Paramount distributed at least 190 motion pictures for theatrical exhibition in the United States in 1979, receiving more than \$560 million in gross revenues from such distribution. In 1978, defendants Columbia, Fox, MCA, and Paramount distributed at least 130 motion pictures for theatrical exhibition in the United States, receiving more than \$710 million from such exhibition.

18. Many of the motion pictures distributed by defendants Columbia, Fox, MCA, and Paramount have been highly successful in theatrical exhibition. During 1978 and 1979, defendant Columbia distributed such motion pictures as "Close Encounters of the Third Kind," "The China Syndrome," and "Kramer v. Kramer." During 1978 and 1979, defendant Fox distributed such motion pictures as "All That Jazz," "Alien," and "Norma Rae." During 1978 and 1979, defendant Paramount distributed such motion pictures as "Heaven Can Wait," "Star Trek - The Motion Picture," and "Grease." During 1978 and 1979, defendant MCA distributed such motion pictures as "Animal House," "The Jerk," and "Jaws 2." According to the industry publication Variety, defendants Columbia, Fox, MCA, and Paramount distributed at least 42% in 1978 and 43% in 1979 of those motion pictures obtaining license fees larger than \$1 million in theatrical exhibition.

19. Pay television provides a subscriber with programming consisting of motion pictures, specials and sports, or other materials for which the subscriber pays a fee. In recent years the number of subscribers to pay television has increased rapidly. As of June 30, 1980, there were approximately 7.7 million subscribers to pay television in the United States.

20. Pay television is supplied to subscribers by pay television systems. The most significant supplier of pay television is cable television. As of June 30, 1980, approximately 6.9 million pay television subscribers, or 90% of all pay television subscribers, received pay television by cable. To receive pay television by cable television, the subscriber pays the cable operator two separate fees. The subscriber pays what is commonly called in the industry a basic fee to receive the basic cable service consisting of signals of television broadcast stations and various non-broadcast services, such as news, weather, and other types of

entertainment. This group of services is usually referred to as basic cable. To receive pay television, the subscriber pays a separate fee over and above the basic fee. For this additional fee, the subscriber receives, on a designated channel, pay television programming.

21. Almost all pay television subscribers receive a network program service. A network program service enters into affiliation agreements with pay television systems to provide a complete program package for a monthly fee per subscriber. The pay television system in turn charges a fee to the subscriber for the network program service. The three largest network program services are Home Box Office ("HBO"), Showtime, and The Movie Channel. As of June 30, 1980, HBO had over four million subscribers, Showtime had over one million subscribers, and The Movie Channel, which began operating at the end of 1979, had over 400,000 subscribers.

22. A significant portion of the programming on a network program service consists of motion pictures. An important part of those motion pictures consists of recently released films which have enjoyed highly successful theatrical exhibitions and which are frequently offered on pay television up to a year before their appearance on broadcast television. The Movie Channel offers only motion pictures. During 1979, 77% of HBO's programming by hours consisted of motion pictures; in 1978 the figure was 76%. During 1979, 85% of Showtime's programming by hours consisted of motion pictures; in 1978 the figure was 92%. The exhibition of recent motion pictures such as those distributed by defendants Columbia, Fox, MCA, and Paramount are very important to the success of network program services. Until the formation of Premiere as hereinafter alleged, defendants Columbia, Fox, MCA, and Paramount independently licensed their motion pictures that had recently been in theatrical exhibition to network program services.

28. The defendants have agreed, among other things, on the price Premiere will charge pay television systems to carry its network program service.

29. Beginning at least as early as April 21, 1980, and continuing thereafter until the filing of this complaint, defendants have entered into an unlawful contract, and have been continuously engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce, in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. §1). Said unlawful contract, combination, and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

30. The aforesaid contract, combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among defendants, the substantial terms of which have been, among others things, to:

- (a) raise, fix, stabilize, and maintain the price of motion pictures licensed by Columbia, Fox, MCA, and Paramount to pay television; and
- (b) refuse to deal with and boycott any network program service other than Premiere.

VI.

EFFECTS

31. The aforesaid contract, combination, and conspiracy has had and will continue to have the following effects, among others:

- (a) the price of motion pictures licensed by defendants Columbia, Fox, MCA, and Paramount to pay television has been and will be raised, fixed, stabilized and maintained at artificial and non-competitive levels;
- (b) competition among defendants in the licensing of motion pictures to network program services and pay television systems has been and will be restrained;

(c) network program services and pay television systems have been and will be deprived of free and open competition in the licensing of motion pictures; and

(d) network program services other than Premiere have been and will be denied access to motion pictures made available to pay television by defendants.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendants have entered into an unlawful contract and have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the Court adjudge and decree to be illegal, null and void, and order terminated and cancelled, all contracts, agreements and understandings between and among defendants, in restraint of the aforesaid trade and commerce, as herein alleged.

3. That defendants be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the contract, combination and conspiracy herein alleged, or from engaging in any other contract, combination, conspiracy, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

4. That pending a final adjudication of the merits of this complaint, a preliminary injunction be issued against defendants, preventing Columbia, Fox, Getty, MCA, and Paramount from making available or licensing to Premiere any motion picture, and otherwise enjoining further steps to effectuate the implementation of Premiere now scheduled to begin operation on January 1, 1981.

5. That plaintiff have such other and further relief as the Court may deem just and proper.

6. That plaintiff recover the costs of this action.

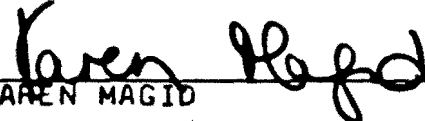

RICHARD J. FAVRETTO
Deputy Assistant Attorney General


SEYMOUR H. DUSSMAN


MARK LEDDY


GORDON G. STONER


STANLEY M. GORINSON


KAREN MAGID


ROBERT E. HAUBERG, JR.


ELISABETH P. HYDE

Attorneys,
Department of Justice

Attorneys,
Department of Justice
Washington, D.C. 20503
(202) 724-6855