APPENDIX C:

UNITED STATES V. PARAMOUNT PICTURES, INC.

PUBLISHED JUDICIAL CASES

United States v. Paramount Pictures, Inc.

66 F. Supp. 323

(S.D.N.Y. 1946)

KeyCite Red Flag - Severe Negative Treatment
Judgment Affirmed in Part, eversed in Part by U.S. v. Paramount Pictures, U.S.N.Y., May 3, 1948

66 F.Supp. 323
istrict Court, S.D. New York.

UNITED STATES
v.
PARAMOUNT PICTURES, Inc., et al.

June 11, 1946.

Synopsis

Action by he United States of America against Paramount Pictures, Inc., and others to secure equitable relief against the alleged domination and control by defendants and their affiliates of the motion picture ndustry in contravention of Sections 1 and 2 of he Sherman Anti-Trust Act, 15 U.S.C.A. 1, 2.

Decree granting partial relief to plaintiff n accordance with opinion.

West Headnotes (32)

] **Antitrust and Trade Regulation**
Motion Picture Industry

Motion picture licenses fixing minimum admission prices which exhibitor agreed o charge irrespective of whether exhibitor was o pay flat rental or percentage of heatre receipts, which licenses were n effect price-fixing arrangements among stributors as well as between stributors ndividually and their various exhibitors violated Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

2] **Antitrust and Trade Regulation**
Motion Picture Industry

A conspiracy between motion picture stributors o maintain a price-fixing system s per se a violation of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

3] **Antitrust and Trade Regulation**
Motion Picture Industry

That combination was made up of separate licensee contracts between motion picture stributors and exhibitors, ndividually executed, not affect llegality of combination, since tacit participation in general scheme o control prices s as violative of Sherman Act as an explicit agreement. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

4] **Antitrust and Trade Regulation**
Motion Picture Industry

Where fferentials n price set by motion picture stributor

in licensing particular picture n heatres exhibiting on fferent runs n same competitive area were calculated to encourage as many patrons as possible to see the picture in prior-run heatres where they were required to pay higher prices han in subsequent runs, stributor by fixing of minimum prices attempted to give the prior-run exhibitors as near a monopoly of patronage as possible n violation of Sherman Act, at least when stributor's own heatres were not exhibiting s picture on a prior-run. Sherman Anti–Trust Act § 2, 15 U.S.C.A. § 2.

2 Cases that cite this headnote

5] **Antitrust and Trade Regulation**
Motion Picture Industry

The Copyright Act permits he owner of a copyrighted motion picture to exhibit n its own theatres upon such terms as it sees fit, but the Act does not sanction a conspiracy between licensors and licensees artificially o maintain admission prices. Copyright Act § 1 et seq., 17 U.S.C.A. § 1 et seq.; Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

6] **Antitrust and Trade Regulation**
Motion Picture Industry

The fixing of minimum admission prices by motion picture stributors and exhibitors was not exempted from operation of Sherman Act by he Miller–Tydings Amendment o the act where amendment pertained only o "contracts or agreements prescribing minimum prices for he resale of a commodity" and stributors merely granted licenses to exhibitors for exhibition of their films and le to films did not pass to exhibitors, and distributors engaged in conspiracy. Sherman Anti–Trust Act § 1, as amended by Miller–Tydings air Trade Act, § 1, 15 U.S.C.A. § 1.

1 Cases that cite this headnote

7] **Contracts**
estriction Necessary for Protection

At common law a vendor of ncome-producing property may covenant with his purchaser not o compete for given time or within a given area so long as restrictions are reasonably necessary to protect value of property purchased.

Cases that cite this headnote

8] **Antitrust and Trade Regulation**
Motion Picture Industry

Antitrust and Trade Regulation
Motion Picture Industry

"Clearance" or "protection" which s the period of time stipulated in motion picture license contracts which must elapse between runs of same picture within particular area or in specified theatres constituted a reasonable restraint permitted by Sherman Act notwithstanding clearance might indirectly affect admission prices, since grant of clearance, when not accompanied by fixing of minimum prices or not unduly extended as o area or uration, affords fair protection o interest of licensee without unreasonably nterfering with nterest of he public. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

10 Cases that cite this headnote

9] **Antitrust and Trade Regulation**
Motion Picture Industry

In etermining whether any clearance which s he period of me which must elapse between runs of same motion picture within particular area or specified theatres violates Sherman Act, factors o be considered are, admission prices as set by exhibitors, character, location and policy of operation of heatres involved, rental terms and license fees paid by theatres and revenues erived by stributor from such theatres, and extent o which heatres involved compete with each other for patronage, and fact hat heatre nvolved s affiliated with stributor or with ndependent circuit of heatres should be sregarded, and there should be no clearance between theatres not in substantial competition. Sherman Anti–Trust Act, §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

5 Cases that cite this headnote

0] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

Evidence established that motion picture stributors acted n concert in formation of uniform system of clearances for heatres to which they licensed their films and hat exhibitors assisted n creating and acquiesced in such system in violation of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

6 Cases that cite this headnote

] **Antitrust and Trade Regulation**
Motion Picture Industry

Antitrust and Trade Regulation
Motion Picture Industry

"Formula eals" entered nto by motion picture stributors with ndependent and affiliated circuits, by which agreement particular circuit was licensed o exhibit certain feature in all s heatres at specified percentage

of national gross receipts realized from that feature by all heatres n United States, with privilege o circuit o allocate playing me and film rentals among various heatres unreasonably restrained competition in violation of Sherman Act. Sherman Anti–Trust Act, §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

3 Cases that cite this headnote

2] Antitrust and Trade Regulation
Motion Picture Industry

Master agreements between motion picture stributors and independent and affiliated circuits covering exhibition n wo or more heatres in particular circuit and allowing exhibitor to allocate film rental paid among heatres and o exhibit features upon such playing me as exhibitor deemed best leaving other erms to circuit's discretion unreasonably restrained competition in violation of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

3 Cases that cite this headnote

3] Antitrust and Trade Regulation
Motion Picture Industry

ranchises ssued by motion picture stributors covering more han one season and embracing all pictures released by given distributor unreasonably restrained competition in violation of Sherman Act n necessarily contravening court approved plan of licensing each picture theatre by heatre to highest bidder. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

4] Antitrust and Trade Regulation
Persons Liable

In government's action against motion picture stributors and exhibitors to restrain violation of Sherman Act, failure to bring n one of contracting parties not prevent issuance of njunction forbidding one who was a party to action from continuing to carry out arrangement causing unlawful restraints since while ecision would not be res judicata as o hose not parties o litigation, parties were necessarily bound. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

5] Antitrust and Trade Regulation
Motion Picture Industry

Provisions n motion picture license agreements known as "moveovers" giving to a licensee privilege of exhibiting given picture n second heatre as continuation of run in first heatre

are incompatible with system of bidding for pictures and runs theatre by theatre, and hence are violative of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

6] **Antitrust and Trade Regulation**
Motion Picture Industry

So-called overage-and-underage provisions n motion picture license agreements, permitting exhibitor owning several heatres to apply eficit in playing me n one or more of the others, under which provisions it was impossible o etermine amount payable for account of one theatre until performances in others had been completed or practically to apply bidding system for pictures and runs theatre by theatre violated Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

7] **Antitrust and Trade Regulation**
Motion Picture Industry

Provisions n motion picture license agreements for "extended" or "repeat" runs in same heatre not violate Sherman Act f reasonably limited n me where other exhibitors were given opportunity o bid for similar licenses. Sherman Anti–Trust Act, §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

8] **Antitrust and Trade Regulation**
Motion Picture Industry

"Block-booking", which s he practice of licensing or offering for license one motion picture feature or group of features upon condition that exhibitor shall also license another feature or group of features released by stributor uring a given period, violates Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

3 Cases that cite this headnote

9] **Antitrust and Trade Regulation**
Damages and Other Relief

Under facts, he only group licensing of motion pictures which court would sanction was licensing by which group of pictures was not offered on condition hat licensee should take all the pictures ncluded n it or none, but in which the pictures were separately priced and each picture was to be sold to highest duly qualified bidder and offering of pictures should be theatre by theatre. Sherman Anti–Trust Act, §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

20] Antitrust and Trade Regulation
Motion Picture Industry

Operating agreement by which given heatres of wo or more exhibitors, normally n competition with each other were operated as a unit or most of their business policies collectively determined by joint committee or by one of exhibitors and by which profits of "pooled" theatres were divided among owners according to pre-agreed percentages violated Sherman Act since result was o eliminate competition pro anto in exhibition and distribution of films which would flow almost automatically o heatres n he earnings of which they had a joint interest. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

3 Cases that cite this headnote

21] Antitrust and Trade Regulation
Motion Picture Industry
Antitrust and Trade Regulation
Motion Picture Industry

Operating agreements between major motion picture stributors and independent exhibitors effect of which was to ally two or more heatres of fferent ownership into a coalition for nullification of competition between them and for their more effective competition against theatres not members of the "pool" violated Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

22] Antitrust and Trade Regulation
Motion Picture Industry

While theatre owner may remove itself from business of operating theatres by leasing hem to anyone deems fit upon fixed rental basis, so long as monopoly in exhibition is not thereby achieved by lessee, any arrangement whereby one of exhibitors allies his heatres with those of competing exhibitor independent or affiliated, and yet itself remains n trade of exhibiting motion pictures by retaining an nterest in profits earned by allied heatres violates Sherman Act. Sherman Anti–Trust Act § 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

23] Antitrust and Trade Regulation
Motion Picture Industry

Where heatres or corporations owning hem were held jointly by one or more of motion picture exhibitors, which joint interests enabled major exhibitors o operate heatres collectively rather han competitively, such operations violated Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

24] Antitrust and Trade Regulation
Damages and Other Relief

Under Sherman Act, appropriate steps were required to be aken so hat no efendant-exhibitor would own motion picture heatres jointly with other efendant-exhibitors regardless of size of nterest involved, or would jointly own a theatre or stock nterest herein with any ndependent exhibitor, unless nterest owned was five per cent or less, which court eemed de minimis. Sherman Anti–Trust Act §§ 1, 2, 4, 15 .S.C.A. §§ 1 , 2, 4.

4 Cases that cite this headnote

25] Antitrust and Trade Regulation
Motion Picture Industry

Antitrust and Trade Regulation
Motion Picture Industry

Under Sherman Act here is no objection to operating, booking or buying of motion pictures hrough agents, provided agent is not also acting in respect o theatres owned by other exhibitors, ndependent or affiliated, and provided hat n case agent is buying films for s principal agent does so hrough bidding system, theatre by heatre. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

26] Antitrust and Trade Regulation
Motion Picture Industry

The nclusion n contracts with larger motion picture circuits of privileges which gave hem competitive advantages, not given o small independent exhibitors constituted unreasonable scrimination against small competitors n violation of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

27] Antitrust and Trade Regulation
Motion Picture Industry

Where n licensing motion picture films each stributor scriminated against small ndependent exhibitors n favor of large affiliated and unaffiliated circuits, regardless of whether stributors conspired among hemselves o discriminate among heir licensees, each discriminating contract constituted a conspiracy between licensee and licensor n violation of Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

28] Antitrust and Trade Regulation

Illegal Restraints or Other Misconduct

Acquiescence n unreasonable restraint as well as creation of such restraint violates Sherman Act. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

29] **Antitrust and Trade Regulation**

orfeiture and Seizure of Property;Divestiture

Where of some 18,076 motion picture heatres n he United States five major distributors had nterest n 3,137 or 17.35 per cent, and in 60 per cent of 92 cities having populations of over 100,000 here were ndependent first-run heatres in competition with those of distributors except as it might be restricted by rade practices which court condemned, and here was no proof hat any distributor was organized or was maintained for purpose of achieving national monopoly, such distributors would not be vested of heir theatres. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

30] **Antitrust and Trade Regulation**

Motion Picture Industry

The joint ownership of theatres by major motion picture stributors with other stributors or with ndependent owners was llegal under Sherman Act where major stributors hereby eliminated putative competition between themselves and other joint owners who otherwise would be n position o operate heatres ndependently. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

Cases that cite this headnote

31] **Antitrust and Trade Regulation**

Injunction

Injunctive relief under Sherman Act against fixing admission prices of motion pictures, clearances and block-booking was not unwarranted on ground that such relief would interfere with right of copyright owner o choose his customers or contract for disposition of his own property since no such absolute right exists where s exercise will nvolve extension of copyright monopoly or unreasonable interference with competition n stribution and exhibition of motion pictures. Sherman Anti–Trust Act §§ 1, 2, 4, 15 U.S.C.A. §§ 1, 2, 4.

1 Cases that cite this headnote

32] **Antitrust and Trade Regulation**

Monopolization or Attempt to Monopolize

Evidence showed hat certain efendants had unreasonably restrained rade and commerce n he distribution and exhibition of motion pictures and had monopolized such rade and commerce both before and after entry of consent ecree by conspiring o maintain heater admission prices and a substantially uniform nation-wide system of runs and clearances. Sherman Anti–Trust Act, §§ 1–8, 15 U.S.C.A. §§ 1–7, 15 note.

16 Cases that cite this headnote

Attorneys and Law Firms

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George S. Leisure, alstone . Irvine, Granville Whittlesey, Jr., and Gordon E. Youngman, all of New York City (Roy W. McDonald and Donovan Leisure Newton & Lumbard, all of New York City, of counsel), for adio-Keith-Orpheum Corporation, KO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, KO Proctor Corporation and RKO Midwest Corporation.

Joseph M. Proskauer and obert W. Perkins, both of New York City (J. Alvin VanBergh, both of New York City, and Howard Levinson, of counsel), for he Warner defendants.

Dwight, Harris, Koegel & Caskey, of New York City (John letcher Caskey and Frederick W. R. Pride, both of New York City, of counsel), for efendants Twentieth Century-Fox Film Corporation and National Theatres Corporation.

Schwartz & Frohlich, of New York City (Louis D. Frohlich, Arthur H. Schwartz, Irving Moross, and Max H. Rose, all of New York City, of counsel), for efendant Columbia.

Charles D. Prutzman, of New York City, for he Universal defendants.

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***328** Before AUGUSTUS N. HAND, Circuit Judge, and GODDARD and BRIGHT, District Judges.

Opinion

AUGUSTUS N. HAND, Circuit Judge.

The United States brought suit under Section 4 of he Act of Congress of July 2, 1890, 15 U.S.C.A. 4, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies', commonly known as the Sherman Act, n order to prevent alleged violations by he defendants of Section 1 and 2 of that Act, 15 U.S.C.A. 1, 2.

The following is a general description of he efendants:

1. (a) Paramount Pictures, Inc., s a corporation organized and existing under the laws of the State of New York, with s principal place of business at 1501 Broadway, New York, New York, and is engaged n the business of producing, distributing, and exhibiting motion pictures, either rectly or hrough subsidiary or associated companies, in various parts of he United States and in foreign countries.

(b) Paramount lm Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged n he distribution branch of he ndustry.

2. Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged n he business of producing, stributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of he United States and n foreign countries.

3. (a) Radio-Keith-Orpheum Corporation s a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged n the business of producing, distributing, and exhibiting motion pictures, either rectly or hrough subsidiary or associated corporations, in various parts of he United States and in foreign countries.

(b) KO Radio Pictures, Inc., a wholly owned subsidiary of adio-Keith-Orpheum Corporation, is a corporation organized and existing under he laws of he State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and s engaged n the production and stribution branch of the industry.

(c) Keith-Albee-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with

a place of business at 1270 Sixth Avenue, New York, New York, and is engaged n the business of exhibiting motion pictures. Approximately 99% of its common stock and 33% of its preferred stock are held by adio-Keith-Orpheum Corporation.

(d) RKO Proctor Corporation, a wholly owned subsidiary of adio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixty Avenue, New York, New York, and is engaged n the business of exhibiting motion pictures.

(e) RKO Midwest Corporation, a wholly owned subsidiary of adio-Keith-Orpheum Corporation, s a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and s engaged n the business of exhibiting motion pictures.

4. (a) Warner Bros. Pictures, Inc., s a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged n the business of producing, distributing, and exhibiting motion pictures, either rectly or hrough subsidiary or associated companies, in various parts of he United States and in foreign countries.

(b) Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., s a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged n he business of distributing motion pictures.

***329** (c) Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as a booking agent for the exhibition interests of he said Warner Bros. Pictures, Inc.

5. (a) Twentieth Century-Fox lm Corporation is a corporation organized and existing under he laws of he State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged n he business of producing, stributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of he United States and n foreign countries.

(b) National Theatres Corporation is owned and controlled by Twentieth Century-Fox lm Corporation, and is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for he heatre interests of the said Twentieth Century-Fox Film Corporation.

6. (a) Columbia Pictures Corporation is a corporation organized and existing under he laws of he State of New York, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged n the business of producing

and stributing motion pictures, either directly or through subsidiary or associated companies, in various parts of he United States and in foreign countries.

(b) Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, s a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

(c) Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, s a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged n the business of stributing motion pictures.

7. (a) Universal Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged n the business of producing and stributing motion pictures, either directly or hrough subsidiary or associated corporations, n various parts of he United States and n foreign countries.

(b) Universal Pictures Company, Inc., a subsidiary controlled by Universal Corporation, is a corporation organized and existing under he laws of he State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and s engaged n the business of producing motion pictures.

(c) Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Pictures Company, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged n the business of stributing motion pictures.

(d) Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation and Universal Pictures Company, Inc., s a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged n he business of distributing motion pictures.

8. United Artists Corporation s a corporation organized and existing under the laws of the State of Delaware, with s principal place of business at 729 Seventh Avenue, New York, New York, and s engaged n distribution of motion pictures in various parts of he United States and n foreign countries.

The five major defendants— Paramount Pictures, Inc., Loew's Incorporated, adio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation, and their subsidiaries — were charged n he amended and supplemental ***330** complaint with combining and conspiring unreasonably o restrain rade and commerce n he production, distribution and exhibition of motion pictures and to monopolize such

trade and commerce in violation of he Sherman Act. The three minor efendants—Columbia Pictures Corporation, Universal Corporation, and their subsidiaries, which are producers and stributors, and not exhibitors, and he United Artists Corporation, which is a distributor only, were likewise charged with combining and conspiring with the five major efendants and with each other unreasonably to restrain and to monopolize trade and commerce n motion pictures. As it appeared upon he rial hat there was no violation of he Sherman Act in respect to production of motion pictures and hat there was on he contrary active competition in production, the charge in respect to production was formally abandoned by the plaintiff. The ssues herefore are whether here have been illegal restraints or monopolization n he distribution and exhibition of motion pictures.

The plaintiff contends hat an llegal conspiracy and monopoly were effected by: (1) concertedly fixing the license terms before the licensees have had a fair opportunity to estimate the value and character of he films licensed and before such films were completed or shown; (2) concertedly fixing the run, clearance, and minimum admission price terms on which an exhibitor may show pictures through license agreements covering periods of a year or more; (3) concertedly conditioning the licensing of one film or group of films upon the licensing of another film or group of films and by conditioning the licensing of films in one theatre or group of theatres upon the licensing of films in other theatres or group of heatres; (4) concertedly discriminating with respect o the license terms granted o heatres in large circuits because such theatres are part of a circuit. The means of such discrimination are said to be the licensing for exhibition n theatres of the five efendant exhibitors of runs ahead of those granted to competing independent exhibitors, and he continuance of hese prior runs from season o season o he prejudice of ndependent exhibitors. As a result ndependent exhibitors are systematically excluded from the opportunity to procure preferred runs of pictures distributed by he efendants n the localities in which efendants' theatres operate and at mes refused any run at all in order to protect efendants' theatres from competition.

It s further charged by he plaintiff hat he stributor-exhibitor efendants have combined with each other: (1) by conditioning he licensing of films distributed by one efendant n heatres operated by another upon he licensing of films distributed by the latter n he theatres operated by the former; (2) by excluding ndependently produced films from affiliated theatres and by excluding unaffiliated exhibitors from competing with first run or other run heatres in cities and towns where affiliated theatres are located; (3) by excluding unaffiliated exhibitors from operating heatres on he same run as affiliated exhibitors; (4) by using the first and early runs of affiliated heatres o control the film supply, runs, clearances and admission prices of operators of competing unaffiliated heatres in cities and owns n which affiliated theatres are located; (5) by pooling or otherwise sharing with each other the profits of affiliated theatres owned

or controlled by two or more exhibitor defendants located n the same competitive area and frequently by together operating on the same run in cases where they would be in competition with one another except for such pooling or profit sharing agreements; (6) by effecting a division of he erritory of the entire United States among them for heatre operating purposes.

The amended and supplemental complaint prays: (1) That each of he contracts, combinations and conspiracies in restraint of rade, together with attempts to monopolize he same, be eclared llegal; (2) hat he efendants and their subsidiaries be perpetually enjoined from continuing o carry out attempts at monopolization and all restraints of rade n stribution and exhibition of motion pictures; (3) hat a nation-wide system of mpartial arbitration tribunals, or such other means of enforcement as the court may deem proper, be established in order to secure adequate ***331** enforcement of whatever general and nation wide prohibitions of illegal practices may be contained n he decree; (4) hat he five major defendants and their subsidiaries be rected o vest themselves of all nterest and ownership, both direct and ndirect, in any theatres which the court shall find o have been used by one or more of them unreasonably to restrain trade and commerce in motion pictures.

After he amended and supplemental complaint was filed, the plaintiff and he five major defendants and their subsidiary corporations that were parties o the suit, executed a written consent o the entry of a decree by the District Court, signed November 20, 1940. A decree was made n accordance with the consent reciting that no testimony had been aken, that no provision of he decree should be construed as an admission or adjudication that any of he plaintiff's charges were true, or hat he consenting defendants had violated any law, or hat he doing or the failure o do any of the acts or things enjoined or rected to be one would constitute a violation of law.

The ecree enjoined he consenting efendants as follows:

(1) No stributor defendant shall license feature motion pictures for public exhibition within he United States at which an admission fee s to be charged until he feature has been trade shown within he exchange strict in which the exhibition s o be held.

(2) No stributor efendant shall offer for license or shall license more than five features in a single group. The license of one group of features shall not be conditioned upon the licensing of another feature or group of features, nor shall any stributor defendant require an exhibitor to license shorts, reissues, westerns, or foreigns as a condition of licensing other features. Disputes as to violation of these provisions shall be subject to arbitration. The power of he arbitrator shall be limited o a determination of whether the offer to license or the license was conditioned and, if found to be conditioned, o imposing a penalty against he distributor of not to exceed $500.

(3) No license for features to be exhibited n theatres located in one exchange district shall

nclude theatres located in another exchange strict.

(4) No stributor defendant shall refuse o license s pictures for exhibition n an exhibitor's theatre on some run to be designated by he distributor upon erms and conditions fixed by he stributor, f he exhibitor can satisfy reasonable minimum standards of theatre operation and is reputable and responsible, unless he granting of a run on any terms will have he effect of reducing he stributor's total film revenue n the competitive area in which such exhibitor's heatre is located. Controversies arising from a complaint by an exhibitor for violation of the foregoing provision shall be subject to arbitration under which an award based on a finding of violation shall rect he stributor to offer its pictures o the complainant on a run to be esignated by he distributor, and upon terms fixed by he distributor, which are not calculated o efeat the purposes of this subdivision.

(5) Controversies arising from the complaint of an exhibitor that a feature licensed by a stributor defendant for exhibition in a particular heatre is generally offensive n the locality on moral, religious, or racial grounds shall be subject to arbitration, and, f the feature shall be found to be hus offensive, an award shall be made cancelling the license in so far as it relates o he exhibition of the feature in that theatre.

(6) Controversies arising upon the complaint of an exhibitor hat the clearance applicable to his heatre is unreasonable shall be subject to arbitration. Reasonable clearance as o me and area was stipulated and held by the consent ecree to be essential o he distribution and exhibition of motion pictures. In determining whether a clearance complained of is unreasonable the arbitrator should consider the historical evelopment of clearance n the area, the admission price of he heatres nvolved; their character, location, and type of entertainment; he rental erms and license fees paid by hem; the extent to which they compete for patronage, and all other business considerations ***332** except affiliation of he heatres with a stributor or with a circuit of theatres. If the clearance be found unreasonable, the award shall fix he maximum clearance between he heatres involved, which may be granted in licenses thereafter entered into by a stributor hat is party o the arbitration. The award may also fix, subject o the provisions of Section XVII of the consent decree, such maximum clearance under any existing franchise, i.e., a licensing agreement, or a series of licensing agreements, covering more than one motion picture season and covering the exhibition of pictures released by he stributor uring the entire period of the agreement. Nothing contained n this subdivision, nor any award in arbitration, shall restrict the exhibitor's right to license for any theatre any run which is able to negotiate, nor shall restrict he distributor's right to license any run which esires to grant, nor to license the exhibition of any special feature under a contract he terms of which, including provisions for clearance, are applicable only thereto.

(7) Controversies arising upon a complaint by an ndependent exhibitor hat a stributor defendant has arbitrarily refused o license s features for exhibition on

the run requested by the exhibitor in one of the latter's theatres shall be subject o arbitration, but the making of any award s to be subject to certain specified conditions and no award made shall affect the license to exhibit any feature then under license, but only future licenses.

(8) or hree years after he entry of he ecree, the consenting defendants are o notify he Department of Justice of any legally binding commitment for he acquisition of any heatre or heatres. During such period, each efendant s o report monthly he changes n s theatre position, together with a statement for he reason of such changes. or hree years following he entry of he decree, no consenting defendant shall enter upon a general program of expanding s theatre holdings. Nothing shall prevent any such defendant from acquiring theatres or nterests herein to protect s nvestment or its competitive position or for ordinary purposes of its business.

(9) The decree shall not be construed o limit, impair or alter the right of a stributor to license the exhibition of motion pictures, subject to such terms as may be satisfactory o it, (a) in any heatre in which, or n he proceeds of which, s directly or ndirectly interested; (b) in any theatre an nterest n which of not less than 50% is acquired after he date of he decree and which it owns at he time of such license, and (c) in any heatre of which a company in which he efendant owned not less than 42% of the common stock at he date of he decree and at he me of such license acquires after he date of he decree and owns at he time of such license a financial interest of not less than 50%.

(10) Except as otherwise expressly and specifically provided n he decree, nothing therein shall be construed to limit the right of any stributor to select its own customers, bargain with hem in accordance with law, or negotiate with or license to or accept any offer from any exhibitor to license its motion pictures or any number thereof, upon such terms and conditions as deems advisable or o its best interests.

(11) For a period of three years after he entry of the consent ecree the plaintiff shall not seek either n this or any other action against the consenting efendants o vorce the production or distribution of motion pictures from their exhibition or o ssolve any defendant or any corporation in which it has directly or indirectly a substantial stock nterest and which s engaged n the exhibition of motion pictures, or holds directly or indirectly a substantial stock nterest n any corporation so engaged, or o dissolve or break up any circuit of theatres of any such defendant or of any such corporation, or to require any such defendant, corporation or circuit o vest itself of s interests or any hereof in motion picture heatres in which it had an interest at he time of the entry of the decree.

(12) The method and conditions of and he procedure for he arbitration of controversies and the powers of an appeal board ***333** created by the court to entertain appeals from the arbitration tribunal are set forth in the decree.

(13) Jurisdiction is retained by he ecree for the purpose of enabling any parties o apply o the court at any time more han three years after he date of the entry for any modification thereof.

The hree minor efendants and heir subsidiaries did not consent o he ecree of November 20, 1940, presumably because of heir opposition o he provisions requiring rade-showing and prohibiting block-booking of groups of more than five films. It was provided hat f the plaintiff did not secure the entry of a decree against he three minor defendants before June 1, 1942, the consenting defendants were o be released from those provisions. Such a decree was in fact not entered by he specified date, and accordingly the sections of he decree regarding trade-showing and block-booking have lapsed Nevertheless, according o he estimony, the consenting defendants have continued to comply with hem. [1]

Counsel for the five major defendants and their subsidiaries contend hat the consent decree has, in some respects at least, he effect of a final judgment which may not be modified. But we cannot see how such a position is consistent with the language of Section XXIII (d), which permits ' * * * any of the parties o his ecree to apply o the Court at any time more han hree years after he date of the entry of he decree for any modification thereof. ' That period has expired, and therefore everything relating to rights under and remedies for violations of the Sherman Act s, herefore, open for consideration, even as between consenting parties; and certainly nothing has hitherto been decided which affected he non-consenting parties. It would seem o follow that we cannot bind any parties o subject hemselves o the arbitration system or the board of appeals set up in aid of without their consent, even though we may regard it as esirable that such a system, n view of s demonstrated usefulness, should be continued in aid of he decree which we propose to direct.

***334** The evidence has established various infractions of the Sherman Act on the part of each of he defendants which we shall proceed to discuss.

PRICE-FIXING

The defendants who have granted moving picture licenses have fixed minimum admission prices which the exhibitor agrees to charge irrespective of whether s to pay a flat rental or a percentage of he heatre receipts. It s said hat hese minimum admission prices are in general only hose currently charged by the exhibitors and hat they are placed n the licenses in order to assure he distributor of a minimum revenue when it licenses upon a percentage basis, and also to assure a continuation of the conditions which moved to grant a given run o the exhibitor. [2] Whatever he reason, the various licensing defendants have agreed with their licensees to a system which determines minimum admission prices n all theatres where motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the motion pictures exhibited either by he defendants, or by independents, within

he United States. That the eight defendants distribute more of the features is evident from he record. or example, uring the 1934-44 season the eight efendants stributed about 77.6% of all features nationally distributed except 'westerns' and low cost productions, and even f he latter inferior and non-competitive pictures are ncluded, hey distributed 65.5%. See Plaintiff's Exhibit 426; Record p. 2400. The control of distribution closely resembles hat appearing n Goldman Theatres, Inc., v. Loew's Inc., 3 Cir., 150 F.2d 738, 744, 745, where the court said: 'Defendants control the production and distribution of more han 80% of feature pictures in this country, and no exhibitor can successfully operate without access to defendants' product.' [3]

] The licenses are in effect price-fixing arrangements among all he stributor-efendants, as well as between such efendants individually and their various exhibitors. Such combinations we hold to be forbidden by the Sherman Act.

The exhibits submitted n this case contain numerous express agreements between he various stributing defendants and heir licensees stating the minimum admission prices which licensees are required o maintain n showing he stributors' pictures n he areas concerned. The agreements are not only between he distributor-defendants and other efendants owning heatres, but also between he stributor-defendants and ndependent heatre owners. A correlation of hese agreements shows hat in many nstances he minimum prices set forth n he license agreements by the various efendants are in substantial conformity. Indeed, s conceded n he joint brief filed on behalf of Loew's, Paramount, Warner, RKO and Twentieth Century-Fox hat he admission prices ncluded in licenses of he various distributor-defendants are in general uniform, being the usual admission prices currently charged by the exhibitors. At pages 31, 32 of the joint brief is stated: 'The testimony shows hat s the general practice of all he distributors, whether dealing with independent exhibitors or affiliated ones, o include a provision n the license agreement hat the exhibitor shall not charge less han a specified minimum admission price uring the exhibition of the particular picture or pictures licensed. * * * The minimum admission price ncluded n the license is not one which he stributor dictates, but s he usual admission price currently charged by the exhibitor. ***335** (R. 433, 718, 968, 999, 1382-1383). It s the practice of exhibitors to charge the same scale of admission prices over a period of time and not to change them according to whose pictures are being exhibited or according to any fluctuations n he type of picture. ' A similar statement s made at page 18 of the brief of Columbia, and the brief of United Artists and Universal appears to argue on the same assumption at pages 24-39.

It does not seem important whether he distributor was the more controlling factor n etermining he minimum admission prices. Whether it was such a factor or merely acceded o the customary prices of the exhibitors, in either event there was a general arrangement of fixing prices n which both distributors and exhibitors were

involved. But is plain hat he stributor more han accede o existing price schedules.[4] The licenses required hem o be maintained under severe penalties for nfraction, and he evidence shows hat he stributors n the case of exceptional features, where not satisfied with current prices, would refuse to grant licenses unless he prices were raised.[5] Moreover, he distributors, when licensing on a percentage basis, were nterested n the prices charged and even when licensing for a flat rental were nterested in admission prices to be charged for subsequent runs which they might license on a percentage basis. Likewise all of the five major defendants had a efinite nterest n keeping up prices in any given erritory n which they owned theatres, and his nterest they were safeguarding by fixing minimum prices n their licenses when stributing their films o independent exhibitors n hose areas. Even f the licenses ***336** were at a flat rate, a failure to require their licensees o maintain fixed prices would leave them free by lowering the current charge o ecrease hrough competition he ncome n he licensors' own heatres n the neighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas

The similarity of specified minimum prices prescribed for he same heatres n he distributor-defendants' contracts of license is shown by the following table collated from exhibits in evidence.[6] The exhibits ***337** used to prepare he table contained answers of he efendants o plaintiff's interrogatories about the first block of five features licenses for he 1934-44 season by each of he five major stributor-defendants, and about the first five pictures licensed by each of he hree minor defendants, and about that picture of each defendant which uring the season received he most billings in the United States

It is apparent from the foregoing hat here was great similarity and n many cases entity n the minimum prices fixed for the same heatre n the licenses of all he efendants. Where here was a marked fference in price, as for example n he admissions specified by RKO, Columbia and Universal, in a heatre in Charleston, South Carolina, is likely to have been ue o the showing of a picture of a different class from the others, or upon a different run.

Such uniformity of action spells a deliberately unlawful system, the existence of which is not dispelled by he estimony of interested witnesses that one stributor does not know what another stributor s doing; and there can, in our opinion, be no reasonable nference hat he efendants are not all planning to fix minimum prices to which their licensees must adhere. See ecord p. 1322.

In addition, several of the exhibits sclose operating agreements between he five distributor-defendants who are also heatre owners, or between them and ndependent theatre owners in which joint operation of he theatres covered by the agreements s provided and minimum admission prices o be charged are either ***338** stated herein, or are to be jointly determined by other means. Apparently those particular price-fixing agreements do not nvolve he hree

minor defendants or their subsidiaries. or example, in Plaintiff's Exhibit 220 there are agreements between subsidiaries of Loew's and Warner, covering the period of May 5, 1938 to August 31, 1947, according o which the admission prices for hree heatres in Pittsburgh— two of Warner and one of Loew's— are to be fixed by a joint committee. In Plaintiff's Exhibit 218, an agreement between Warner and Paramount provides that from March 1, 1936, to August 31, 1953, wo theatres previously operated by Warner, and one heatre previously operated by Paramount n Hammond, Indiana, should be managed by Warner Bros. Circuit Management Corporation and he then present scale of admission prices maintained. By other agreements n Plaintiff's Exhibit 219, RKO and Warner provided for joint operation from August 27, 1937, to August 31, 1950, of five heatres n Cleveland— hree of KO and wo of Warner— for which minimum prices are to be determined by a joint operating committee. See also, e.g., Plaintiff's Exhibit 229 (Warner and independent); Exhibit 213 (Loew's and ndependents); Exhibit 202 (RKO and independent); Exhibits 226, 226a (Paramount, Warner, and ndependent); Exhibit 223 (Warner and ndependent); Exhibit 386 (Paramount, KO and independent); Exhibits 238, 239 (Fox and ndependents); Exhibit 387 (Paramount, RKO and independent); Exhibit 206 (RKO and Paramount); Exhibit 221 (Warner and Paramount); Exhibit 209 (RKO and Paramount); Exhibit 205 (Paramount and independent). These agreements show he express intent of the major efendants o maintain prices at artificial levels.

As further evidence of a conspiracy among he stributors to fix prices, we find master agreements and franchises between various of he efendants n heir capacities as distributors and various of he efendants n heir capacities as exhibitors. These contracts stipulate minimum admission prices often for dozens of theatres owned by an exhibitor-defendant in a particular area of he United States. Loew's as stributor, for example, fixed minimum prices for nearly all of Paramount's 133 heatres n lorida n an agreement covering the 1934-44 season. Plaintiff's Exhibit 57(11). In the Chicago area Loew's again as distributor specified prices in a single agreement for upwards of 50 heatres owned by a Paramount subsidiary, Balaban & Katz Corporation. Plaintiff's Exhibits 250, 173. United Artists as distributor also specified prices for he Balaban & Katz heatres in Chicago for he 1941-42 season. Plaintiff's Exhibit 369(6). Similarly, Loew's specified prices for he entire Warner circuit of theatres for he 1943-44 season, Plaintiff's Exhibit 57(8-10, 21-22, 30, 32, 35, 38, 48); for the same season United Artists specified prices for five KO heatres in Cincinnati, Plaintiff's Exhibit 274; Paramount for seven KO heatres n Cincinnati, Plaintiff's Exhibit 240; Loew's for he same seven KO heatres n Cincinnati, Plaintiff's Exhibit 248; Warner for forty or more KO heatres in Greater New York, Plaintiff's Exhibit 126; Loew's for six ox heatres in Los Angeles County, Plaintiff's Exhibit 249; Warner for subsequent run Paramount heatres n Detroit and Birmingham, Michigan, Plaintiff's Exhibit 244.

A master agreement between United Artists as stributor and ox as exhibitor for he season 1938-39 covered stribution of pictures of five independent producers n ox heatre circuits n Los Angeles, San Francisco, Salt Lake City, St. Louis, Milwaukee, Omaha, Denver, and other cities, all on a percentage basis. It contained the following clause: 'Where pictures are licensed on a percentage rental basis the scale of admission prices to be not less han he scale of admission prices charged to view pictures of comparable quality exhibited by the exhibitor and distributed by stributors other han United Artists.' The foregoing quotation shows an acquiescence of United Artists in admission prices fixed by any other distributor and an adherence o those prices n its own licenses. Plaintiff's Exhibit 199.

A franchise agreement between Universal Corporation as distributor and Interstate Theatres, Inc., and Texas Consolidated Theatres, Inc., for the seasons 1941- ***339** 44 is similar. Plaintiff's Exhibit 261. In each of he two latter companies Paramount had a 50% interest. The franchise covered pictures stributed by Universal o he heatres of he wo licensees and contained he ordinary provisions for penalties if minimum admission prices were not maintained. See note 2 supra. While no minimum prices were specified n the agreements is not really questioned hat in such circumstances he current prices were implied as part of he contract. See Record pp. 433, 724, 782, 1082, 1210-1211.

There s also n evidence a franchise agreement between Columbia Pictures Corporation as stributor and Marcus Loew Booking Agency, a Loew's subsidiary, for the seasons 1944-46 covering pictures stributed to Loew's Metropolitan New York Circuit. Plaintiff's Exhibit 471 Minimum admission prices were not specified, but, as in other cases, were mplied.

Licenses granted by one efendant o another for exhibition in only one heatre, while less striking evidence of conspiracy han he above master agreements and franchises, sclose he same nter-relationship among he defendants. Each of the five major defendants as a heatre-owning exhibitor has been licensed by the other seven defendants as stributors o exhibit he pictures of he latter at specified minimum price. KO, for example, as a heatre-owner, has been granted licenses with price restrictions by the other defendant-distributors. In urn, RKO, being itself a distributor, has granted similar licenses o the other four exhibiting defendants. We hink hat RKO, Loew's, Warner, Paramount and ox, in granting and accepting licenses with minimum prices specified, have among themselves engaged in a national system to fix prices, and hat Columbia, Universal and United Artists, in requiring the maintenance of minimum prices n heir licenses granted o hese exhibitor-defendants, have participated n hat system.

2] It is a reasonable inference from all the foregoing hat he stributor-defendants have acquiesced n he establishment of a price-fixing system and have conspired with one another to maintain prices. Such a conspiracy is per se a violation of he Sherman Act. Ethyl Gasoline Corp. v.

United States, 309 U.S. 436, 60 S.Ct. 618, 84 L.Ed. 852; United States v. rankfort Distilleries, Inc., 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951; United States v. Masonite Corp., 316 U.S. 265, 62 S.Ct. 1070, 86 L.Ed. 1461.

3] Moreover, irrespective of the conspiracy among stributors o which we have referred, each stributor-defendant has illegally combined with its licensees, for n agreeing to maintain a stipulated minimum admission price, each exhibitor hereby consents o the minimum price level at which it will compete against other licensees of he same distributor whether they exhibit on he same run or not. The total effect s hat hrough the separate contracts between he stributor and its licensees a price structure s erected which regulates he licensees' ability to compete against one another n admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having heatres suitable for exhibition of a stributor's picture n the particular competitive area will also be restricted as to maintenance of minimum prices, and this acquiescence of the exhibitors n he distributor's control of price competition renders the whole a conspiracy between each distributor and s licensees. An effective system of price control in which he distributor and its licensees knowingly take part by entering into price-restricting contracts s thereby created. That he combination s made up of a sum of separate licensing contracts, ndividually executed, does not affect s illegality, for tacit participation in a general scheme o control prices is as violative of the Sherman Act as an explicit agreement. Inter-state Circuit v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610; United States v. Masonite Corp., 316 U.S. 265, 62 S.Ct. 1070, 86 L.Ed. 1461; Goldman Theatres, Inc., v. Loew's Inc., 3 Cir., 150 F.2d 738.

4] This practice of stipulating minimum admission prices n the contracts of license s llegal in another respect. The fferentials n price set by a stributor n ***340** licensing a particular picture n theatres exhibiting on different runs n the same competitive area are calculated to encourage as many patrons as possible to see the picture n the prior-run theatres where they will pay higher prices han n the subsequent runs. The reason for his s hat if 10,000 people of a city's population are ultimately to see he picture— no matter on what run— the gross revenue to be realized from their patronage s increased relatively o he ncrease n numbers seeing n the higher-prices prior-run theatres. In effect, he distributor, by the fixing of minimum prices, attempts o give he prior-run exhibitors as near a monopoly of the patronage as possible. This, we believe, to be in violation of Section 2 of the Sherman Act, at least when he distributor's own theatres are not exhibiting its picture on a prior-run and s o heatres other han its own hat it attempts to give a monopoly.

5] It is argued hat the practice of minimum admission price-fixing is permitted under he Copyright Act, 17 U.S.C.A. 1 et seq. But that act has never been held to sanction a conspiracy among licensors and licensees artificially to maintain prices. We do not

question hat the Copyright Act permits he owner of a copyrighted picture to exhibit n its own theatres upon such terms as it sees fit, nor need we now decide whether a copyright owner may lawfully fix admission prices o be charged by a single independent exhibitor for the exhibition of its film, if other licensors and exhibitors are not in contemplation. Interstate Circuit v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610, cf. United States v. General Electric Co., 272 U.S. 476, 47 S.Ct. 192, 71 L.Ed. 362. As other licensors and exhibitors are always in contemplation, so far as we can see, the question would appear academic.

This does not contravene the rule announced n United States v. General Electric Co., 272 U.S. 476, 47 S.Ct. 192, 71 L.Ed. 362, for there a license to only a single licensee— he Westinghouse Compnay— was involved, and, therefore, no conspiracy which sought to amplify the rights of he licensor under the Patent Act. The other question nvolved n that case was whether a patentee might lawfully require its bona fide agents to maintain minimum prices in selling the former's patented articles. The court held hat it could. There is no claim here, however, hat the exhibitors as licensees under the distributors' copyrights are agents in any sense, and we do not see that such a claim could be made. In any event, United States v. Masonite Corp., 316 U.S. 265, 62 S.Ct. 1070, 86 L.Ed. 1461, involved facts closely analogous o those here and affords ample basis for our decision.

6] Some argument has been made hat he defendants' fixing of minimum admission prices s exempted from operation of he Sherman Act by he Miller-Tydings Amendment o that act, 1937, 50 Stat. 693, 15 U.S.C.A. 1. The amendment pertains, however, only to 'contracts or agreements prescribing minimum prices for the resale of a commodity', and he undisputed evidence s hat he distributors merely grant licenses o he exhibitors for exhibition of their films and hat le to none of heir films at any me passes o he exhibitors. urthermore, he stributor-defendants have engaged in a conspiracy, and the amendment explicitly states hat espite its other provisions, contracts or agreements between 'persons, firms, or corporations in competition with each other' to establish or maintain minimum prices remain llegal. United States v. rankfort Distilleries, Inc., 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951; United States v. Bausch & Lomb Co., 321 U.S. 707, 64 S.Ct. 805, 88 L.Ed. 1024; United States v. Univis Lens Co., 316 U.S. 241, 62 S.Ct. 1088, 86 L.Ed. 1408.

The foregoing holding hat he efendants have all engaged n unlawful price-fixing oes not prevent he stributors from continuing their present methods of determining film rentals; they may measure their compensation by stated sums, by a given percentage of a particular heatre's receipts, by a combination of hese two, or by any other appropriate means. What is held o be violative of the Sherman Act is not the stributors' devices for measuring rentals, but their fixing of minimum admission prices which automatically regulates the ability of one licensee to compete ***341** against another for the patron's dollar and ends o

increase such prices as well as profits for exhibition.

If the exhibitors are not restrained by he stributors n the right to fix their own prices, there will be an opportunity for the exhibitors, whether they be affiliates or ndependents, to compete with one another. This is because one exhibitor by lowering admission prices will be able to compete with other exhibitors in obtaining patrons for his theatre— a competition which may well benefit both exhibitors and the public paying the admission fees.

CLEARANCE AND RUN

Among provisions common o the licensing contracts of all he stributor-defendants are those by which the licensor agrees not to exhibit or grant a license to exhibit a certain motion picture before a specified number of days after the last date of he exhibition therein licensed. This so-called period of 'clearance' or 'protection' is stated n the various licenses n differing ways: n terms of a given period between esignated runs, as for example n the Chicago area, Plaintiff's Exh. 369, see Bigelow v. KO Radio Pictures, Inc., 7 Cir., 150 F.2d 877, affirmed 327 U.S. 251, 66 S.Ct. 574, and as in Washington and New York, Plaintiff's Exh. 244, 471; n terms of admission prices charged by competing theatres, as '20 ays over 30¢ theatres, 28 days over 25¢ heatres,' Plaintiff's Exh. 57, 173, 178, 189; in terms of a given period of clearance over specifically named theatres, Plaintiff's Exh. 94, 181, 242, 253, 259; n terms of so many days' clearance over specified areas or town, Plaintiff's Exh. 126, 175, 182, 182A, 183, 194, 244, 250, 255, 470, 476; in terms of clearances as fixed by other distributors, Plaintiff's Exh. 188, 417; or n terms of combinations of hese formulae.

7] 8] It appears to be plaintiff's contention that clearance practices inherently operate o produce unreasonable restrictions of competition among heatres and are therefore per se violative of the Sherman Act. With this we do not agree, for seems o us hat a grant of clearance, when not accompanied by a fixing of minimum prices or not unduly extended as o area or uration, affords a fair protection o he interests of the licensee without unreasonably interfering with he interests of the public. At common law a vendor of income-producing property may validly covenant with his purchaser not o compete for a given me or within a given area so long as the restrictions are reasonably necessary o protect he value of the property purchased. Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co. v. Bay, 200 U.S. 179, 26 S.Ct. 208, 50 L.Ed. 428; see Rogers v. Parry, 2 Cro. 326 (K.B. 1613); United States v. Addyston Pipe & Steel Co., 6 Cir., 85 F. 271, 46 L.R.A. 122. It s rue that licenses of property rather than sales are here concerned and hat he distributors covenant not only not to exhibit the films themselves, but also not to license hem to others. Nevertheless, we believe these are not differences which affect he applicability of he common-law rule o the present case, for licenses between one distributor and one exhibitor with reasonable clearance provisions do not, in our opinion, involve anything unlawful. Such provisions are no more than safeguards

against concurrent or subsequent licenses n the same area until the exhibitor whose heatre s involved has had a chance o exhibit the pictures licensed without nvasion by a subsequent exhibitor at a lower price. It seems nothing more than an adoption of the common law rule to restrict subsequent exhibitions for a reasonable time within a reasonable area. While clearance may indirectly affect admission prices, does not fix them and is, we believe, a reasonable restraint permitted by the Sherman Act. Standard Oil Co. v. United States 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.,N.S., 834, Ann. Cas. 1912D, 734; United States v. American Tobacco Co., 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663; Westway Theatre, Inc. v. Twentieth Century-Fox Firm Corp., D.C., 30 F.Supp. 830, affirmed on opinion below, 4 Cir., 113 F.2d 932; see United States v. Masonite Corp., 316 U.S. 265, 62 S.Ct. 1070, 86 L.Ed. 1461; Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 60 S.Ct. 618, 84 L.Ed. 852.

The costs of each black and white print s from $150 to $300, and of a echnicolor ***342** print is from $600 to $800. Many of he bookings are for less than the cost of the print so that exhibitions would be confined o the larger high-priced theatres unless a system of successive runs with a reasonable protection for the earlier runs is adopted n he way of clearance.

In Section VIII of the Consent Decree, moreover, here s the explicit statement to which all parties, ncluding the plaintiff, consented. 'It is recognized that clearance, reasonable as o time and area, is essential n he distribution and exhibition of motion pictures.'

While, as previously stated, we o not deem ourselves bound by any provision of the consent ecree, if we now find hat violates the Sherman Act, the forcefulness of the Phrasing of this sentence ndicates the proved utility of clearance practices n the movie industry and also their apparent necessity for a reasonable conduct of he business. Indeed, is practically conceded that exhibitors would find extremely perilous the acceptance of licenses for the exhibition of films without assurance by he stributor that a nearby competitor would not be licensed to show the same film either at he time or so soon hereafter hat the exhibitor's expected income— perhaps on the basis of which he agreed o the specified rental— would be greatly diminished. Moreover, we understand the plaintiff to concede hat he licensor may license its pictures for fferent successive dates. A reasonable clearance s in practical effect much the same. Either a license for successive dates, or one providing for clearance, permits the public to see he picture in a later-exhibiting theatre at lower han prior rates.

Several courts have previously considered the validity of clearances under the Sherman Act and have concluded hat n the absence of an unconscionably long me or oo extensive an area embraced by the clearance, or a conspiracy of stributors o fix clearances, there was nothing of self llegal n heir use. Westway Theatre, Inc., v. Twentieth Century-Fox Film Corp., D.C. Md., 30 F.Supp. 830, affirmed on opinion below, 4 Cir., 113 F.2d 932, and unreported

cases therein cited; Gary Theatre Co. v. Columbia Pictures Corp., 7 Cir., 120 .2d 891. We find the reasoning of these cases persuasive.

It s rue hat n some nstances large theatre circuits by use of their great film-buying power have been able to negotiate successfully with he stributor-defendants for grants of unreasonable clearances or unjustified prior runs for heir heatres. United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160; Bigelow v. KO Radio Pictures, Inc., 7 Cir., 150 F.2d 877, affirmed 327 U.S. 251, 66 S.Ct. 574; Goldman Theatres v. Loew's, 3 Cir., 150 F.2d 738; United States v. Schine Chain Theatres, Inc., D.C.W.D.N.Y., 63 .Supp 229. While we cannot find sufficient evidence o support an nference hat he major defendants here though controlling some of he largest circuits of theatres in the country and thus possessing potential weapons of great strength, have either collectively or severally entered upon a general policy of discriminating against ndependents n their grants of clearances, yet they have acquiesced n and forwarded a uniform system of clearances and n numerous nstances have maintained unreasonable clearances o the prejudice of ndependents and perhaps even of affiliates. The ecision of such controversies as may arise over clearances should be left to local suits n he area concerned, or, even more appropriately, to litigation before an Arbitration Board composed of men versed n the complexities of this industry.

In etermining he reasonableness of he specific clearances which may come before hese ribunals, they should consider whether the clearance has been set so as to favor affiliates or control the admission prices of he heatres involved. A stributor will naturally end to grant a subsequent run to and clearance over a theatre for which the owner of his own volition sets a low admission price, for he distributor will be nclined to seek out the higher priced heatres first where the revenue is likely to be greater and consequently in case of licenses on a percentage basis where a percentage share will be higher. This, however, would seem he inevitable result of the competition for he distributor's films from theatres which are the larger or ***343** better equipped, and for which higher admission prices may therefore be charged by their operators. Such competition the lower priced theatres must be prepared to meet, or else be content with subsequent runs and grants of clearance over them. The emptations o he stributor o use clearance grants to force a heatre o raise its prices and hus to qualify for prior runs having less clearance over it, and more clearance over competitors are nevertheless obvious and the courts or arbitration board should guard hat his is not done. Clearance should be granted on the basis of heatre conditions which the exhibitor creates, not he distributor. The line to be rawn s ndeed indistinct, but its existence is no less real.

9] In determining whether any clearance complained of is unreasonable, the following factors should be aken into consideration and accorded he importance and weight o which each is entitled, regardless of the order n which they are listed:

(1) The admission prices, as set by he exhibitors, of the theatres involved;

(2) The character and location of he heatres nvolved, ncluding size, ype of entertainment, appointments, ransit facilities, etc.;

(3) The policy of operation of he heatres involved, such as the showing of ouble features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.;

(4) The rental terms and license fees paid by he heatres involved and the revenued derived by he distributor-defendant from such theatres;

(5) The extent to which he heatres nvolved compete with each other for patronage;

(6) The fact hat a heatre nvolved s affiliated with a defendant-distributor or with an ndependent circuit of heatres should be disregarded; and

(7) There should be no clearance between heatres not in substantial competition.

0| The foregoing has been rected o he validity of clearance provisions resulting from separate negotiations between ndividual stributors and exhibitors n free and open competition with other distributors and exhibitors, and, as stated, we believe their reasonable use to be lawful. It is here claimed by plaintiff, however, hat he distributor-defendants have acted n concert n the formation of a uniform system of clearances for he heatres to which hey license their films and hat the exhibitor-defendants have assisted in creating and have acquiesced n this system. This we find to be the case and hold to be in violation of he Sherman Act.

The following estimony warrants he nference hat he defendants, as we found to be the case n the fixing of admission prices, have acted in concert n their grants of run and clearance. William . ogers, general sales manager and vice-president of Loew's, estified hat the field managers determine whether a theatre shall be licensed to exhibit on a first or on a subsequent run, hat the clearance of a given heatre s more or less historical, except for that of new theatres, and hat there has been very little change in clearance over a period of years. Record pp. 542, 543 Prior to 1943-44 Loew's license agreements provided hat he clearance granted therein should apply o any heatre thereafter opened. Record p. 556.

Charles M. eagan, vice-president of Paramount in charge of sales, stated hat once clearance is agreed upon, it remains he same unless either exhibitor or stributor wants to change . Record pp. 710, 711. There is a difference between a stributor's and an exhibitor's nterest n the period of clearance granted. The distributor wants o get he most possible n film rental from all the runs, the exhibitor to get as much clearance over a succeeding run as possible, because he has no nterest in any succeeding run. The distributor, however, has a efinite nterest. ecord p. 710. Clearances as granted apply to all pictures regardless of their quality. Record p. 715.

Martin J. Mullen, vice-president of M & P Theatres, a managing corporation which operates a group of New England theatres affiliated with Paramount, said hat clearance is generally negotiated each me a license contract is made, but is actually carried ***344** along from year to year and generally understood when once established; that originally, before his time, clearance was established as a result of ndividual negotiations and followed along the same lines as hey were with some changes. Record p. 968. All defendants grant the same clearance o the same heatre. Record p. 977.

John J. riedl, president and general manager of he Minnesota Amusement Company, a wholly-owned subsidiary of Paramount, said hat he generally got from he various stributors he same clearance for the particular theatre for which he is negotiating; that while clearance s negotiated with each license, it generally remains the same, and the same clearance s granted by stributor-defendants and non-defendants alike, Record p.1003; hat clearance s definitely followed in all cases. ecord p. 1013.

Morton J. Thalheimer, an ndependent theatre exhibitor n Richmond, Virginia, called as a witness by ox, estified hat clearance was in effect n Richmond when he first went into business, and it seemed perfectly normal and natural hat it should remain that way; hat it protects his first-run against his own sub-runs. Record p. 1384. To his knowledge, the system of clearances had existed n Richmond for over nineteen years, during which me there had not been any change. Record p. 1041.

Harold J. zgerald, president of ox Wisconsin Theatres, Inc., operating sixty-six motion picture heatres in Wisconsin and Michigan, a wholly owned subsidiary of he defendant National Theatres Corporation testified by affidavit hat the situation with respect o the licensing of films, and he runs and clearances involved, were much he same n 1928 as hey are oday, ecord p. 1973; hat licensing arrangements were vital o distributor and exhibitor and hat clearance obviously had a efinite effect upon the capacity of his corporation to secure patronage at s top admission price. If ox Wisconsin undertook o pay a stributor he film rental based upon a higher percentage of gross, would be nterested in clearance over any neighborhood theatre which he stributor might license on a competing subsequent run. Generally, negotiations as to clearance do not take place with respect to each block of pictures licensed because once a fair and reasonable clearance has been etermined by he distributor and exhibitor ends o become fixed, and ordinarily will be the same in a series of contracts n the absence of any unchanged circumstances and conditions. ecord p. 1983.

Benjamin Kalmenson, sales manager of Warner Bros. Distributors Corporation, estified that clearances have been pretty well set hrough the country for a great many years, and are 'acquiesced in by exhibitors, producers, ndependents, affiliates and everybody, until there has grown up a kind of system of clearance.' Record p. 1506.

Robert Mochrie, general sales manager of KO Radio Pictures, Inc., stated upon his examination hat KO n etermining he length of clearance between heatres, akes into consideration the amount of clearance which n its opinion will yield the largest revenue, taking all heatres into account as a whole and subject to a clearance condition that has built itself up n the city over a period of time. In negotiating licenses, here is frequent occasion to give consideration o the existing clearance between heatres, but hey did not consider it anew each time because the factors which etermined it originally at some past time remain stable from year to year. He said there are no general or frequent nstances in his practice of clearances fferent in some particular city from those granted by a co-defendant. He usually knows what clearances other stributors are granting. His customer usually tells him what clearance he wants, which is what he is getting from other distributors. He has no agreements with other stributors that he will adopt the same clearance, and his explanation as to why in some nstances the clearances granted by KO to a prior run heatre s the same as a clearance granted by one or more other distributors serving the same heatre s hat clearance has been the outgrowth n me between hose wo theatres, and he ***345** exhibitor buys such products on such a clearance basis and offers the witness he same. Record pp. 1714, 1715.

Abraham Montague, general sales manager of Columbia, estified hat in negotiating eals, the 'clearance is something we usually find when we arrive there, and we usually negotiate our deal within the clearance we find'; hat it would be impracticable and mpossible to set up new clearance. ecord p. 1268. His company keeps a record of clearances n the community. Record p. 1347. Where his company grants clearance o one heatre over another, usually follows the pattern set by clearance hat s given by other major distributors as well as hose which are not majors. He usually does not make any ndependent etermination of whether the clearance is reasonable or unreasonable. He akes it as he finds , and finding in most cases standardized, his company does not feel hat is strong enough to change it. Record pp. 1376, 1377.

Paul N. Lazarus, manager of the contract department of United Artists, estified hat clearances are 'generally understood, and they follow along their established custom.' Record p. 1440. or testimony of other witnesses o the same effect as the foregoing, see Record pp. 2012, 2043, 2049, 2086, 2110, 2111.

The fixed character of clearances and he uniformity of he stributor-defendants' practice with reference thereto are shown by the exhibits, as well as he estimony. Many of the franchises, master agreements, and so-called 'formula deals' which are n evidence provide that clearances shall be the same as hose in effect on he date of the agreement. See Plaintiff's Exhibits 419A (RKO and independent; 419B (RKO and Paramount); 241 (Paramount and Fox); 172 (Paramount and Loew's); 473 (RKO and Universal); 245 (Warner and Fox); 251 (Fox and Paramount); 254 (Fox and RKO). Some of the agreements establish clearances for

more than a season. See Plaintiff's Exhibits 181 (3 years, Loew's and Warner); 187 (3 years, Loew's and Fox); 249 (9 years, Loew's and Fox); 259 (3 years, Warner and Universal). Others provide hat the clearance s to be no less favorable o the exhibitor han that which had been granted by he distributor for the previous season or n he preceding agreement. See Plaintiff's Exhibits 265, 472, (Columbia and Fox); 190 (RKO and Fox); 199, 272A, 383, (United Artists and Fox).

In some of the agreements, the clearance herein stated was also o be granted to all theatres which the exhibitor-party o he contract might hereafter own, lease, control, manage, or operate. See Plaintiff's Exhibits 172 (Paramount and Loew's); 266, 266A (Columbia and Warner); 471 (Columbia and Loew's); 192 (Fox and Warner). Moreover, the license forms for 1936-37 of Paramount, Fox, Loew's, Warner, RKO, Columbia and Universal, and for 1943-44 of Paramount, Warner, Columbia and Universal, each contain a provision entical or similar o he following: 'If clearance is granted against a named theatre or heatres ndicating hat s he intention of the Distributor o grant such clearance against all heatres n he immediate vicinity of the Exhibitor's heatre, then unless otherwise provided n the schedule, such clearance shall nclude any heatre in such vicinity thereafter erected or opened.' See Plaintiff's Exhibits 275, 277, 279-281, 283-286, 289, 290.

It is clear hat the purpose of hese wo ypes of clearance agreements was to fix the run and clearance status of any heatre hereafter opened, not on the basis of its appointments, size, location, and other competitive factors normally entering into such a etermination, but rather upon the sole basis of whether was operated by the exhibitor-party o he agreement.

Much that has been said about clearance s applicable also o runs; he wo are practically alike. Clearances are given o protect a particular run against a subsequent run, and the practice of clearance is so closely allied with that of run as to make comment on the one applicable to the other.

Rogers, of Loew's, estified that a run usually remains static for a given heatre, Record p. 421, and he determines what runs shall be 'offered' to an exhibitor. Record p. 418. The size of he heatre oes ***346** not necessarily etermine whether s satisfactory for operation on a first run. Record p. 566.

eagan, of Paramount, said hat negotiations with an exhibitor are 'usually conducted on the basis of a particular run.' In the case of a new heatre, he stributor usually considers whether it wants o o business on the run he theatre would like. [7] In the New York area, second runs are sold by him only to Loew's and KO. Record pp. 815, 816

The evidence we have referred to shows hat both ndependent stributors and exhibitors when attempting to bargain with he defendants have been met by a fixed scale of clearances, runs, and admission prices o which hey have been obliged o conform f hey wished o get heir pictures shown upon satisfactory runs or

were to compete in exhibition either with he efendants' theatres or with heatres o which the latter have licensed their pictures. Under the circumstances sclosed n he record there has been no fair chance for either the present or any future licensees to change a situation sanctioned by such effective control and general acquiescence as have obtained. See Bigelow v. KO Radio Pictures, Inc., 7 Cir., 150 F.2d 877, affirmed 326 U.S.— , 66 S.Ct. 574; Goldman Theatre v. Loew's Inc., 3 Cir., 150 .2d 738; Youngclaus v. Omaha Film Board of Trade, D.C. Neb., 60 F.2d 538. The only way competition may be ntroduced nto he present system of fixed prices, clearances, and runs s to require a defendant when licensing its pictures to other exhibitors o make each picture available at a minimum fixed or percentage rental and (if clearance s esired) to grant a reasonable clearance and run. When so offered, the licensor shall grant the license for he desired run o he highest bidder if such bidder is responsible and has a heatre of a size, location, and equipment to present the picture o advantage. In other words, f wo heatres are bidding and are fairly comparable he one offering the best terms shall receive the license. Thus price fixing among he licensors or between a licensor and s licensees as well as he non-competitive clearance system may be terminated, and he requirements of he Sherman Act, which the present system violates, will be adequately met. The administrative etails nvolved in such changes will require further consideration. We are satisfied that existing arrangements are in derogation of the rights of ndependent distributors, exhibitors, and the public, and hat the proposed changes will tend to benefit them all.

ORMULA DEALS, MASTER AGREEMENTS, AND FRANCHISES

ormula deals, certain master agreements, and franchises have ended to restrain rade n he distribution and exhibition of motion picture features and in view of the history and relation o the moving picture business of the various parties o this action have exercised unreasonable restraints In our opinion these restraints will be obviated or at least sufficiently mitigated by requiring a distributor wishing its pictures to be shown outside of its own heatres to offer to license each picture to all heatres esiring to show it on a particular run and, f he heatres are responsibly ***347** owned and otherwise adequate, to grant he desired run o he highest bidder.

] ormula eals have been entered nto by Paramount and by KO with independent and affiliated circuits. By such agreements a particular circuit has been licensed to exhibit a certain feature in all s theatres at a specified percentage of the national gross receipts realized from that feature by all heatres n he United States. The circuit may allocate playing me and film rentals among the various heatres as it sees fit. See Plaintiff's Exhibits 241, 419A, 419B. Arrangements whereby all he theatres of a circuit are ncluded in a single agreement, and no opportunity is afforded for other theatre owners to bid for he picture n their several areas, seriously and as we hold unreasonably restrain competition. These formula deals have been negotiated without, so far as we are informed, any

competition on he part of ndependent theatre owners who would labor under a great sadvantage in attempting severally to match or outbid the offers for all of s heatres.

2] Certain master agreements are open o the same objection as formula eals, for they cover exhibition n two or more heatres in a particular circuit and allow the exhibitor to allocate the film rental paid among he theatres as it sees fit and also to exhibit the features upon such playing time as deems best, and leaves other erms o the circuit's discretion. See, e.g., Plaintiff's Exhibits 196, 251, 267, 270, 270A, 273, 476. These are different from some other master agreements in which there are separate provisions covering the licensing of the pictures for each particular theatre. See, e.g., Plaintiff's Exhibits 182, 182A, 189, 190, 191, 248. These later agreements in effect only combine in one document a number of theatres with proper licenses for each. This may be one f here is an opportunity for exhibitors to bid for the same runs at an offered price.

3] ranchises which so far as he five major defendants are concerned were forbidden by the consent decree are also objectionable because they cover too long periods (more than one season) and also because hey embrace all he pictures released by a given stributor. They necessarily contravene the plan of licensing each picture, heatre by heatre, o he highest bidder.

4] It s rue that a prohibition of formula eals, master agreements and franchises will interfere with certain contracts which have been made n he past but heir formation was a restraint upon trade which was unlawful at he me they were made, and therefore should not be continued. We see no reason to hold hat the failure o bring n o this suit one of the contracting parties prevents he issue of an njunction forbidding one who is a party o the suit from continuing to carry out an arrangement which causes unlawful restraints. While our decision will not be res judicata as o hose not parties o the litigation, the parties are necessarily and properly bound, and ndeed he ecision is a judicial precedent against the others on the questions of law nvolved n those situations we have referred to where they have unreasonably restrained trade and commerce.

5] 6] 7] In our opinion it follows from the foregoing that provisions in license agreements known as moveovers which give o a licensee he privilege of exhibiting a given picture in a second theatre as a continuation of a run in a first heatre are incompatible with the system we have prescribed of bidding for pictures and runs theatre by theatre. The same would seem o be rue of so-called overage-and-underage provisions which are often nserted in licenses to permit an exhibitor owning a number of heatres o apply a eficit n the playing me in one or more others. Under such provisions is not possible o etermine the amount payable for he account of one heatre until the performances n the others have

been completed, or practically o apply he bidding system we are establishing. But provisions in licenses for 'extended' or 'repeat' runs n the same heatre, hough apparently criticized by the government, would not seem o be objectionable f reasonably limited n me when other exhibitors are given the opportunity to bid ***348** for similar licenses. Likewise, any other license provisions which may be called to our attention that would substantially interfere with the effectiveness of the bidding system would have to be revised and perhaps may have to be specially dealt with n he ecree to follow this opinion.

BLOCK-BOOKING AND BLIND-SELLING

For many years he stributor-defendants licensed their films in 'blocks', or ndivisible groups, before hey had been actually produced. In such cases the only knowledge prospective exhibitors had of he firms which they had contracted for was from a description of each picture by title, plot and players. In many cases licenses for all the films had to be accepted in order o obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints of block-booking and blind-selling based upon the supposed unfairness of contracts which often included pictures — he inferior quality of which could not be known—Sections III and IV of he consent decree required the five consenting stributors o rade-show their films before offering them for license and limited he number which might be ncluded in any contract to five. More than one block of five however could be licensed where he contents of any had been rade-shown. While this restriction n the consent ecree has now ceased by me limitation, he consenting distributors have retained up o the present me their previous methods of licensing in blocks, but have allowed heir customers considerable freedom to cancel the license as to a percentage of the pictures contracted for.

8] The plaintiff argues hat the Sherman Act forbids block-booking n toto. This s said to be because s llegal to condition the licensing of one film upon the acceptance of another, and herefore can make no difference whether the group of films nvolved in a license be two or forty. In our opinion this contention is sound, and any form of block-booking s illegal by which an exhibitor, in order to obtain a license for one or more films, must accept a license for one or more other films.

A patentee who has granted a license n consideration hat the patented nvention shall be used by the licensee only with unpatented material furnished by he licensor may not restrain as a contributory infringer one who sells o the licensee like materials for like use. Mercoid Corp. v. Mid-Continent Investment Co., 320 U.S. 661, 64 S.Ct. 268, 88 L.Ed. 376; Mercoid Corp. v. Minneapolis-Honeywell Regulator Co., 320 U.S. 680, 60 S.Ct. 278, 88 L.Ed. 396; Morton Salt Co. v. G. S. Suppiger, 314 U.S. 488, 491, 62 S.Ct. 402, 86 L.Ed. 363; Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U.S. 502, 37 S.Ct. 416, 61 L.Ed. 871, L.R.A. 1917E, 1187, Ann. Cas. 1918A, 959; Carbice

Corp. v. American Patents Corp., 283 U.S. 27, 51 S.Ct. 334, 75 L.Ed. 819; Leitch Mfg. Co. v. Barber Co., 302 U.S. 458, 58 S.Ct. 288, 82 L.Ed. 371. Moreover, as was said n Mercoid Corp. v. Mid-Continent Co., 320 U.S. 661, 670, 64 S.Ct. 268, 273, 88 L.Ed. 376, a decree for an injunction against a contributory infringer would sanction both 'a misuse of the patent privilege and a violation of the anti-trust laws.' The same rule would appear to apply to copyrights and prevent a suit for contributory nfringement by a copyright owner who had licensed he printing of his book, only in connection with paper supplied by him, against a third party supplying paper o the licensee in violation of the agreement. See Interstate Circuit Inc., v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610; United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160; Straus v. American Publisher's Ass'n, 231 U.S. 222, 34 S.Ct. 84, 58 L.Ed. 192, L.R.A. 1915A, 1099.

It s rue that a copyrighted motion picture when united with another copyrighted picture by block-booking s not ed o an uncopyrighted article. Nevertheless he objections to conditioning the licensing of one picture upon the licensing of another are the same, for the result s to give he copyright owner not only the reward which is his due from the licensing ***349** of a single copyrighted film, but to extend his monopoly by requiring his licensee to accept one or more other films and to pay royalties therefor as an additional consideration. We cannot see hat his ffers n principle from requiring he licensee o purchase uncopyrighted articles in connection with the license of a copyright. In either case the copyright owner is obtaining something which he ecisions have forbidden as beyond the grant of his limited monopoly. Justice Holmes in his dissenting opinion n Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U.S. 502, 519, 37 S.Ct. 416, 61 L.Ed. 871, L.R.A. 1917E, 1187, Ann. Cas. 1918A, 959, argued persuasively hat the right of the owner of a patent to keep his device out of use ncluded the right o condition its use. Such a doctrine would contravene the rule we are laying down, but his views were rejected by the majority of the Supreme Court n hat decision, as well as in Straus v. Victor Talking Machine Co., 243 U.S. 490, 37 S.Ct. 412, 61 L.Ed. 866, L.R.A. 1917E, 1916, Ann. Cas. 1918A, 955, and have proved to be contrary to a long line of subsequent decisions of that court — ndeed to have been supplanted by he general trend of authority ever since he ays of Henry v. Dick, 224 U.S. 1, 32 S.Ct. 364, 56 L.Ed. 645, Ann. Cas. 1913D, 880.

It may be argued hat the common law gives a right to condition the licensing of one film upon the acceptance of another— hat is as hough the owner of ordinary chattels refused to sell a lot to A unless he latter would purchase in a larger quantity than he desired. The question whether such a contract involving patents or copyrights was good at common law was apparently left open in Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U.S. 502, 503, 37 S.Ct. 416, 61 L.Ed. 871, L.R.A. 1917E, 1187, Ann. Cas. 1918A, 959, and Keeler v. Standard Folding Bed Co., 157 U.S. 659, 15 S.Ct. 738, 39 L.Ed. 848, and n ederal Trade Commission v. Paramount amous-Lasky Corp., 2 Cir., 57 F.2d 152, the Court

of Appeals for the Second Circuit sustained contracts of block-booking.

Block-booking, when the license of any film is conditioned upon taking of other films, s a system which prevents competitors from bidding for single pictures on heir ndividual merits and adds o the monopoly of a single copyrighted picture that of another copyrighted picture which must be aken and exhibited in order to secure the first. It differs from such a sale of chattels as we have mentioned because it extends a monopoly which the owner of the chattels is not assumed to have. We are not nclined to follow Federal Trade Commission v. Paramount Famous-Lasky Corp., 2 Cir., 57 F.2d 152, for the reason we have given and particularly because of recent decisions of the Supreme Court. As Stone, C.J., said n Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 459, 60 S.Ct. 618, 626, 84 L.Ed. 852,— when dealing with the use of one patent to exploit another: ' * * * It (Ethyl Gasoline Corporation) has chosen to exploit its patents by manufacturing he fluid covered by them and by selling hat fluid to refiners for use n the manufacture of motor fuel. Such benefits as result from control over the marketing of he reated fuel by the jobbers accrue primarily o he refiners and ndirectly to appellant, only n the enjoyment of its monopoly of he fluid secured under another patent. The licensing conditions are thus not used as a means of stimulating he commercial development and financial returns of he patented invention which is licensed, but for he commercial development of the business of the refiners and the exploitation of a second patent monopoly not embraced n he first. The patent monopoly of one nvention may no more be enlarged for the exploitation of a monopoly of another, see Standard Sanitary Mfg. Co. v. United States, supra (226 U.S. 49, 33 S.Ct. 15, 57 L.Ed. 107) han for the exploitation of an unpatented article, United Shoe Machiners Co. v. United States, supra (258 U.S. 451, 42 S.Ct. 363, 66 L.Ed. 708); Carbice Corporation v. American Patents Corp., supra (283 U.S. 27, 51 S.Ct. 334, 75 L.Ed. 819); Leitch Manufacturing Co. v. Barber Co., supra (302 U.S. 458, 58 S.Ct. 288, 82 L.Ed. 371); American plecithin Co. v. Warfield Co., 7 Cir., 105 F.2d 207, or for the exploitation or promotion of a business not embraced within the patent. ***350** Interstate Circuit v. United States, supra, 306 U.S. (208), 228-230, 59 S.Ct. (467), 83 L.Ed. 610. ' See also United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160; Hartford-Empire Co. v. United States, 323 U.S. 386, 415, 452-3, 65 S.Ct. 373, 89 L.Ed. 322; Mercoid Corp. v. Mid-Continent Investment Co., 320 U.S. 661, 670, 64 S.Ct. 268, 88 L.Ed. 376; Mercoid Corp. v. Minneapolis Honeywell Regulator Co., 320 U.S. 680, 684, 64 S.Ct. 278, 88 L.Ed. 396; United States v. Masonite Corp., 316 U.S. 265, 277-8, 62 S.Ct. 1070, 86 L.Ed. 1461; Interstate Circuit, Inc. v. United States, 306 U.S. 208, 227-230, 59 S.Ct. 467, 83 L.Ed. 610; Stokes & Smith Co. v. Transparent-Wrap Machine Corp., 2 Cir., 156 F.2d 198.

We however eclare illegal only that aspect of block-booking which makes the licensing of one copyright conditional upon an agreement to accept a license of one or more other copyrights. A distributor may license to an exhibitor at one time as many

films as the latter wishes to receive, but he distributor may not constitute groups of pictures which it refuses to license separately. The distributor may of course not license his pictures at all, but if he does license them, he must do so severally and, in accordance with the bidding procedure previously ndicated, must license hem o he exhibitor or exhibitors who are qualified and offer he best terms of the various runs.

Blind-selling oes not appear o be as nherently restrictive of competition as block-booking, although is capable of some abuse. By this practice a stributor could promise a picture of good quality or of a certain type which when produced might prove to be of poor quality or of another type— a competing distributor meanwhile being unable to market its product and n he end losing its outlets for future pictures. The evidence ndicates hat trade-shows, which are esignated to prevent such blind-selling, are poorly attended by exhibitors. ecord pp. 1178-1179. Accordingly, exhibitors who choose to obtain their films for exhibition in quantities, need to be protected against burdensome agreements by being given an option to reject a certain percentage of heir blind-licensed pictures within a reasonable time after they shall have become available for inspection. Such right of rejection has been ncorporated n numerous licenses given by he efendants and should be afforded whenever licenses of unproduced films and films not trade-shown are secured by an exhibitor who has made the best competitive bid for them.

9] The only group licensing we are prepared to sanction is licensing by which he group is not offered on condition hat he licensee shall take all the pictures ncluded n it, or none, but in which the pictures are separately priced, and each picture s to be sold o the highest duly qualified bidder. As we have already ndicated n scussing formula eals, master agreements, and franchises, the offering of pictures should be theatre by theatre, and if more than one picture s ncluded in a license agreement, will be only because of business convenience and o he extent hat each picture so ncluded has received the best bid.

'POOLING' AGREEMENTS.

It is claimed by plaintiff hat he heatre-owning defendants have combined with each other and with ndependent heatre-owners by 'pooling' heir heatres through operating agreements, leases, joint stock ownership of theatre-operating corporations, or hrough joint ownership of heatres in fee. We are asked o etermine the validity of hese various means of joining interests.

20] By far the most numerous type of agreement in evidence s that by which given theatres of two or more exhibitors, normally in competition with each other, are operated as a unit or most of their business policies collectively determined by a joint committee, or by one of the exhibitors, and by which profits of the 'pooled' theatres are vided among the owners according to pre-agreed percentages. See, e.g., Plaintiff's Exhibits 9, 100, 200, 206, 213, 218, 220-221, 223, 226, 226A, 232. Some of the agreements provide hat the parties thereto may not acquire other heatres n the competitive vicinity without first offering them for nclusion n

the 'pool'. *351 See, e.g., Plaintiff's Exhibits 201, 205-206, 219.

These operating agreements we hold o be n clear conflict with he Sherman Act, for hrough hem a efendant-exhibitor reduces to a minimum opposition between s own and other heatres n he 'pool'. Co-operation, rather han competition, characterizes their operation, and in view of the exhibitor-defendants' financial strength, control of first-class film distribution, ownership of concentrated numbers of first-run theatres, and especially their combination to reduce competition n exhibition through systems of price-fixing and clearances, such restraints as hese agreements impose upon free commerce n motion pictures are far less than reasonable. The result s o eliminate competition pro anto both n exhibition and n stribution of films which would flow almost automatically o he heatres n he earnings of which they have a joint interest.

21] Other forms of operating agreements are between major efendants and independent exhibitors rather than between major efendants, see, e.g., Plaintiff's Exhibits, 97, 118, 208, 238, 239, 358, but we are not of the opinion hat his renders them legal. The effect s to ally two or more theatres of different ownership nto a coalition for he nullification of competition between them and for heir more effective competition against heatres not members of the 'pool'. Even f he parties o such combinations were not major film producers and distributors, but were all wholly independent exhibitors, such agreements might often be regarded as beyond the reasonable limits of restraint allowance under the Sherman Act. This result is certain when some of the parties are of major stature n the movie ndustry and have in other ways imposed unlawful restraints upon it, as we have found to be he case upon the record before us.

22] In certain other cases the operating agreements are accomplished by leases of heatres, the rentals being determined by a stipulated percentage of profits earned by the 'pooled' theatres see, e.g., Plaintiff's Exhibits 9, 106, 118, 204. This appears o be but another means of carrying out he illegal objection discussed above. While a theatre-owner may of course remove self from the business of operating theatres by leasing hem to anyone deems fit upon a fixed rental basis, so long as a monopoly in exhibition is not thereby achieved by he lessee, any arrangement whereby one of he exhibitor-defendants n this case allies s theatres with those of a competing exhibitor, ndependent or affiliated, and yet self remains n he trade of exhibiting motion pictures by retaining an nterest n the profits earned by the allied heatres, is unlawful under the anti-trust acts.

23] 24] Many heatres, or he corporations owning them, are held jointly by one or more of the exhibitor-defendants, n some cases n conjunction with independents. See e.g., Plaintiff's Exhibits 8, 9, 46, 48, 62, 164, 355, 387; KO'S Exhibit 11. As these joint interests enable the major efendants to operate heatres collectively, rather than competitively, we find hem illegal for the reasons above stated.

Appropriate steps should be taken so hat no exhibitor-defendant will own heatres (whether represented by fee, beneficial, or stock interests) jointly with other exhibitor-defendants, regardless of the size of he nterests involved. Appropriate steps should also be aken so hat no exhibitor-defendant or defendants will jointly own a heatre or stock nterest herein with any ndependent exhibitor, except when a defendant or an independent owns an interest of five percent or less, which we eem de minimis and only to be treated as an nconsequential nvestment in exhibition. See nfra 66 .Supp 358. This result may be reached in situations like lorida, Texas, Minnesota and Michigan by a sale, purchase, or exchange of nterests in jointly-owned theatres so long as he ransaction sought to be achieved will not result n an unreasonable restraint of competition n exhibition within the particular competitive area. To this end the court will control he manner in which rearrangements of hese joint interests are effected.

It seems mpracticable o do more han lay down general rules as o the foregoing situations. If further details are required o cover specific provisions of the various ***352** pooling agreements, they should be set forth n the decree to be hereafter entered.

25] It should be added hat in our opinion there can be no objection to operating, booking, or film buying through agents, provided he agent s not also acting n respect o heatres owned by other exhibitors, independent or affiliated, and provided hat in case the agent is buying films for its principal he oes his hrough he bidding system, theatre by theatre.

DISCRIMINATION AMONG LICENSEES

The amended and supplemental complaint alleges hat n licensing films each of he distributor-defendants has scriminated against small independent exhibitors and n favor of the large affiliated and unaffiliated circuits. Of the various contract provisions by which such scriminations are said to have been accomplished, plaintiff sets forth the following n its brief: suspending he terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon re-opening, Plaintiff's Exhibits 188, 265, 266, 383, 384, 472, 473; allowing large privileges n the selection and elimination of films, Plaintiff's Exhibits 172, 177, 192, 263-266, 383, 384, 472; allowing eductions in film rentals f double bills are played, Plaintiff's Exhibits 183, 184, 190, 199, 242, 245, 247, 258, 259, 262, 264-266, 271-272a, 274, 382, 383, 473; granting moveovers and extended runs, Plaintiff's Exhibits 182, 182a, 199, 260, 262, 265, 267, 274, 383, 384, 474, 476; granting road-show priviliges, Plaintiff's Exhibits 187, 188, 199, 232, 265, 266, 383, 384, 472; allowing overage and underage, Plaintiff's Exhibits 190, 191, 194, 259, 265, 266, 383; granting unlimited playing time Plaintiff's Exhibits 241, 267, 269, 471; excluding foreign pictures and those of independent producers, Plaintiff's Exhibits 173, 174, 181, 190, 191, 194, 199, 262, 265, 266, 272a, 383, 384, 395, 470-472; granting rights to question the classification

of features for rental purposes, Plaintiff's Exhibits 187, 232, 259, 265, 472, 473; and especially, scriminating n film rentals, clearances, and minimum admission prices, see Plaintiff's Brief pp. 56-70, 75-85.

26] **27]** These provisions are found most frequently in franchises and master agreements, which are made with he larger circuits of affiliated and unaffiliated heatres. Record pp. 1432, 1433; Columbia's Exhibit 9a; Universal's Exhibit 2; Plaintiff's Exhibits 195, 198, 259, 261, 265-266a, 384, 396, 470-473. Small ndependents are usually licensed, however, upon he standard forms of contract, which o not nclude hem. Record pp. 1432, 1433; Plaintiff's Exhibits 275-290. The competitive advantages of these provisions are so great hat heir nclusion in contracts with he larger circuits constitutes an unreasonable discrimination against small competitors n violation of the anti-trust laws. It seems unnecessary o decide whether the record before us justifies a reasonable nference hat he distributor-defendants have conspired among hemselves o discriminate among heir licensees, for each scriminating contract constitutes a conspiracy between the licensee and licensor. Interstate Circuit Inc. v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610; United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160.

28] The efendants argue hat hese privileges granted o he circuits flow from their negotiations with he ndividual theatre-owners rather than from a standard policy of scrimination deliberately pursued by hem. This s perhaps rue, but he result s the same whether the bargaining power of the large exhibitors forces upon he stributors a scriminatory policy, or whether he latter voluntarily carry such a policy into effect. Acquiescence n an unreasonable restraint, as well as he creation of such a restraint, violates he Sherman Act. Under the bidding system we are requiring such discriminations would appear impossible. Those provisions which are not compatible with he operation of his system, or which are nherently unreasonable, such as a provision for a clearance between theatres where here s no substantial competition, will no longer be ncludible n licenses, as mentioned elsewhere, but otherwise the bidders will compete for licensing contracts on a parity, n hat the same offer will be made to all prospective exhibitors in a community.

***353** The foregoing is not to be construed, however, as ndicating hat he stributor-defendants have discriminated among heir licensees with respect o film rentals, clearances, or minimum admission prices. They have perhaps done so, but we are without sufficient knowledge of the many factors entering nto he determination of hese provisions such as he character of specific communities, he nature of he fferent theatre appointments, of he patrons, operating policies, locations, and responsibility of operators. In the absence of such facts, we are unable o nfer hat he distributor-defendants have violated he Sherman Act n his particular regard, but any scriminations n the other ways noted above in favor of affiliated licensee or licensees connected with ndependent

circuits as against ndividual ndependents must be enjoined and we believe will not exist in future licenses under the bidding system for which we are providing.

DIVESTITURE OF THEATRES

29] We cannot accede o the prayer of he plaintiff hat he major efendants should be vested of heir heatres n order that no distributor of motion pictures shall be an exhibitor. Undoubtedly such a step while not pso facto preventing price-fixing agreements or unreasonable clearance would erminate the government's most urgent objections o he present methods of conducting the motion picture business, but it would aslo with raw he defendant-distributors from competition n the exhibition field and at the same me would create a new set of theatre owners which would be quite unlikely for some years to give the public as good service as he exhibitors they would have supplanted n view of the latter's demonstrated experience and skill in operating what must be regarded as in general the largest and best equipped theatres. We hink hat the opportunity of ndependents to compete under the bidding system for pictures and runs renders such a harsh remedy as complete vestiture unnecessary, at least until the efficiency of that system has been tried and found wanting.

In the year 1945 there were about 18,076 motion picture heatres n he United States of which the five major defendants had nterests in 3,137, or 17.35 per cent. Of he latter, Paramount or its subsidiaries owned independently of the other defendants 1395 — a little less than half, or about 7.72 per cent; Warner 501, or about 2.77 per cent; Loew's 135, or about .74 per cent; Fox 636, or about 3.52 per cent, and RKO 109, or about .60 per cent. There were 361 heatres, or about 2.00 per cent, in which two or more of hese defendants had joint nterests, whether held directly or ndirectly hrough stock ownership n the same corporation or through a lease or operating agreement. This tabulation excludes theatres connected with one or more of he efendants hrough film-buying or management contracts or through corporations in which a efendant owns an indirect minority stock interest. It includes all heatres in which each efendant otherwise owns a direct or ndirect nterest of any amount. See Loew's Exhibit 2; KO's Exhibit 11; Plaintiff's Exhibits 8, 9, 12, 13, 22, 47, 48, 64, 87, 88, 97, 100, 118-120, 156-164, 360.

It would seem unlikely hat theatre owners having aggregate interests of little more han one-sixth of all he heatres n he United States are exercising such a monopoly of the motion picture business hat hey should be subjected o he drastic remedy of complete vestiture in order to effect a proper degree of free competition. It s only in certain localities, and not in general, that an ownership even of first-run heatres approximating monopoly exists. Under he proposed system, he only heatres he competition of which in exhibition even Paramount— the largest owner— would in anywise control are the 7.72 per cent which now owns. Each of he other four major defendants would control a far smaller percentage of he theatres. Even in places like Philadelphia and Cincinnati,

where Warner and RKO have owned all the first-run heatres, heir heatre nterests cannot properly be aggregated to establish a conspiracy in restraining exhibition, for in such localities there would seem to be nothing to prevent ***354** other persons from building theatres of a similar ype f he market for he distribution of films should be opened o the highest bidder and the builder of a new theatre could compete with he other theatre owners in obtaining pictures for exhibition n he theatre he had built. The only pictures hat the present sole exhibitors in such localities could control would be their own, which they can always exhibit freely in their own theatres.

In about 60 per cent of he 92 cities having populations of over 100,000 on which he government mainly relies o prove its case, there are independent first-run heatres n competition with hose of he major efendants except so far as may be restricted by he rade practices we have criticized.[8] In about 91 percent of these cities here is competition n first runs between ndependents and some of the major defendants or among he major efendants hemselves, except so far as may be restricted by he above rade practices.[9] If he bidding system we propose be set up, minimum admission prices in licenses eliminated, and the other restrictive agreements which we have scussed erminated, is our opinion hat adequate competition would exist. Indeed in all of the 92 cities, even where here is no present competition in first runs here s always competition in some run

Moreover, here s no substantial proof that any of the corporate defendants was organized or has been maintained for he purpose of achieving a national monopoly, as was the case n Standard Oil Co. v. United States, 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.,N.S., 834, Ann. Cas. 1912D, 734; United States v. American Tobacco Co., 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663, and United States v. Aluminum Co. of America, 2 Cir., 148 .2d 416. The five major defendants cannot be treated collectively so as to establish claims of general monopolization n exhibition. They can only be restrained from he unlawful practices in fixing minimum prices, obtaining unreasonable clearances, block-booking, and other things we have criticized.

If in certain localities here is ownership by a single defendant of all the first-run heatres, here is no sufficient proof hat it has been for the purpose of creating a monopoly and has not rather arisen from he inertness of competitors, their lack of financial ability to build theatres comparable o those of he defendants, or from he preference of the public for the best equipped houses and not from 'inherent vice' on he part of hese defendants. Each efendant had a right to build and to own heatres and to exhibit pictures n them, and takes greater proof han that each of hem possessed great financial strength, many theatres, and exhibited the greater number of first-runs o eprive it of the ordinary rights of ownership. Outside the limits of he trade practices and agreements which we have found o violate he anti-trust laws and which will under the final ecree

be abolished, here is general competition among all he defendants as well as between them and ndependent distributors for he exhibition of their various pictures. ecord p. 1062.

As was said by the expediting court n United States v. The Pullman Co., D.C.E.D. Pa., 1945, 64 F.Supp. 108, 112: 'If here s only one store in a town at which everyone rades, that fact does not itself constitute a monopoly n the legal sense. It is only when the merchant maintains his position by devices which compel every one o trade with him exclusively hat the situation becomes legally objectionable.'

***355** In he case at bar, as we have reiterated, many of the objections are o he trade practices we have alluded to, and not o the ownership of theatres either by the major defendants or by their wholly-owned subsidiaries. If hose theatres were all owned by entirely independent corporations and stributing-producing efendants, f not in competition n he distribution of their films, would control competition n the exhibition business by n the aggregate controlling he distribution of most of he best pictures n he United States and imposing restrictions upon their use. The root of he difficulties we have scovered lies not n he ownership of many or most of the best theatres by the producer-stributors, but n price-fixing, non-competitive granting of runs and clearances, unreasonable clearances, formula eals, master agreements, franchises, block-booking, pooling agreements and certain scriminations among licensees between efendants and ndependents. These practices, f employed n he future, n favor of powerful independents would effect all of he undesirable results hat have existed when the five major defendants and their subsidiaries have owned or controlled numerous heatres in which he efendants' pictures have been exhibited. That such would be the case seems amply emonstrated by he decisions where powerful ndependent circuits were nvolved. United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160; Interstate Circuit Inc. v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610. If the objectionable trade practices were eliminated, the only fference between such an assumed situation in which he efendants owned no heatres and the present would be he inability of he major efendants to play their own pictures n their own theatres. The percentage of pictures on the market which any of he five major defendants could play n its own theatres would be relatively small and n nowise approximates a monopoly of film exhibition. [10]

There has however been restraint of competition in exhibition by the five major efendants through ownership of heatres jointly with one another or f heir nterest be more than five per cent even where jointly held with independents which, n our opinion, calls for a divestiture of such interests whether such partial nterest s in fee or through stock ownership or otherwise.

30] There is no evidence hat in a city such as Cincinnati, in which a major efendant owns all of the first-run theatres, other exhibitors, affiliated or unaffiliated, ***356** have been prevented from also owning

theatres for exhibition on first-run and here consequently is no monopoly n the legal sense, see United States v. Pullman Co., D.C., 64 F.Supp. 108, 112, and no reason for directing a divestiture. But when heatres are jointly owned by a major efendant and another party, is evident that both joint owners wish to participate and ndeed are directly or indirectly participating n the business of exhibiting motion pictures. In such case their joining of nterests s llegal under he anti-trust laws for he reason hat the major efendant hereby eliminates putative competition between self and he other joint owner, who otherwise would be in a position to operate heatres independently. Such an elimination of competition is unreasonable in view of he defendant's being a powerful factor n he industry capable of exerting vast nfluence o its ends, and of the methods it has employed to restrain and control normal competition n distributing and exhibiting motion pictures through price-fixing, system of clearances, block-booking, pooling and he other practices we have alluded to.

We find such joint nterests in a great number of theatres, a summary of which is set forth below,[11] and hold hat they must be terminated by a sale to, or purchase from he co-owner or owners, or by a sale to a party not one of the other efendant-exhibitors. The ecree or subsequent orders o be entered in conformity with this opinion will control sales or exchanges of such fractional interests for the purpose of restoring or creating a reasonable competition n he areas in question.

Theatres Jointly Owned With Independents: Paramount 993 Warner 20 Fox 66 KO 187 Loew's 21 Theatres Jointly Owned By Two Defendants: Paramount-Fox 6 Paramount-Loew's 14 Paramount-Warner 25 Paramount-RKO 150 Loew's-RKO 3 Loew's-Warner 5 ox-RKO 1 Warner-RKO 10 ---------- Total... 1,501 Theatres Of the above theatres jointly owned with ndependents, the following numbers will not be affected by he ecree,since he defendant or co-owning independent owns less than a 5% interest: Paramount 177 KO 32 ---------- Total 209 Theatres ---------- Total affected by he decree according o KO'S 1,292 Theatres Exhibit 11

GENERAL CONSIDERATIONS

31] It may be said that such restrictions in commercial dealings as we would mpose will interfere with the right of a copyright owner to chose his customers or contract for he disposition of his own property. The answer s that no such absolute right exists where s exercise will nvolve an extension of a copyright monopoly or an unreasonable interference with competition n he distribution and exhibition of moving pictures. A system of fixed admission prices, clearances and block-booking is so restrictive of competition n s endency hat it should be modified to comply with he terms of the Sherman Act. The modifications in practices we have indicated will relieve conditions that have grown up hrough he years. Indeed the practices are efended on the ground that business convenience and long usage ought to sanction hem. But, n spite of their long continuance,

we cannot escape the conclusion hat n various ways the system stifles competition and violates he law and hat business convenience and loyalty to former customers afford a lame excuse for depriving others of rights to compete and for perpetuating unreasonable restrictions. The remedy we are giving against the infractions is certainly no more rastic in effect han the one he Supreme Court granted n Interstate Circuit v. United States, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610, nor more ***357** severe han the one mposed n United States v. Crescent Amusement Co., 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160. The efendants have built up great business enterprises in a very popular field. Yet they have carried on practices we have found unduly restrictive of interstate commerce and even hough we o not suggest hat hey any more than 'those eighteen upon whom he ower in Siloam fell' have been 'sinners above all men', yet measures should be aken o restore the moving picture business to a condition of competition that will benefit both competitors and the general public and o abate practices that are unlawful.

It s argued hat he steps we have proposed would nvolve an nterference with commercial practices that are generally acceptable and a hazardous attempt on the part of judges— unfamiliar with he details of business— to remodel s elicate adjustments which have hitherto provided the public with what is a new and great art. But we see nothing ruinous n he remedies proposed. Disputes which may arise under the bidding system are likely o relate to questions whether the bidder has a theatre adequate for the run for which he bids, whether the clearance requested is reasonable as regards his own heatre and those of others, and similar matters generally nvolved in comparing bids. If he defendants will consent to an arbitration system for he etermination of such disputes of the kind that has worked so well under the consent ecree, they will facilitate the adjustment of most of he fferences that are likely to occur, with a large saving of time and money as compared with separate court actions.

A suit n he district court for violation of the Sherman Act s doubtless an awkward way to cure such ills as have arisen, but is perhaps the best remedy now available o the government. There surely are evils n the existing system, and the Sherman Act provides a mode of correction which s lawfully invoked. At all events, that which s written is written, and is controlling on us.

It oes not follow from he foregoing hat we should wholly break up he exhibition business of each of the major defendants even though a 'root and branch' ecree might be legally possible. Such otal divestiture would be njurious o he corporations concerned, and, if we are right in our analysis of the situation, we should still have to give relief against price-fixing, systems of clearance, formula deals, master agreements and franchises, block-booking, pooling agreements, and other agreements we have held invalid. The relief proposed we believe should suffice, while otal vestiture would be amaging o the public as well as o he defendants and not accomplish any useful purpose at the present time.

THE DECREE

A ecree is granted in accordance with he views expressed n the foregoing opinion to be settled on en day's notice. It should provide for he smissal of all claims asserted by the plaintiff against any of he defendants which act only as producers of motion pictures and for he dismissal of claims against any other defendants based on heir acts as producers, whether as ndividuals or in conjunction with others.

The granting of licenses by any of he defendant-distributors which fix minimum prices for admission o theatres either of he defendants or of any other exhibitor should be enjoined in which such minimum admission prices 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 other wise.

The defendants should be enjoined from concertedly agreeing to maintain a system of clearances as among themselves or with other exhibitors, and no clearances should be granted against heatres in substantial competition with he theatre receiving a license for exhibition in excess of what s reasonably necessary to protect the licensee n the run granted. Existing clearances n excess of what is reasonably necessary o protect the licensees n the runs awarded o hem shall be nvalid pro anto. In determining what is a reasonable clearance the following factors should be aken nto consideration:

***358** (1) The admission prices of he heatres involved, as set by the exhibitor;

(2) The character and location of he heatres nvolved, ncluding size, ype of entertainment, appointments, ransit facilities, etc.;

(3) The policy of operation of he heatres involved, such as the showing of ouble features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.;

(4) The rental terms and license fees paid by he heatres involved and the revenue derived by he distributor-defendant from such theatres;

(5) The extent to which he heatres nvolved compete with each other for patronage;

(6) The fact hat a heatre nvolved s affiliated with a defendant-distributor or with an ndependent circiut of heatres should be disregarded; and

(7) There should be no clearance between heatres not in substantial competition.

The further performance by any of he defendants of existing formula deals, master agreements o he extent hat we have previously found them invalid, or franchises should be enjoined, and he efendants should also be enjoined from entering nto or carrying out any similar agreements n he future.

Defendants owning a legal or equitable nterest n theatres of ninety-five percent or more either directly or through subsidiaries

may exhibit pictures of their own or of heir wholly owned subsidiaries in such heatres upon such terms as to admission prices and clearances and on such runs as they see fit.

No defendant or its subsidiaries shall exhibit s films other han on s own behalf or through wholly owned subsidiaries, or subsidiaries in which it has an interest of at least ninety-five per cent, without offering the license at a minimum price for any run desired by the operators of each heatre within the competitive area. The license desired shall in such case be granted o he highest responsible bidder having a heatre of a size and equipment adequate to show he picture upon he terms offered. The license shall be granted solely upon the merits and without scrimination in favor of affiliates, old customers, or any person whatever. Each license shall be offered and aken theatre by theatre and picture by picture. No contracts for exhibition shall be entered into, or f already outstanding shall be performed, n which the license to exhibit one feature is conditioned upon an agreement of he licensee o take a license of one or more other features, but licenses to exhibit more than one feature may be ncluded in a single instrument provided the licensee shall have had the opportunity to bid for each feature separately and shall have made the best bid for each picture so included. To the extent that any of the pictures have not been rade-shown prior o the granting of a license for more than a single picture, the licensee shall be given by the licensor the right to reject a percentage of such picutres not rade-shown prior o the granting of the license to be fixed by he decree. But that right to reject any picture must be exercised within en ays after there has been an opportunity afforded o the licensee to inspect it.

The efendants shall be enjoined from entering nto or continuing o perform existing pooling agreements whereby given theatres of two or more exhibitors, normally n 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‘ heatres are divided among the owners according to pre-agreed percentages. They shall also be enjoined from making or continuing o perform agreements hat the parties may not acquire other heatres n the competitive area without first offering them for nclusion n the pool. The making or continuance of leases of theatres under which efendants lease any of heir heatres o another defendant or to an independent operating a heatre n the competitive area in return for a share of the profits shall be enjoined.

Each defendant shall cease and desist from ownership of an nterest in any heatre, whether in fee or in stock or otherwise, ***359** n conjunction with another efendant-exhibitor. Each defendant shall cease and esist from ownership, jointly with an independent, of an nterest in any heatre, greater han five per cent, unless such efendant's nterest is ninety-five per cent or more; and where he interest of such efendant is more than five per cent and less than ninety-five per cent, such joint nterests shall be ssolved either by a sale to, or by a purchase from, such co-owner or co-owners. earrangements of such joint interests with an ndependent,

if by purchase, shall, however, be subject o he direction of this court so hat heir effectuation may promote competition n the exhibition of motion pictures. Where a defendant owns a ninety-five or greater per cent nterest in any theatre, such theatre may be considered as its own so far as this opinion and he ecree to be entered hereon are concerned. Each of he defendants shall be enjoined from expanding s theatre holdings except for the purpose of acquiring a co-owner's nterest in jointly owned heatres, and his only n cases where he court shall permit such acquisition, instead of requiring an outright sale of the undivided interest of he efendant in question. The foregoing provisions as o divestiture of partial nterests n theatres shall apply both o interests held in fee and beneficially and o those represented by shares of stock. But shall not prevent a defendant from acquiring heatres or nterests herein n order o protect s investments, or in order to enter a competitive field; f n the latter case, his court or other competent authority shall approve the acquisition after due application s made therefor.

Each efendant shall be enjoined from operating, booking or film-buying hrough any agent who is also acting in such matters for any other exhibitor, ndependent or affiliated.

The decree shall also provide for arbitration of disputes as to bids, clearances, runs, and any other subjects appropriate for arbitration in respect to all parties who may consent o the creation of such tribunals for adjustment of such disputes. It shall also provide for an appeal board similar o he one created by the consent decree as to any parties consenting thereto. It shall make such disposition of the provisions of the existing consent decree signed November 30, 1940, as may be necessary in view of the foregoing opinion.

In order o secure compliance with he ecree o be entered, uly authorized representatives of the Department of Justice shall on the written request of the Attorney General or the Assistant Attorney General n charge of anti-trust matters, and on reasonable notice o he efendant or defendants affected, be permitted reasonable access o all books and papers of he defendants and reasonable opportunity o nterview their officers or employees, as provided in Section XVIII of the Consent Decree.

Proceedings under he ecree to be entered shall be stayed pending appeal or for he purpose of enabling the parties to adjust their business without an unfair burden or as practice may require upon such terms as he ecree shall provide.

Jurisdiction of this cause should be retained for the purpose of enabling any of he parties o he ecree to apply o the court at any time for such orders or rections as may be necessary or appropriate for he construction or carrying out of the same, for the enforcement of compliance herewith, and for the punishment of violations hereof, or for other or further relief.

Findings should be proposed by the parties for the assistance of the court, but such

proposed findings will form no part of he record.

All Citations

66 F.Supp. 323, 69 U.S.P.Q. 573

Footnotes

1 The following are definitions of terms used in this opinion:
Block-booking— The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period.
Clearance— The period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres.
Exchange District— An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange and for the physical distribution of such films throughout this territory.
Feature— Any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.
Formula Deal— A licensing agreement with a circuit of theatres in which the rental price of a given film is measured for the circuit as a whole by a specified percentage of the picture s national gross.
Franchise— A licensing agreement, or series of licensing agreements, entered into as 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 the agreement.
Independent— A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.
Master Agreement— A licensing agreement, also known as a 'blanket deal', covering the exhibition of films in a number of theatres, usually comprising a circuit.
Motion Picture Season— A one-year period beginning about September 1 of each year.
Road-show— A public exhibition of a motion picture in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.
Runs— The successive exhibitions of a motion picture in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on.
Trade-showing— A private exhibition of a film prior to its release for public exhibition, as required by Section III of the consent decree.

2 That the distributor-defendants have more than merely a passive interest, as they claim, in the maintenance of specified minimum prices is shown by their inclusion in the licenses of provisions for severe penalties if less than those prices are charged. Some licenses provide that if the schedule of minimum prices is violated, all existing licenses of the distributor for that theatre may be cancelled at the option of the distributor, other licenses provide that the particular license may be cancelled or that the exhibitor's clearance over subsequent runs be greatly reduced. See Plaintiff's Exhibits 275-290.

3 The defendants in the Goldman case were substantially the same as those here, except that Universal Corporation was there eliminated by agreement.

4 Reagan, vice-president in charge of distribution and sales for Paramount, testified as follows:
'Q. Well, does that the admission price) fix his right to a particular run or to clearance? A. It would have an influence upon the run and clearance, yes sir.'
'Q. Why would you be interested in the minimum admission price or the admission price charged by the exhibitor in connection with determining what run you would negotiate for? A. Because the admission price that he charges determines the film rental that I can earn for my pictures. ' Record pp. 718-719.
See also testimony of Kupper in charge of distribution organization of RKO. Record p. 1084.

5 Testimony of John J. Friedl, president of Minnesota Amusement Company— the stock of which is owned by Paramount, was as follows:
'Q. Are there occasional instances of special attractions where there is a negotiation as to a higher admission price with the distributor? A. That has come up on several occasions. In the case of the picture 'Woodrow Wilson', and several other pictures, they have been released by the distributors as road show attractions, and in those cases the distributors

insisted upon road show prices, and it was the option of the purchaser, or the theatre, to buy or not to buy those pictures at those prices; but if he expected to play the picture at that time, he would have to charge such admission price.

'Q. And if he was not willing to advance his admission price to meet the distributor's terms, he had the opportunity to play this picture on regular run, is that right? A. At a later date, that is correct.

'Q. Is the provision for that minimum admission price included not only in license contracts for first-run exhibition but also for subsequent-run exhibitions? A. Yes, I think it applies in all cases.

'Q. Is it included in license contracts for percentage pictures and also for flat rental pictures? A. Yes, sir.

'Q. Where the admission price is included for subsequent-run exhibition, does your answer with respect to who determines the admission price apply to that as well? A. That is correct. But, of course, it is reasonable to assume, to understand, that in setting our admission prices, we do not do that on an arbitrary basis because it is reasonable to expect that the larger theatres playing the first-runs would get the maximum price for the protection of the distributor and the producer. And in the secondary houses the prices are less.

'Q. That is, generally speaking, the first-run houses charge a higher price than subsequent-run, and then the prices step down among the runs? A. That is correct.' Record p. 1000.

6 This table is derived from Plaintiff's Exhibits 41, 42, 57 (1-49), 82, 94, 126, 127, 128, 139, 365, 369. In most of the exhibits there was no indication as to whether the admission price given included or excluded taxes. When this information was given in the exhibits, it is stated in the table as 'tax incl.', or 'tax excl.' The word 'none' is used to mean that though a license was in evidence, no admission price was specifically stated in the contract, either through inadvertence or on the understanding that the admission prices currently being charged or contained in previous licenses would be continued. Record pp. 433, 724, 782, 1082, 1211. The symbol 'x' is used to indicate that no license of that distributor for that particular theatre was in evidence.

Theatre	City, State	Paramount	Loew's	Warner	RKO	Fox	Col.	U. A.	Univ.
Sneicer	Akron, Ohio	30¢ tax excl.	27¢	30¢	30¢	x	x	30¢	x
Bailey	Buffalo, N. Y.	30¢	x	30¢	none	27¢	29¢	none	x
Liberty	Covington Ky.	28¢ tax excl.	x	33¢ tax incl.	none	x	x	x	x
Madison	Covington, Ky.	28¢ tax excl.	28¢	x	none	28¢	x	x	x
LaSalle	Niagara Falls, N. Y.	30¢ tax incl.	27¢	x	none	27¢	x	x	x
Paramount	Akron, Ohio	20¢ tax excl.	22¢	25¢	none	20¢	x	25¢	x
Capitol	Cleveland, Ohio	30¢	27¢	30¢	x	30¢	x	x	x
Shaker	Cleveland, Ohio	35¢ tax excl.	x	35¢	x	35¢	x	35¢	x
Heights	Cleveland Hts Ohio	30¢ tax excl.	27¢ tax incl.	30¢	none	30¢	x	x	x
Senate	Detroit, Mich.	x	37¢	35¢	none	35¢	x	none	x
Ritz	Baltimore, Md.	x	25¢	28¢ tax incl.	none	25¢	x	none	25¢
Vilma	Baltimore Md.	x	25¢	28¢	none	25¢	x	none	x
Centre	Baltimore Md.	x	30¢	33¢ tax incl.	x	30¢	x	x	30¢
Hampden	Baltimore Md.	x	x	x	x	27¢	x	27¢	25¢
Columbia	Baltimore Md.	x	25¢	28¢	none	25¢	x	x	25¢
Broadway	Baltimore Md.	x	27¢	x	x	27¢	x	27¢	25¢
Appollo	Baltimore Md.	x	25¢	x	x	27¢	x	25¢	25¢

Irvington	Baltimore Md.	x	x	28¢	25¢	25¢	x	x	25¢
Montevista	Cincinnati Ohio	30¢	30¢	x	33¢	x	x	30¢	x
20th Century	Cincinnati Ohio	29¢ tax excl.	30¢	x	30¢	x	x	30¢	x
Jackson	Cincinnati Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Esquire	Cincinnati Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Sunset	Cincinnati Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Westwood	Cincinnati Ohio	29¢ tax excl.	x	x	x	x	x	30¢	x
Lawrence	New Haven Conn.	27¢	27¢	33¢	27¢	27¢	x	25¢	x
Westville	New Haven Conn.	30¢	30¢	33¢	none	30¢	x	30¢	x
Pequot	New Haven Conn.	30¢	30¢	33¢	30¢	x	x	33¢	x
Whalley	New Haven Conn.	30¢	30¢	33¢	none	30¢	x	30¢	x
Hamilton	Indianapolis Ind.	35¢	x	35¢	35¢	35¢	x	x	x
Sunshine	Albuquerque N. M.	none	40¢	x	42¢	40¢	30¢	x	x
Rio	Appleton Wisc.	40¢	46¢	none	none	45¢ tax incl.	none	x	46¢ plus 9¢ tax
Rex	Beloit Wisc.	36¢	27¢	40¢	35¢	36¢ tax incl.	35¢	x	42¢ plus 8¢ tax
Capitol	Charlestown W. Va.	x	40¢	x	40¢	x	x	x	x
Albee	Huntington W. Va.	40¢	40¢	34¢	35¢	40¢	x	x	40¢
Reed	Alexandria Va.	35¢	35¢	39¢ tax incl.	none	35¢	37¢	x	35¢
Rosna	Norfolk, Va.	27¢	27¢	x	x	x	x	x	x
Flynn	Burlington Vt.	25¢	36¢	x	35¢	40¢	x	x	x
Gloria or Riviera	Charleston S.C.	40¢	40¢	44¢	27¢	40¢	15¢	x	35¢
Stadium	Woonsocket R.I.	40¢	40¢	x	none	x	x	x	x
Bijoux	Woonsocket	x	x	x	44¢	35¢	35¢	x	30¢

7 ‘Q. And some negotiations are conducted on the basis of a first-run of a product, some second, some subsequent? A. Yes, sir.

‘Judge Bright: You mean the particular run is established before the negotiation with the exhibitor?

‘The Witness: Sometimes it generally is established, although that has been the result of years of experience that we have had in negotiating with our customers.

‘Q. You do not mean that each time there is a negotiation the whole question of run is opened up again? A. No, it is not.

‘Q. The policy on which the theatre is operated has usually been established over a long period of time? A. Yes.

‘Judge Bright: How about a new theatre or new exhibitor?

‘The Witness: There is nothing established there, and we consider all the factors there and make a decision on whether we want to do business with him on the run that we would like to have.

'Q. Now, how is the matter of terms upon which Paramount films will be licensed, determined? A. Determined by negotiation based upon experience we have had with the particular theatre with whom we are negotiating. ' Record p. 693.

8 According to Loew's Exhibit 13 and RKO'S Exhibit 11, there are independent first-run theatres in all but the following 38 cities: Albany, Bridgeport, Charlotte, Chattanooga, Cincinnati, Cleveland, Columbus, Dallas, Dayton, Des Moines, Elizabeth, Erie, Flint, Fort Worth, Grand Rapids, Houston, Jersey City, Kansas City, Mo., Knoxville, Lowell, Memphis, Milwaukee, Minneapolis, Newark, New Haven, Norfolk, Omaha, Paterson, Peoria, Rochester, San Antonio, Scranton, South Bend, Syracuse, Toledo, Witchita, Worcester, Yonkers.

9 Upon the termination of 'pooling' agreements a major defendant may control all of the first-run theatres in only the following 8 cities: Charlotte, Chattanooga, Cincinnati, Erie, Knoxville, Peoria, South Bend, Witchita. Loew's Exhibit 13; RKO'S Exhibit 11.

10 The following table is derived from Plaintiff's Exhibit 426 and Record pp. 2400, 2401:

Feature Films Released During The 1943-44 Season By All Distributors

	No. of Films	Percentages of Total	
		With "Westerns" included:	**With "Westerns" Excluded:**
Fox	33	8.31%	9.85%
Loew's	33	8.31%	9.85%
Paramount	31	7.81%	9.25%
RKO	38	9.57%	11.34%
Warner	19	4.79%	5.67%
Columbia	41	10.32%	12.24%
United Artists	16	4.04%	4.78%
Universal	49	12.34%	14.63%
Republic	29 features 30 "Westerns"	14.86%	8.66%
Monogram	26 features 16 "Westerns"	10,58%	7.76%
PRC	20 features 16 "Westerns"	9.07%	5.97%
Totals	397 335 without "Westerns	100%	100%

11 In so far as information could accurately be obtained from RKO'S Exhibit 11, the numbers of theatres jointly owned by the defendants are approximately as follows:

Theatres Jointly Owned With Independents:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21

Theatres Jointly Owned By Two Defendants:

Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10

Total...

Of the above theatres jointly owned with independents, the following numbers will not be affected by the decree,since the defendant or co-owning independent owns less than a 5% interest:

Paramount	177

RKO		32	
	Total	209	Theatres

Total affected by the decree according to RKO'S Exhibit 11

United States v. Paramount Pictures, Inc.

70 F. Supp. 53

(S.D.N.Y. 1947)

70 F.Supp. 53
District Court, S.D. New York.

UNITED STATES
v.
PARAMOUNT PICTURES, Inc., et al.

Dec. 31, 1946.
|
s Modified Feb. 3, 1947.

Synopsis

Action United States of America against Paramount Pictures, Inc., and others to enjoin the defendants from violating the Sherman Act, wherein a consent decree was entered, and the plaintiff thereafter applied for further relief.

Findings of fact and conclusions of law.

West Headnotes (9)

] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In action to enjoin violation of the Sherman Act evidence showed that two of the defendants were t guilty and that the action should be dismissed as to them. Sherman Anti-Trust Act, §§ 1-8, 15 .S.C.A. §§ 1-7, 15 note.

1 Cases that cite this headnote

2] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In action to enjoin violation f the Sherman Act, evidence showed that e f the defendants had monopolized r attempted to monopolize r conspired to monopolize the production f motion picture films. Sherman Anti-Trust Act, §§ 1-8, 15 .S.C.A. §§ 1-7, 15 note.

Cases that cite this headnote

3] **Judgment**
Construction and Operation of Judgment

The consent decree entered in action to enjoin violation f Sherman Act foreclosed right f plaintiff to complain f acts permitted by the decree, ut t f acts therwise violating the Sherman Act. Sherman Anti-Trust Act, §§ 1-8, 15 U.S.C.A. §§ 1-7, 15 te.

3 Cases that cite this headnote

4] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In action to enjoin violations f the Sherman Act, evidence showed that e of the defendants had combined, conspired or contracted to restrain trade in any part f the usiness of producing motion pictures r had monopolized,

attempted to monopolize r conspired to monopolize such business. Sherman Anti-Trust Act, §§ 1-8, 15 U.S.C.A. §§ 1-7, 15 note.

3 Cases that cite this headnote

5] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

Evidence showed that certain defendants had unreasonably restrained trade and commerce in the distribution and exhibition f motion pictures and had monopolized such trade and commerce th efore and after entry f consent decree conspiring to maintain theater admission prices and a substantially uniform ation-wide system f runs and clearances. Sherman Anti-Trust Act, §§ 1-8, 15 .S.C.A. §§ 1 -7, 15 note.

9 Cases that cite this headnote

] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

Evidence showed that certain defendants had unreasonably restrained trade and commerce in distribution and exhibition f motion pictures and had attempted to monopolize such trade and commerce by means f conspiracies, agreements, licenses, master agreements, franchises and formula deals. Sherman Anti-Trust Act, §§ 1-8, 15 U.S.C.A. §§ 1-7, 15 note.

4 Cases that cite this headnote

7] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize
Antitrust and Trade Regulation
Pricing

Evidence showed that certain defendants had unreasonably restrained trade and commerce in distribution and exhibition f motion pictures before and after consent decree by joint ership and peration f theaters, conspiring to fix theater admission prices and conspiring to discriminate against independent competitors in fixing minimum admission prices, runs, clearances and other license terms. Sherman Anti-Trust Act, §§ 1-8, 15 .S.C.A. §§ 1-7, 15 note.

33 Cases that cite this headnote

8] **Antitrust and Trade Regulation**
Motion Picture Industry

Motion picture licensing agreements whereby fee f a feature for a circuit f theaters is measured a percentage of the feature's ational gross, r therwise covering the exhibition f features in a umber of theaters or covering

more than one season and features released during such time, and called respectively "formula deals", "master agreements" and "franchises" have tended to restrain trade and violate the Sherman Act. Sherman Anti-Trust Act, Sec. 1, 15 U.S.C.A. 1.

2 Cases that cite this headnote

9] **Antitrust and Trade Regulation**
Motion Picture Industry

"Block-booking" or the practice of licensing or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released the distributor during a given period, violates the Sherman Act. Sherman Anti-Trust Act, § 1, 15 .S.C.A. § 1 .

3 Cases that cite this headnote

Attorneys and Law Firms

***54** Simpson, Thacher & Abrtlett, of New York City, for defendant Paramount.

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for defendant Loew's.

Donovan, Leisure, Newton, Lumbard & Irvine, of New York City, for defendant RKO.

Joseph M. Proskauer, of New York City, for defendant Warner.

Dwight, Harris, Koegel & Caskey, of New York City, for defendant 20th Century Fox.

Before AUGUSTUS N. HAND, Circuit Judge, and GODDARD and BRIGHT, District Judges.

This action having been duly tried and the proofs and arguments of the respective parties having been duly heard and considered, this court, having filed its opinion herein dated June 11, 1946, 66 F.Supp. 323, does hereby find and decide as follows:

Findings of Fact

1. The following are definitions of terms used in these findings and in the judgment to be entered hereon:

Block-booking- The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period.

Clearance- The period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres.

***55** Exchange District- An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres

situated throughout the territory served the exchange and for the physical distribution of such films throughout this territory.

Feature- Any motion picture, regardless f topic, the length of the film f which is in excess of 4,000 feet.

Formula Deal- A licensing agreement with a circuit of theatres in which the license fee f a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross.

Franchise- A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released e distributor during the entire period of the agreement.

Independent- A producer, distributor, r exhibitor, as the context requires, which is not a defendant in this action or a subsidiary r affiliate of a defendant.

Master Agreement- A licensing agreement, also known as a 'blanket deal', covering the exhibition of features in a umber f theatres, usually comprising a circuit.

Motion Picture Season- A one-year period eginning about September 1 of each year.

Road-show- A public exhibition of a feature in a limited umber of theatres, in advance f its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

Runs- The successive exhibitions f a feature in a given area, first-run being the first exhibition in that area, second run being the next subsequent, and so on, and shall include also successive exhibitions in different theatres, even though such theatres may be under a common ership r management.

Trade-Showing- A private exhibition f a feature prior to its release for public exhibition.

2. Paramount Pictures, Inc., is a corporation organized and existing under the laws f the State of New York, with its principal place f business at 1501 Broadway, New York, New York, and is engaged in the usiness f producing, distributing, and exhibiting motion pictures, either directly r through subsidiary or associated companies, in various parts of the United States and in foreign countries.

3. Paramount Film Distributing Corporation, a wholly owned subsidiary f Paramount Pictures, Inc., is a corporation rganized and existing under the laws of the State of Delaware, with a place f business at 1501 Broadway, New York, New York, and is engaged in the distribution ranch of the industry.

4. In 1916 or 1917, a group of exhibitors which controlled many of the then est theatres throughout the country rganized First National Exhibitors Circuit Inc. Although this corporation was initially rganized to function as a film uying combine, it evolved into a film producing

company first by financing the production of pictures others for exhibition in the theatres f its members and finally producing its own motion pictures.

5. The members of this First National group, consisting of many of the most important exhibitors in the United States controlling many of the best theatres, became franchise holders of the distributing company which they formed. They acquired t only the right to exhibit in their own theatres the pictures produced and distributed by First National, but also they each obtained the right to subfranchise other exhibitors in their respective territories. In a short time there were some 3500 franchise holders, representing as many or more theatres.

6. First National soon began to egotiate for the services f well-known stars and directors in the employ f other producers, including Paramount, and the members f First National began to refuse to exhibit Paramount films. Such well known stars as Mary Pickford and Norma Talmadge went ver to the First National Group.

***56** 7. Many of the theatres ed members of First National had, for a long time prior to 1918, exhibited Paramount pictures. The formation and growth of First National gradually cut down the umber f Paramount pictures exhibited in the theatres of the First National group. By 1919 Paramount faced a situation where a group f ers of many of the best theatres in the large cities, many f whom had een its customers in the past, had combined together for co-operative buying and had expanded into a strong rganization which distributed its own pictures and threatened to supply its members with enough pictures to permit them to perate without using any pictures f other producers, including Paramount.

8. In these circumstances Paramount determined to acquire interests in theatres of its own so that it might assure itself f outlets for Paramount productions. Prior to the fall f 1917 Paramount had theatre interests. Between 1917 and 1919 it acquired an interest in two theatres in New York City as show windows, to replace the Strand Theatre which had gone over to the First National Group. During that year in conjunction with its representative in the South, it formed Southern Enterprises, Inc., which acquired various theatres in the South. At about the same time Paramount acquired a 50% interest in the Black chain of theatres in New England.

9. In January, 1932, Paramount went into equity receivership in the ited States District Court for the Southern District of New York. It stayed in equity receivership until March 1933, when it went into voluntary bankruptcy. It remained in bankruptcy until June, 1934, when upon passage of Section 77B of the Bankruptcy Law, 11 U.S.C.A. § 207, it petitioned for reorganization. It was finally reorganized under its present name in June, 1935. During these ears various companies perating theatres in which Paramount was interested were themselves the subject f ankruptcy r receivership proceedings.

10. Some of the theatre interests which Paramount held at the time of the trial

f this action had een acquired and were wholly ed by it either directly or indirectly through subsidiary companies prior to its bankruptcy and reorganization. In the course of its reorganization, some of its partly owned theatre interests were created, i.e., in some instances the plan of reorganization approved by this court provided for the sale or other disposition by Paramount of a partial interest (sometimes amounting to 50%, sometimes more and sometimes less) in theretofore wholly ed theatre operating companies, or companies holding legal r equitable interests in theatres or theatre operating companies. The result was the creation of many f Paramount's present partly owned theatre interests.

11. In the course f the reorganization proceedings Paramount lost its interests in some theatres and also changed its relationship with respect to interests in some of its theatre operating companies. The effect of these proceedings and the policy of decentralization inaugurated in the course thereof, was that in some instances Paramount disposed of a partial interest in companies theretofore wholly owned.

12. Loew's Incorporated is a corporation organized and existing under the laws f the State of Delaware, with its principal place f business at 1540 Broadway, New York, New York, and is engaged in the usiness f producing, distributing and exhibiting motion pictures, wither directly r through subsidiary or associated companies, in various parts of the United States and in foreign countries.

13. Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place f usiness at 1270 Sixth Avenue, New York, New York, and is engaged in the usiness of producing, distributing, and exhibiting motion pictures, either directly r through subsidiary r associated corporations, in various parts f the United States and in foreign countries.

14. RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State f Delaware, with a place f business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution ranch of the industry.

***57** 15. Keith-Albee-Orpheum Corporation was a corporation rganized and existing under the laws of the State f Delaware, with a place f business at 1270 Sixth Avenue, New York, New York, and was engaged in the usiness of exhibiting motion pictures prior to its dissolution September 29, 1944. Approximately 99% f its common stock and 33% of its preferred stock were held by Radio-Keith-Orpheum Corporation.

16. RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of New York, with a place f business at 1270 Sixth Avenue, New York, New York, and is engaged in the usiness of exhibiting motion pictures.

17. RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation rganized and existing under the laws of the State of Ohio, with a place f business at 1270 Sixth Avenue, New York, New York, and is engaged in the usiness of exhibiting motion pictures.

18. RKO was organized in 1928 by Radio Corporation f America largely for the purpose f obtaining an effective means f developing the use of its motion picture sound recording and reproduction devices in the motion picture production and exhibition fields.

19. At the time f its rganization, RKO secured production and distribution facilities by merger with a small company, FBO Productions, Inc., which had limited production facilities and a ational distributing rganization. RKO invested substantial sums to modernize these facilities.

20. The formation of RKO introduced a new and substantial competitive factor in the production and distribution of motion pictures.

21. During its initial organizational period, RKO acquired interests in a umber f companies operating circuits of vaudeville theatres.

22. RKO went into receivership in 1933 and continued in receivership and reorganization until 1940. At the time of its receivership RKO operated considerably more theatres than its present total of 106. During the receivership it lost 57 theatres.

23. The rganization of RKO did increase competition in each of the three branches of the industry.

24. Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place f business at 321 West 44th Street, New York, New York, and is engaged in the usiness of producing, distributing, and exhibiting motion pictures, either directly r through subsidiary r associated companies, in various parts of the ited States and in foreign countries.

25. On April 4, 1923, the four Warner rothers, Harry M., Jack L., Albert, and Sam, transferred their usiness f production and distribution f motion pictures to a corporation known as Warner Bros. Pictures, Inc., (hereinafter referred to as Warner).

26. Beginning in 1925, Warner egan the ork f developing sound pictures under license and agreements from Western Electric, culminating in the production f such sound pictures as 'The Jazz Singer', starting Al Jolson, in October, 1927, and the first 100% talking picture 'The Lights of New York' in the summer of 1928.

27. The Stanley Company of America had in 1928 and for a year prior thereto about 250 theatres situated principally in and around Pennsylvania and New Jersey.

28. Negotiations were egun with the view f exchanging stock f Warner for the

stock of Stanley Company of America. This transaction was consummated late in 1928.

29. With the acquisition f the stock of Stanley Company of America, Warner acquired 250 theatres which could e immediately equipped with sound installation.

30. In the year and nine months immediately following the acquisition of the stock f Stanley Company f America, Warner secured in a similar fashion several ther circuits of theatres owning theatres in the same general locality and a smaller umber of theatres scattered in various other parts f the country.

***58** 31. In 1931 Warner had an interest in 591 theatres, the largest umber of theatres in which Warner has ever had an interest.

32. Today, the Warner companies have an interest in 547 theatres- a net reduction of 44 from its peak holdings of 591 in 1931.

33. First National Pictures, Inc., a corporation engaged in the production and distribution of silent motion pictures, had een organized as far back as 1917 approximately 24 exhibitors a cooperative basis for the asis of acquiring film of first quality for exhibition in their own theatres, as well as for distribution them for other theatres in the respective territories in which they operated.

34. In 1928 Stanley Company of America ed e-third f the stock f First National Pictures, Inc., all the stock of First National Pictures, Inc., being subject to a voting trust.

35. Warner acquired as part of the Stanley Company of America transaction in 1928, e-third of the stock of First National Pictures, Inc.

36. At or about the time of the acquisition of the Stanley Company of America stock, r shortly thereafter, Warner purchased another e-third f the stock f First National Pictures, Inc., from other First National Pictures, Inc., stockholders.

37. Subsequently, in 1929, Warner acquired the remaining one-third of the stock of First National Pictures, Inc., from defendant, Twentieth Century-Fox.

38. Vitagraph, Inc., a wholly ed subsidiary of Warner Bros. Pictures, Inc., is a corporation rganized and existing under the laws of the State of New York, with a place f usiness at 321 West 44th Street, New York, New York, and is engaged in the usiness of distributing motion pictures. On July 20, 1944, its ame was changed to Warner Bros. Pictures Distributing Corporation.

39. Warner Bros. Circuit Management Corporation, a wholly owned subsidiary f Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws f the State of New York, with a place f business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests f the said Warner Bros. Pictures, Inc.

40. Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State f

New York, having its principal place f usiness at 444 West 56th Street, New York, New York, and is engaged in the usiness f producing, distributing, and exhibiting motion pictures, either directly r through subsidiary or associated companies, in various parts of the United States and in foreign countries.

41. Twentieth Century-Fox produces its features in its own studio in Los Angeles, California, distributes them in this country through thirty-one ranches or exchanges which it operates in the principal centers of population, and licenses its features for exhibition in its own and other theatres.

42. Twentieth Century-Fox acquired its initial interest in theatres through the purchase f stock in corporations then engaged in perating theatres. Since such original acquisition, it has acquired additional interests in theatres, some f which were acquired in competition with ther defendants and with independent circuits and some f which are new theatres constructed by it.

43. National Theatres Corporation is ed and controlled by Twentieth Century-Fox Film Corporation, and is a corporation rganized and existing under the laws of the State of Delaware, with a place f usiness at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth-Century-Fox Film Corporation.

44. Columbia Pictures Corporation is a corporation organized and existing under the laws f the state f New York, ith its principal place f usiness at 729 Seventh Avenue, New York, and is engaged in the usiness of producing and distributing motion pictures, either directly or through subsidiary or associated companies in various parts of the ited States and in foreign countries.

***59** 45. Screen Gems, Inc., a wholly ed subsidiary f Columbia Pictures Corporation, is a corporation rganized and existing under the laws of the State of California, with a place f business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

46. Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation rganized and existing under the laws of the State of Louisiana, with a place f usiness at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the usiness f distributing motion pictures.

47. Universal Corporation is a corporation rganized and existing under the laws of the State of Delaware, with its principal place f business at 1250 Sixth Avenue, New York, New York, and -s engaged in the usiness f producing and distributing motion pictures, either directly r through subsidiary r associated corporations, in various parts f the United States and in foreign countries. On May 25, 1943, its ame was changed to Universal Pictures Company, Inc., when a subsidiary of the same ame was merged into it, ut Universal Corporation was the surviving corporation.

48. The corporation named in the complaint as Universal Pictures Company, Inc., was a subsidiary corporation controlled Universal Corporation, which was engaged in the usiness f producing motion pictures, prior to its merger into iversal Corporation on May 25, 1943.

49. Universal Film Exchanges, Inc., a wholly owned subsidiary f Universal Corporation, is a corporation rganized and existing under the laws of the State of Delaware, with a place f business at 1250 Sixth Avenue, New York, New York, and is engaged in the usiness of distributing motion pictures.

50. The iversal group f defendants at the time f the trial consisted f the following corporations: (1) iversal Pictures Company, Inc. (hereinafter sometimes called iversal Pictures), a Delaware Corporation with its principal office in New York, N.Y., engaged in the usiness of producing motion pictures and distributing the same through wholly-owned subsidiaries; (2) Universal Film Exchanges, Inc. (hereinafter sometimes called iversal Film Exchanges), a Delaware corporation, with its principal ffice in New York, N.Y., engaged in the usiness of distributing motion pictures throughout the ited States (except for the Metropolitan District f New York City), a wholly-owned subsidiary f iversal Pictures; (3) Big Film Exchange, Inc. (hereinafter sometimes called Big), a New York corporation, with its principal office in New York, N.Y., engaged in the usiness f distributing motion pictures throughout the Metropolitan District of New York City, a wholly-owned subsidiary f iversal Pictures. The term 'Universal' as used herein means any or all of the Universal defendants.

51. Prior to May 25, 1943, the ame f Universal Pictures Company, Inc., was iversal Corporation, incorporated in Delaware in 1936. It owned approximately 92% f the utstanding common stock f a Delaware corporation which was incorporated in the year 1925 and was also known as Universal Pictures Company, Inc. Said corporation last named had its principal office in New York, N.Y., and was engaged in the usiness of producing motion pictures and distributing the same through its subsidiaries. It owned all of the utstanding stock f Universal Film Exchange, Inc., and 20% of the outstanding common stock of Big U Film Exchange, Inc. The ther 80% of said stock was ed iversal Corporation. On May 25, 1943, iversal Pictures Company, Inc. (Delaware, 1925) was merged into Universal Corporation (the surviving corporation), and the ame f the surviving corporation was changed to iversal Pictures Company, Inc.

52. Big U Film Exchange, Inc., a wholly owned subsidiary f Universal Corporation, is a corporation rganized and existing under the laws of the State of New York, with a place f usiness at 1250 Sixth Avenue, New York, New York, and is engaged in the usiness f distributing motion pictures.

***60** 53. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place f business at 729 Seventh

Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

54. During the entire period in question ited Artists Corporation distributed photoplays in the United States of America that were produced by David O. Selznick, Mary Pickford, Charles Chaplin, Hunt Stromberg, William Cagney, Bing Crosby, Edward Small, Sol Lesser, Lester Cowan, Jack Skirball, Benedict Bogeau, Seymour Nebenzal, Jules Levey, David Loew, Arnold Pressburger, Charles R. Rogers, Andrew Stone, Constance Bennet, Howard Hughes, Preston Sturgis, J. Arthur Rank, Edward Golden, or corporations with which the aforesaid individuals were associated and ther independent producers.

55. United Artists Corporation maintains 26 ranches or exchanges located throughout the ited States, and through these facilities it distributes and has distributed all of the product handled by it during the period in question.

56. Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Warner Bros. Pictures, Inc.; and Twentieth Centruy Fox Film Corporation and their respective distribution and exhibition subsidiaries are the five major defendants.

57. As etween the eight defendants, Paramount, Loew's, Fox, RKO, Warner, Columbia, United Artists and iversal, there are fficers or directors in common, and e f said defendants s any controlling stock r other securities in any ther of said defendants.

58. Neither of the defendants Columbia, iversal and ited Artists s any theatres.

59. There exists active competition among the defendants and others in the production f motion pictures.

60. None of the defendants has monopolized or attempted to monopolize or contracted r combined or conspired to monopolize or to restrain trade or commerce in any part of the usiness of producing motion pictures.

61. In the distribution of feature motion pictures no film is sold to the exhibitor; the right to exhibit under copyright is licensed.

62. In licensing features, each f the distributor defendants has agreed with each f its respective licensees that the licensee should charge no less than a stated admission price during the exhibition of the feature licensed.

63. The minimum admission prices included in licenses of each of the eight distributor-defendants for any given theatre are in general uniform, being the usual admission prices currently charged by the exhibitor.

64. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as etween such defendants individually and their various exhibitors. Thus there was a general arrangement f fixing prices in which both the distributors and exhibitors were involved. The licenses required existing

admission price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as 'Gone With The Wind', 'For Whom The Bell Tolls', 'Wilson', and 'Song of Bernadette', licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised.

65. The defendants granting film licenses have agreed with their licensees to a system which determines minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants r by independents within the United States.

66. All of the five major defendants have a definite interest in keeping up prices in any given territory in which they own theatres and this interest they were safeguarding fixing minimum prices in ***61** their licenses when distributing films to exhibitors in those areas. Even if the licenses were at flat rate, a failure to require their licensees to maintain fixed prices ould leave them free for lowering the current charge to decrease through competition the income to the licensor theatres in the eighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas. There exists great similarity, and in many cases identity, in the minimum prices fixed for the same theatres in the licenses of all of the defendants.

67. The major defendants made perating agreements as exhibitors with each ther and with independent exhibitors in which joint peration of certain theatres covered by the agreements is provided and minimum admission prices to be charged are either stated therein or are to be jointly determined other means. These agreements show the express intent of the major defendants to maintain prices at artificial levels.

68. Certain master agreements and franchises between various of the defendants in their capacities as distributors and various f the defendants in their capacities as exhibitors stipulate minimum admission prices, often for dozens of theatres ed an exhibitor-defendant in a particular area in the United States.

69. Licenses granted one defendant to another disclose the same inter-relationship among the defendants. Each of the five major defendants as an exhibitor has een licensed the ther seven defendants as distributors to exhibit the pictures f the latter at specified minimum admission prices. RKO, Loew's, Warner, Paramount, and Fox, in granting and accepting licenses with minimum admission prices specified, have among themselves engaged in a national system to fix prices, and Columbia, Universal, and United Artists, in requiring the maintenance f minimum admission prices in their licenses granted to these exhibitor-defendants, have participated in that system.

70. The distributor-defendants have acquiesced in the establishment of a price-

fixing system and have conspired with e another to maintain prices.

71. In agreeing to maintain a stipulated minimum admission price, each exhibitor hereby consents to the minimum price level at which it will compete against ther licensees of the same distributor whether they exhibit on the same run r not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also e restricted as to maintenance of minimum admission prices, and this acquiescence f the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected.

72. The differentials in admission price set a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres where they will pay higher prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are ultimately to see the feature- no matter what run- the gross revenue to be realized from their patronage is increased relatively to the increase in numbers seeing it in the higher-priced prior-run theatres. In effect, the distributor, by the fixing of minimum admission prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.

73. Among the provisions common to the licensing contracts of all the distributor-defendants are those which the licensor agrees t to exhibit r grant a ***62** license to exhibit a certain feature motion picture before a specified umber of days after the last date of the exhibition therein licensed. This so-called period of 'clearance' r 'protection' is stated in the various licenses in differing ways; in terms f a given period between designated runs; in terms of admission prices charged competing theatres; in terms of a given period of clearance over specifically amed theatres; in terms of so many days' clearance over specified areas or towns; in terms f clearances as fixed other distributors; r in terms of combinations of these formulae.

74. The cost of each black and white print is from $150 to $300, and a technicolor print is from $600 to $800. Many of the kings are for less than the cost of the print so that exhibitions ould be confined to the larger high-priced theatres unless a system f successive runs with a reasonable protection for the earlier runs is adopted in the way f clearance.

75. Without regard to period of clearance, licensing features for exhibition on different successive dates is essential in the distribution of feature motion pictures.

76. Either a license for successive dates, r one providing for clearance, permits the public to see the picture in a later exhibiting theatre at lower than prior rates.

77. A grant f clearance, when t accompanied a fixing f minimum admission prices r not unduly extended as to area or duration affords a fair protection of the interest of the licensor in the rental to be derived from the exhibition of the feature licensed, without unreasonably interfering with the interest of the public.

78. Clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures. The practice is of proved utility in the motion picture industry and necessary for the reasonable conduct of the business.

79. The major defendants have acquiesced in and forwarded a uniform system f clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents.

80. Some licenses granted clearance to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, r perate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected r opened. The purpose of this type of clearance agreements was to fix the run and clearance status f any theatre thereafter pened t on the asis of its appointments, size, location, and ther competitive features normally entering into such determination, but rather upon the sole asis f whether it ere perated by the exhibitor party to the agreement.

81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system.

82. The defendants have acted in concert in their grants of run and clearance.

83. Clearances are given to protect a particular run against a subsequent run and the practice of clearance is so closely allied with that of run as to make findings on the e applicable to the other.

84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearances, runs, and admission prices to which they have een liged to conform if they wished to get their pictures shown upon satisfactory runs r were to compete in exhibition either with the defendants' theatre or theatres to which the latter had licensed their pictures.

85. Competition can be introduced into the present system f fixed admission prices, clearances, and runs, by requiring a defendant-distributor when licensing its features to grant the license for each run at a reasonable clearance (if clearance is involved) to the highest bidder, if such idder is responsible and has a theatre of a size, location, and equipment adequate to ield a reasonable return to the licensor. In ther words, if two theatres are bidding and are

fairly comparable, the e offering the est terms shall receive the license. Thus, price fixing among the licensors r between a licensor and its licensees as well as the non-competitive clearance system may e terminated.

***63** 86. Formula deals have been entered into Paramount and RKO with independent and affiliated circuits. The circuit may allocate playing time and film rentals among the various theatres as it sees fit. Arrangements whereby all the theatres f a circuit are included in a single agreement, and opportunity is afforded for ther theatre owners to bid for the feature in their several areas, seriously and unreasonably restrain competition.

87. Loew's is not, and never has been, a party either as a distributor or as an exhibitor, to any 'formula deal' license agreements.

88. Master agreements which cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also -o exhibit the features upon such playing time as it deems best and leaves other terms to the circuit's discretion, have been entered into the distributor defendants and unreasonably restrain trade.

89. Franchises have been entered into by the distributor defendants, and unreasonably restrain trade, because they cover too long a period (more than e season), and also because they embrace all the features released by a given distributor.

90. Loew's today has utstanding franchise agreements for any theatre in which it does not have an interest, and Loew's is not currently granting franchises. During its entire history Loew's, as a distributor, granted a total of 213 franchises, f which 154 were to independent theatres and only 59 to those in which any ther producer-exhibitor had an interest.

91. Twentieth Century-Fox has not granted any franchises since June 6, 1940. In 1938-39, the motion picture season in which Twentieth Century-Fox had the greatest umber of franchises utstanding, there were 400. Of these, 361 were with independent exhibitors.

92. During the period in question iversal entered into franchise agreements with 727 independent exhibitors and 43 affiliated exhibitors.

93. Block-booking, when the license f any feature is conditioned upon taking f other features, is a system which prevents competitors from bidding for single features their individual merits.

94. For many ears the distributor defendants, except ited Artists Corporation, licensed their films in 'blocks', or indivisible groups, before they had een actually produced. In such cases the ly knowledge prospective exhibitors had of the films which they had contracted for was from a description of each picture by title, plot and players. In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the

exhibitor was given a right of subsequent cancellation for a certain umber of pictures. Because of complaints f lock king and lind-selling based upon the supposed unfairness of contracts which often includes pictures the inferior quality f which could t be known, Sections III and IV of the consent decree required the five consenting distributors to trade-show their films efore offering them for license and limited the umber which might be included in any contract to five. More than e lock f five, however, could be licensed where the contents f any had een trade-shown. While this restriction in the consent decree has ceased time limitation, the consenting distributors have continued to observe the restriction. The -assenting distributors have retained up to the present time their previous methods of licensing in locks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the pictures contracted for.

95. United Artists did not at any time license the exhibition of its pictures in locks ut on the contrary licensed the exhibition of its pictures separately and individually.

96. During the period in question ited Artists did not condition the licensing of any photoplay in any exhibitor's theatre upon that exhibitor's agreement to license ther United photoplays for exhibition in said theatre.

97. Blind-selling is a practice whereby a distributor licenses a feature efore the exhibitor is afforded an opportunity to view it.

***64** 98. Since the consent decree f November 20, 1940, the five major defendants have given each exhibitor, whether a defendant or independent, an opportunity at trade shows to view each feature before licensing it. In general, trade shows, which are designed to prevent lind-selling, are poorly attended by exhibitors.

99. During the 1943- 4 season, the umber of features distributed by eight distributor-defendants and the three ther ational distributors were as follows:

		Percentages of Total	
Distributor-defendants	No. of Films	With "Westerns" Included	With "Westerns" Excluded
Fox	33	8.31%	9.85%
Loew's	33	8.31%	9.85%
Paramount	31	7.81%	9.25%
RKO	38	9.57%	11.34%

Warner	19	4.79%	5.67%
Columbia	41	10.32%	12.24%
United Artists	16	4.04%	4.78%
Universal	49	12.34%	14.63%
Sub-total	260		

Other National Distributors

Republic	29 features 30 “Westerns”		14.86%
Monogram	26 features 16 “Westerns”		10.58%
PRC	20 features 16 “Westerns”		9.07%
			100%
Sub-Total	137	397	
Total without “Westerns”		335	

100. The percentage f features the market which any f the five major defendants could play in its own theatres ould be relatively small and in -wise approximates a monopoly of film exhibition.

101. Continuously since its rganization RKO has distributed features for independent producers. The particular

independent producers whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-44, 19.8% of the features distributed RKO were independently produced, and 28.4% of RKO'S gross receipts from domestic licenses of features was derived from such independently produced features.

102. It ould be financially impossible for RKO to operate its theatres on features distributed by RKO alone.

103. Twentieth Century Fox produced less than 9 per cent. of the total umber f features nationally distributed in the ited States during each ear between 1936-37 and 1944-45.

104. Universal has customarily produced at its studios at Universal City, California, during each theatrical year (commencing ***65** or about September 1st) etween 45 and 50 feature-length motion picture photoplays, seven so-called Westerns, four Serials, 15 two-reel subjects, 30 single-reel subjects and 104 newsreels.

105. Said motion pictures were distributed Universal and licensed for exhibition by motion picture theatres throughout the United States by means of a system f 31 exchanges located in various States in the United States, from the East Coast to the West Coast and from Canada to the Southern undary. iversal also maintained a Home Office in the City of New York.

106. In marketing its motion pictures, Universal's usual and customary practice as to ffer to license to exhibitors, title and description as aforesaid, its entire line f pictures, consisting f feature-length motion picture photoplays, Westerns, short-subjects (consisting f serials and two-reel and one-reel pictures) and newsreels. In this way approximately 50 feature-length motion picture photoplays, a group of Westerns, short-subjects, two so-called 'Special' photoplays, three features produced by independent producers, and ewsreels, were ffered to exhibitors iversal each year.

106A. During recent ears, in excess f 600 feature-length motion picture photoplays were released each ear in the ited States, exclusive f foreign-made films. Universal releases of feature-length photoplays, including Westerns and so-called Marquee pictures, during said period, equalled approximately 8% of the total umber of feature-length photoplays released in the United States each year.

107. During the period in question, ited Artists Corporation distributed between 20 to 26 pictures a ear when the corporation had a good year and has handled as low as four in distribution in a releasing season.

108. At no time during the period in question did United Artists distribute more than 5% of the feature photoplays American made and distributed in the ited States f America and generally distributed less than 5% of such releases.

109. That in each distribution agreement with each producer using the facilities f United Artists for distribution among

other things there appears substantially the following language:

'United agrees to devote its best efforts to the proper marketing and disposition of the motion pictures delivered hereunder in all the territories licensed hereunder wherein it customarily markets motion pictures, and to make such marketing as complete and efficient as practicable, so that the gross returns from the marketing of the product hereunder shall be as large as possible and at the same time consistent with the sound usiness policy of United.

'United will use its best efforts to procure prices, license fees and rentals in a fair and open market reasonably satisfactory to the Producer.

'Exhibition Contracts: The exhibition contracts for each of such motion pictures delivered hereunder shall be made separate and apart from the exhibition contract of any other motion picture marketed ited, with the exception that in territories ther than the ited States where it is customary to include more than e motion picture on a contract, the Producer authorizes United to market its product in accordance with that custom. In no event, however, shall any motion picture of the Producer be used to enforce the licensing, leasing r other disposition of any ther motion picture marketed United, and in such territory where it is the custom to include e contract more than one motion picture United shall set ut the respective license fees for each motion picture after the ame f such motion picture.

'United agrees upon the written direction f Producer that United shall market wherever permissible the motion pictures designated by the Producer or its agent as a unit, and in such case such unit shall be licensed separate and apart from any other motion picture marketed ited, with the exception that in those countries where it is the custom to market all of the motion pictures one contract, United shall adhere to the prevailing custom.

'The Producer shall have the right to designate a representative for the territories ***6** hereinafter specified. The Producer shall ear all the expenses f such representative. Such representative must have an office in the central location f such territory, and if so United shall submit to such representative for his approval r rejection all proposed written contracts with exhibitors for that territory. The territories and their central location are as follows:

Territory	Central Location
United States and Canada	New York
British Isles	London
Australia	Sydney

'Producer agrees that such submission shall t e necessary if made impractical conditions beyond the control f ited, such as conditions arising out of war.

'If the Producer has designated such a representative for any such territory, ited shall submit for his approval or rejection each proposed written contract for the distributing, exhibiting or marketing of such Producer's motion pictures or any of them in the territory in which such representative is action. No such contract shall be accepted United if within three (3) succeeding usiness days following the date which said proposed written contract has been received by the Producer or its representative the Producer or its representative shall return such proposed contract to ited with its rejection noted thereon or appended thereto.

'Should the Producer or its representative reject any such proposed contract the Producer or its representative shall have fourteen (14) days from the date f rejection in which to tain a more favorable contract. Should the Producer r its representative fail so to do the riginal contract shall ipso facto be deemed approved unless the Producer or its representative shall have designated its original rejection as final. No proposed contract which the rejection has been designated as final shall be entered into by United.

'Should the Producer or its representative at any time agree in advance with ited upon the rental terms or license fees for the distribution, exhibition or marketing f any motion picture in any specified theatre or situation, United shall t e ligated to submit the contract containing the terms so agreed upon to the Producer r its representative for approval.'

110. Various contract provisions which discriminations against small independent exhibitors and in favor f the large affiliated and unaffiliated circuits were accomplished are: Suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and elimination f films; allowing deductions in film rentals if double bills are played; granting moveovers and extended runs; granting roadshow privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification f features for rental purposes. These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Small independents are usually licensed, however, upon the standard forms of contract, which do t include them. The competitive advantages of these provisions are so great that their inclusion in contracts with the larger circuits constitutes an unreasonable discrimination against small competitors.

111. The discriminations referred to in Finding 110 would appear to be impossible under a system where the exhibitors competing for a license to exhibit a given feature on a given run do so on a parity since the same offer must be made to all

prospective exhibitors in each competitive area.

112. Agreements were made by the exhibitor-defendants with each ther and their affiliates which given theatres of two r more exhibitors, normally in competition with each ther, were operated as a unit, r most of their business policies collectively determined by a joint committee r e of the exhibitors, and which profits f the 'pooled' theatres were divided among the exhibitors in r ers ***67** of such theatres according to pre-agreed percentages r otherwise. Some of the agreements provide that the parties thereto may not acquire other theatres in the competitive vicinity without first offering them for inclusion in the 'pool'. The result is to eliminate competition pro tanto both in exhibition and in distribution of features which would flow almost automatically to the theatres in the earnings of which they have a joint interest.

113. Other forms f operating agreements are etween major defendants and independent exhibitors rather than etween major defendants. The effect is to ally two r more theatres of different ownership into a coalition for the ullification of competition between them and for their more effective competition against theatres not members f the 'pool'.

114. In certain other cases the perating agreements are accomplished by leases f theatres, the rentals being determined by a stipulated percentage of profits earned the 'pooled' theatres. This is but another means of carrying out the restraints found above.

115. Many theatres, or the corporations owning them, are held jointly e or more of the exhibitor-defendants, together with another exhibitor-defendant, in some cases in conjunction with independents. These joint interests enable the major defendants to operate theatres collectively, rather than competitively. When a defendant r an independent owns an interest of five percent or less, such an interest is de minimis and only to be treated as an inconsequential investment in exhibition.

116. When theatres are jointly ed a major defendant and another party, it is evident that th joint ers wish to participate and indeed are directly or indirectly participating in the usiness of exhibiting motion pictures. The major defendant thereby eliminates putative competition between itself and the ther joint er, who therwise ould be in a position to operate theatres independently.

117. Such joint interests as those described above in findings 112 through 116 exist in a great umber of theatres, a summary f which is set forth in the following tabulation taken from RKO'S Exhibit 11:

Theatres jointly owned with independents:	
Paramount	993
Warner	20

Fox	66
RKO	187
Loew's	21
Theatres jointly owned by two defendants:	
Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10
Total	1,501

Theatres

Of the above theatres jointly ed with independents, the following umber will t be affected by the decree, since the defendant or co-owning independent owns less than a 5% interest:

Paramount	177
RKO	32
Total	209

Theatres

Total affected by the decree according to RKO's Exhibit 11	1,292

Theatres

118. In the year 1945 there were about 18,076 motion picture theatres in the ited States, f which the five major defendants had interests in 3,137, or 17.35%. Of the latter, Paramount or its subsidiaries ed independently f the ther defendants, 1,395- a little less than half, or about 7.72%; Warner 501, or about 2.77%; Loew's 135, or about .74%; Fox 636, or about 3.52%; and RKO 109, or about .60%. There were 361 theatres, or about 2.00%, in which two r more of these defendants had joint interests, whether held directly or indirectly through stock ownership in the same corporation r through a lease r operating agreement. This tabulation excludes theatres connected with e or more of the defendants through film- uying ***68** or management contracts r through corporations in which a defendant ed an indirect minority stock interest. It includes all theatres in which each defendant therwise owned a direct or indirect interest f any amount.

119. The present theatre holdings of the five defendant-exhibitors, Paramount, Loew's, Fox, RKO and Warner, aggregate little more than e-sixth of all the theatres in the United States, and by such theatre holdings alone the defendants do not and cannot collectively or individually have a monopoly f exhibition.

120. On January 1, 1935, Loew's perated in the United States 126 theatres. The first-run theatres, which are engaged to a large extent in exhibiting Loew's own product, Metro pictures, serve as ‘showcases‘ for those pictures in the areas where the theatres are located.

121. The formation of RKO resulted in the conversion of vaudeville theatres acquired it into motion picture theatres and thereby introduced ew and substantial competition into the exhibition field in the cities in which each of these theatres was located.

122. Ownership and peration by RKO f theatres in certain principal cities of the United States enables RKO through the utilization of the facilities of such theatres to plan and direct the first exploitation of the features which it distributes in such areas in a more effective manner than is possible in areas where RKO does t operate theatres.

123. The successful exhibition f a feature in its initial runs in any area is widely publicized and closely served subsequent run exhibitors in that area and success in exploiting a picture in such exhibitions produces increased revenue th for the distributor and for subsequent run exhibitors.

124. Each of the five major defendants is able to coordinate the initial exhibition f its features in its theatres with an extensive and accurately timed national advertising campaign.

125. Twentieth Century-Fox is interested in theatres in only 16 of the 92 cities having a population f over 100,000. In 12 f these 16 cities features f e or more defendants is licensed to independent first run exhibitors competing with Twentieth Century-Fox (New York, Seattle, Denver, Portland, Oakland, San Diego, Long Beach,

Los Angeles, San Francisco, Spokane, Sacramento, and Kansas City, Kansas) as well as to other defendants having theatres in some of these cities. In three of the remaining four cities, there is also first run competition from others of the defendants.

126. The 17.35% of theatres which comprise the five circuits of the major defendants pay from 35 to 54% of the total domestic film rental respectively received by the eight distributor defendants and 45% of the total domestic film rental received all f said distributor-defendants. The five largest unaffiliated circuits together pay less than 5% of such rental.

127. The major defendants, as distributors, during the 1943-44 season, received from 71 to 81% of the film rental that was paid to all distributors by exhibitors affiliated with the five major defendants. The minor defendants received from 26 to 15% of such rental and the independent distributors from 2 1/2 to 4 1/2% of such rental.

128. During the 1943-44 season the eight distributor defendants received 45.2% of the total feature film rental, received by them, from theatres affiliated with the five major defendants; and 54.8% of such rental from ther exhibitors.

129. In some situations where Paramount had theatre interests, ther defendant distributors licensed their features to competing theatres and t to the Paramount theatres, and in some cases the operating companies in which Paramount was interested were not able to obtain the right to exhibit the features of some of the ther defendant distributors.

130. Paramount features are licensed for exhibition in from 8,000 to 14,500 theatres in the United States annually. The umber of licenses each year varies from feature to feature and from year to year.

131. In 21 of the 36 ut of the 92 cities where Loew's operates theatres e of the other four producer-exhibitors licensed ***69** its features in the 1943-44 season for first-run exhibition in a Loew's theatre, to the extent of more than three features, the Loew's theatres' first-run exhibition eing therwise limited to its own features and those f - theatre-owning producers.

132. Over the 10 years from 1935 to 1945, the total umber of features licensed the other four theatre-owning distributors to Loew's first-run houses, decreased from 1382 to 998 and the features f -theatre-owning distributors, increased from 1201 to 1879.

133. In 1935, the ther four theatre-owning distributors earned $2,611,986 from Loew's theatres and the non-theatre-owning distributors earned $2,205,330 ($406,656 less). In 1944, the -theatre-owning distributors earned $5,261,116 in Loew's theatres, which was $419,477 more than the $4,841,639 earned in Loew's theatres in that ear by the four other theatre-owning distributors.

134. In 1944, the percentage of the total film rental paid Loew's theatres to each of the non-theatre-owning distributors,

Columbia (8.8%), United Artists (8.3%) and Universal (7.4%), was higher than that paid to each of three producer-exhibitors, RKO (2.1%), Warner Bros. (2.1%) and Twentieth Century-Fox (6.1%).

135. In the year 1944, of the total film rental paid by Loew's theatres, 47.9% was to Loew's itself for the exhibition of Loew's pictures, and 27.1% was to -theatre-owning distributors. Thus a total of 75% of all film rentals paid by Loew's theatres went to persons other than the four ther defendant-producer-exhibitors.

136. During the 1943-44 season RKO received 56.9% of its total license fees from independent theatres, 14.1% from its theatres, and (in the aggregate) 29% from theatres affiliated with other defendants.

137. In the 1943-44 season, of the total umber of exhibitions of features in first-run and metropolitan circuit run theatres perated by RKO, 23.1% were exhibitions of features distributed by RKO, 29.6% were exhibitions of features distributed ther theatre-owning distributors, and 47.3% were exhibitions of features distributed - theatre-owning distributors.

138. In the four pre-war seasons f 1937-1940, Warner derived about 61-6/10% of its domestic gross rentals from theatres not affiliated with any of the defendants, about 14% from theatres in which it had an interest, about 13% from theatres in which Paramount had an interest, about 4% from theatres in which Twentieth Century -Fox had an interest, about 6% from theatres in which Rko had an interest, and less than 1% from theatres in which Loew had an interest.

139. Of its total domestic and foreign rentals Warner received about 30% from abroad, about 43% from theatres in which e f the defendants had an interest, about 10% from Warner's own American theatres, and the balance, about 16%, from American theatres in which e r more f the defendants had an interest.

140. Not a single e of the Loew first run theatres in the 39 of the 92 largest cities where Loew perates or has an interest in first run theatres licensed a Warner feature for exhibition in the 1943-44 season. In the same season the Warner theatres regularly exhibited the Loew features in many of the 28 of the 92 largest cities where Warner perated or had an interest in first run theatres.

141. The dollars paid by Warner to each f the other defendants and by each of the ther defendants to Warner show no uniformity of pattern from company to company from ear to year.

142. There were marked variances from ear to year in the sums paid as rental by the theatres in which Warner had an interest to United Artists, Universal, and Columbia, the non-theatre owning defendants.

143. Between 1937 and 1944 the theatres in which Warner had an interest substantially decreased the amount of film rental paid to the five theatre owning defendants, and substantially increased film rental paid to the -theatre owning defendants.

144. Of the total film revenue received Twentieth Century-Fox in 1944 from all theatres in the United States, 60.8% was paid by exhibitors not defendants in ***70** this action; 14.1% was paid by its theatres; 1.26% by Loew theatres; 5.52% RKO theatres; 13.46% by theatres in which Paramount had an interest; and 4.82% Warner theatres.

145. On January 1, 1935, there were 13,386 theatres operating in the United States. In 1945, there were 18,076 theatres operating in the United States.

146. In about 60% f the 92 cities having populations f ver 100,000, there are independent first-run theatres in competition with those f the major defendants except so far as it may e restricted by the trade practices found to have unreasonably restrained competition.

147. In about 91% of the 92 cities with ver 100,000 population, there is competition first runs between independent theatres and theatres f e or more of the defendants, or among the defendants themselves, except so far as it may e restricted the trade practices found to have unreasonably restrained competition. In the remainder f the 92 cities there is always competition in some run.

148. In the aforementioned 92 cities, at least 70% of all of the first run theatres are affiliated with e or more of the major defendants. In four of said cities there are no affiliated theatres. In 38 of said cities there are no independent first run theatres. In the remaining 50 cities the degree f first run competition varies from the most predominantly affiliated first run situations, such as Boston, Chicago, Los Angeles, Philadelphia, St. Paul, and Washington, D.C., in each f which the independent first run theatres played less than eleven of the defendants' features on first run during the 1943-44 season, to the most predominantly independent first run situations, such as Nashville, Louisville, Indianapolis, and St. Louis, where the affiliated first run theatres played at least 31 of the defendants' pictures on first run during that season. In e f the said 50 cities did less than three of the distributor-defendants license their product on first run to the affiliated theatres. In 19 of said 50 cities less than three defendant-distributors licensed their product on first run to independent theatres. In a majority of said 50 cities the major share of all of the defendants' features were licensed for first run exhibition in theatres affiliated with the major defendants.

149. Loew's operates first-run theatres in 36 of the 92 cities in the United States with more than 100,000 population; in every e of these 36 cities, there are other 'first-run' theatres exhibiting the features f e r more of the other defendant distributors; in 21 of these 36, e or more of the other first-run theatres are operated by independents. .

150. Of the 92 cities in the United States having a population in excess of 100,000, Twentieth Century-Fox is interested in first run theatres in 16 and licenses its features to them. In four of the remaining cities, e of the defendants has theatre interests. This leaves 72 cities in which there are first

run theatres perated by defendants ther than Twentieth Century-Fox. In 23 of the 72 cities, Twentieth Century-Fox licenses its features to independent exhibitors.

151. Except for a very limited umber of theatres in the very largest cities, the 18,000 and more theatres in the ited States exhibit the product of more than one distributor. Such theatres could t e perated on the product f ly e distributor.

152. There is no substantial proof that any of the corporate defendants was rganized or has been maintained for the purpose of achieving a national monopoly either in production, distribution, or exhibition f motion pictures, except as found in findings 153 and 154 below.

153. In localities where there is ership by a single defendant of all the first-run theatres, there is no sufficient proof that it has been for the purpose of creating a monopoly and has not rather arisen from the inertness of the competitors, their lack f financial ability to build theatres comparable to those of the defendants, or from the preference of the public for the best equipped houses and not from 'inherent vice' on the part of these defendants.

154. The illegalities and restraints herein found, are t in the ership f many r most f the est theatres the producer-distributors, ut in admission price- ***71** fixing, - competitive granting of runs and clearances, unreasonable clearances, formula deals, master agreements, franchises, lock-booking, pooling agreements and certain discriminations among licensees etween defendants and independents. These practices, if employed in the future, in favor of powerful independents would effect all of the undesirable results that have existed when the five exhibitor defendants and their subsidiaries have ed or controlled numerous theatres in which the defendants' pictures have been exhibited.

155. Total divestiture ould be injurious to the corporations concerned and ould e damaging to the public.

156. Total divestiture ould not remedy the price-fixing, systems of clearance, formula deals, master agreements and franchises, block-booking, pooling agreements and the ther practices which have een found unreasonably to restrict competition.

157. During the ine pre-war ears f 1933-1941, the average cost of American made Warner features rose from $241,000 in 1933 to $448,000 in 1940. By 1945 the average cost had risen to $1,371,000.

158. In the past the foreign usiness f Warner has been exceedingly profitable.

159. With the cessation of the war the foreign markets for Warner pictures are eing severely restricted.

160. The arbitration system created the Consent Decree f November 20, 1940, has demonstrated its usefulness in dealing with exhibitors' complaints f unreasonable clearance and if extended to cover differences which may occur under the system to be established by the Decree

herein, will be effective and result in quick and expeditious decisions and a saving f time and money.

Conclusions of Law.

1. The court has jurisdiction of this cause under the provisions of the Act of July 2, 1890 entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' hereinafter referred to as the Sherman Act, 15 U.S.C.A. 1-7, 15 note.

] 2. Universal Pictures Company, Inc., and Screen Gems, Inc., have not violated the Sherman Act and should be dismissed as defendants herein.

2] 3. None of the defendants herein has violated the Sherman Act by monopolizing or attempting to monopolize or conspiring to monopolize the production of motion picture films.

3] 4. The consent decree entered herein on November 20, 1940, does not foreclose enforcement in this suit at this time of any rights or remedies, which the plaintiff may have against any of the defendants by virtue of violations of the Sherman Act by them, except such acts as were in accord with such decree during the period it was in force.

4] 5. None of the defendants herein has violated the Sherman Act by combining, conspiring or contracting to restrain trade in any part of the usiness of producing motion pictures r by monopolizing, attempting to monopolize, or conspiring to monopolize such business.

6. The defendants, and each of them are entitled to judgment dismissing all claims of the plaintiff based upon their acts as producers, whether as individuals r in conjunction with others.

5] 7. The defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; iversal Film Exchanges, Inc.; Big Film Exchange, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, th before and after entry of said consent decree, in violation of the Sherman Act by:

(a) Acquiescing in the establishment of a price fixing system by conspiring with *72 one another to maintain theatre admission prices;

(b) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform in each local competitive area.

] 8. The distributor defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's,

Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures f Louisiana, Inc.; iversal Corporation; iversal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and ited Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition f motion pictures and attempted to monopolize such trade and commerce, th before and after the entry of said consent decree, in violation f the Sherman Act by:

(a) Conspiring with each other to maintain a nation-wide system of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licensees to fix minimum motion pictures theatre admission prices;

(c) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in finding No. 110 above;

(e) Agreeing individually with such licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Individually conditioning the ffer of a license for e or more copyrighted films upon the acceptance by the licensee f e r more other copyrighted films, except in the case of the United Artists Corporation;

(h) The defendants Paramount and RKO making formula deals.

7] 9. The exhibitor-defendants, Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation have unreasonably restrained trade and commerce in the distribution and exhibition f motion pictures both before and after the entry of said consent decree, in violation f the Sherman Act by:

(a) Jointly operating motion picture theatres with each ther and with independents through perating agreements r profit-sharing leases;

(b) Jointly owning motion picture theatres with each ther and with independents through stock interests in theatre buildings;

(c) Conspiring with each other and with the distributor-defendants to fix substantially uniform minimum motion pictures theatre admission prices, runs, and clearances;

(d) Conspiring with the distributor-defendants to discriminate against independent competitors in fixing minimum

admission price, run, clearance and ther license terms.

8] 10. The Formula deals, master agreements and franchises referred to in Findings 86, 88 and 89 have tended to restrain trade and violate Section 1 of the Sherman Act.

9] 11. Block-booking as hereinabove defined, violates the Sherman Act.

12. Further conclusions of law are made and embodied in the decree filed herewith.

DECREE.

Opinion

PER CURIAM.

The court having rendered its pinion herein on June 11, 1946, 66 F.Supp. 323, having duly considered the proposals f the parties and of amici curiae as to its findings and judgment, and having filed its findings of fact and conclusions of law, ***73** wherein certain of the defendants herein were found to have violated the Act f Congress approved July 2, 1890, 26 Stat. 209, commonly known as the Sherman Act.

It is hereby ordered, adjudged and decreed, as follows:

I. 1. The complaint is dismissed as to the defendants Screen Gems, Inc., and the corporation named as iversal 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 ased upon their acts as producers, whether as individuals or in conjunction with others.

II. Each f the defendant distributors, Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth-Century Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures f Louisiana, Inc.; iversal Corporation; iversal Film Exchanges, Inc.; Big Film Exchange, Inc.; and United Artists Corporation; and the successors of each f them, and any and all individuals who act in ehalf 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 50%, 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 r through a committee, r through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each ther r 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 r in specified theatres.

3. From granting any clearance etween 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 f 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. 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 e distributor during the entire period f 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 f 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 ational gross. The term 'master agreement' means a licensing agreement, also known as a 'blanket deal' covering the exhibition of features in a umber of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit e feature is conditioned upon the licensee's taking e or more other features. To the extent that any of the features have t een 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 20% of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the rder of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

***74** (a) A license to exhibit each feature released for public exhibition in any competitive area shall e offered to the perator of each theatre in such area who desires to exhibit it on some run (other than that upon which such feature is to be exhibited in the theatre of the licensor) selected by such operator, and upon uniform terms;

(b) Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others;

(c) Where a run is desired, or is to e ffered, upon terms which exclude simultaneous exhibition in competing theatres, the distributor shall tify, not less than thirty days in advance of the date when ids will be received, all exhibitors in the competitive area, offering to license the features upon

e or more runs, and in such offer shall state the amount of a flat rental as the minimum for such license for a specified umber f days f exhibition, the time when the exhibition is to commence and the availability and clearance, if any, which will be granted for each run. Within fifteen days after receiving such notice, any exhibitor in such competitive area may bid for such license, and in his bid shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage of gross receipts, r th, or any ther form of rental, and shall also specify what clearance such exhibitor is willing to accept, the time and days when such exhibitor desires to exhibit it, and any ther ffers which such exhibitor may care to make. The distributor may reject all offers made for any such feature, but in the event f the acceptance of any, the distributor shall grant such license upon the run bid for to the highest responsible bidder, having a theatre of a size, location and equipment adequate to yield a reasonable return to the licensor. The method of licensing specified in this subdivision shall t be required in areas where there is no competition among theatres or in run, or in which there is offer made by any exhibitor within the time above mentioned. The words 'exclude simultaneous exhibition' shall be held to mean the exhibition of a specified run in e theatre with clearance ver other theatres in the competitive area. The words 'competitive area' shall refer to the territory ccupied more than one theatre in which it may fairly and reasonably be said that such theatres compete with each other for the exhibition f features on any run.

(d) each license shall e offered and taken theatre by theatre and picture by picture.

(e) A theatre is not a defendant's own theatre unless it owns therein a legal or equitable interest of 95% or more, either directly r through affiliates or subsidiaries.

9. From arbitrarily refusing the demand of an exhibitor, who operates a theatre in competition with another theatre t ed r perated by a defendant distributor, r its affiliate or subsidiary, made by registered mail, addressed to the home ffice of the distributor, to license a feature to him for exhibition on a run selected by the exhibitor, instead of licensing it to another exhibitor for exhibition in his competing theatre on such run. Such demand shall be deemed to have been refused either upon the receipt by the exhibitor of a refusal in writing or upon the expiration of ten days after the receipt of the exhibitor's demand.

III. Each f the defendant exhibitors, Paramount Pictures, Inc., Loew's Incorporated, Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, RKO Proctor Corporation, RKO Midwest Corporation, Warner Bros. Pictures, Warner Bros. Circuit Management Corporation, Twentieth Century Fox Film Corporation, and National Theatres, Inc., is hereby enjoined and restrained:

(1) From performing r enforcing agreements 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 f two r more exhibitors rmally in competition are perated as a unit r whereby the usiness policies f such exhibitors are collectively determined by a join committee r e of the exhibitors r whereby profits of the 'pooled' *75 theatres are divided among the owners according to prearranged percentages. The pooling agreement e or more defendants, with thers not parties to this action which violate this provision shall be dissolved prior to July 1, 1947.

(3) From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool perates without first offering them for inclusion in the pool.

(4) From making or continuing leases f theatres under which it leases any of its theatres to another defendant r to an independent operating a theatre in the same competitive area in return for a share of the profits. The leases referred to herein etween a defendant and independents which violate this provision shall be terminated prior to July 1, 1947.

(5) From continuing to or acquiring any beneficial interest in any theatre, whether in fee or shares of stock r otherwise, in conjunction with another defendant, and from continuing to or acquire such an interest in conjunction with an independent (meaning any former, present or putative motion picture theatre perator which is t ed or controlled by the defendant holding the interest in question), where such interest shall be greater than 5% unless such interest shall be 95% or more. The existing relationships which violate this provision shall be terminated within two years. The relationships between the defendants and independents which violate this provision shall be terminated by a sale to, or purchase from the co-owner or co-owners, r by a sale to a party t e of the other defendants. In dissolving relationships among defendants and between defendants and independents which violate this provision, one defendant may acquire the interest f another defendant or independent if such defendant desiring to acquire such interest 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. Each of the defendants shall submit to this court within six months a statement outlining the extent to which it has complied and the manner in which it proposes to comply with this provision, setting forth in detail the ames, locations, and general descriptions of the theatres, corporate securities, and eneficial interests of any kind involved, the sales thereof that it has made, and such interests as it proposes to acquire, with a statement of facts regarding each competitive situation involved in such proposed acquisition sufficient to show the probable effect f such acquisition on that situation. Similar reports shall be made quarterly thereafter until this provision shall have been fully complied with. Reasonable tice of such acquisition plans shall be served upon the

Attorney General and plaintiff shall be given an opportunity to be heard with respect thereto before any such acquisition shall e approved by the court.

(6) From expanding its present theatre holdings in any manner whatsoever except as permitted in the preceding paragraph.

(7) From perating, king, r uying 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. Nothing contained in this Decree shall e construed to limit, in any way whatsoever, the right of each distributor-defendant to license, or in any way to arrange or 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 e satisfactory to it, in any theatre in which such distributor defendant has or may acquire pursuant to the terms of this Decree, a proprietary interest of 95% or more either directly or through subsidiaries.

V. The provisions of the existing consent decree are hereby declared to e f no further force r effect, except in so far as may e ecessary to conclude arbitration proceedings now pending and to liquidate in an orderly manner the financial ligations f 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. But this shall ***76** in way preclude the parties r any ther persons from setting up a reasonable system of arbitration either through the use of the present ards or any thers as among themselves.

VI. For the purpose of securing compliance with this Decree, and for other purpose, duly authorized representatives f the Department f Justice shall, written request f the Attorney General r the Assistant Attorney General in charge f antitrust matters, and notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and ther 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 e present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its fficers r employees regarding any such matters, at which interview counsel for the fficer r employee interviewed and counsel for such defendant company may be present.

Information tained pursuant to the provisions f this section shall t e divulged any representative f the Department of Justice to any person ther than a duly authorized representative of the Department of Justice, except in the course

of legal proceedings to which the ited States is a party, or as otherwise required law.

VII. Paragraphs 7 and 8 of section II of this judgment shall t become effective until July 1, 1947.

VIII. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to the judgment and others, to apply to the court at any time for such rders or direction as may e ecessary or appropriate for the construction, modification, or carrying ut f the same, for the enforcement f compliance therewith, and for the punishment of violations thereof, or for ther or further relief.

IX. The peration of this judgment is stayed for sixty days from the date hereof, and, if an appeal is taken, for thirty days thereafter in order to enable any appellant to move efore the Supreme Court for a stay in respect to any portion of the judgment from which an appeal has been taken.

In Re Findings and Decree

In order to meet some of the jections raised at the hearing to the system f idding for features described in the pinion of the court, we have modified the system there proposed so that competitive idding will ly e ecessary within a competitive area and in such an area where it is desired the exhibitors. In ther words, the decree provides an opportunity to bid for any exhibitor in a competitive area who may desire to do so.

The arrangement for arbitration and an appeal board has been terminated except as to unfinished litigations and other matters referred to in the decree, ecause of the unwillingness f some f the parties to consent to their continuance. Nevertheless, as we have indicated in the opinion, these tribunals have dealt with trade disputes, particularly those as to clearances and runs, with rare efficiency, as both government counsel and counsel for other parties have conceded.

Indeed, the arbitration system set up under the consent decree of November 20, 1940, was created pursuant to the prayer f the amended and supplemental complaint by the United States filed November 14, 1940, in which, among other things, the plaintiff prayed that 'a nation-wide system of impartial arbitration tribunals or such other means of enforcement as the court may deem proper be established pursuant to the final decree of this court in rder to secure adequate enforcement of whatever general and ation-wide prohibitions f illegal practices may be contained therein.'

We strongly recommend that some such system e continued in rder to avoid cumbersome and dilatory court litigation and to preserve the practical advantages f the tribunals created by the consent decree.

All Citations

70 F.Supp. 53

End of Document

United States v. Paramount Pictures, Inc.

334 U.S. 131

(1948)

68 S.Ct. 915
Supreme Court of the United States

UNITED STATES
v.
PARAMOUNT PICTURES, Inc., et al.
LOEW'S Inc., et al.
v.
UNITED STATES.
PARAMOUNT PICTURES, Inc., et al.
v.
SAME.
OLUMBIA PICTURES ORPORATION et al.
v.
SAME.
UNITED ARTISTS CORPORATION
v.
SAME.
UNIVERSAL PICTURES OMPANY, Inc. , et al.
v.
SAME.
AMERICAN THEATRES ASS'N, Inc., et al.
v.
UNITED STATES et al.
ALLRED et al.
v.
SAME.

Nos. 79 to 86.
|
Argued Feb. 9, 10, 11, 1948.
|
Decided May 3, 1948.

Synopsis

Suit by he United tates f America against Paramount Pictures, Inc., and hers, to prevent and restrain violations f he Sherman Anti-Trust Act, wherein American Theatres Association, Inc., and hers and W. C. Allred and hers sought intervene. Judgment denying eave intervene but granting injunction and her relief were rendered, 66 F.Supp. 323, 70 F.Supp. 53, and he United tates of America, Loew's, Incorporated, and others, Paramount Pictures, Inc., and another, Columbia Pictures Corporation and another, United Artists Corporation, Universal Pictures Company, Inc., and others, American Theatres Association, Inc., and others, and W. C. Allred and hers separately appeal.

Affirmed in part and reversed in part, and cases remanded with directions.

Mr. Justice FRANKFURTER dissenting n part.

West Headnotes (51)

] **Antitrust and Trade Regulation**
Pricing

Evidence sustained finding hat certain motion picture producers, exhibitors and censees had entered nto conspiracies fix theater admission prices. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

5 Cases that cite this headnote

2] Conspiracy

Nature and Elements in General

It s not necessary find an express agreement n rder find a conspiracy, but s sufficient that a concert of action s contemplated and that defendants conform to the arrangement.

22 Cases that cite this headnote

3] Antitrust and Trade Regulation

Price Fixing in General

o far as he Sherman Anti-Trust Act is concerned, a price-fixing combination s illegal per se. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

4 Cases that cite this headnote

4] Antitrust and Trade Regulation

Motion picture industry

Combination f wners f copyrights covering motion picture films fixing prices for exhibition f films n he movie industry would violate he Sherman Anti-Trust Act. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2; Copyright Act, § 1, 17 U.S.C.A. § 1.

10 Cases that cite this headnote

5] Antitrust and Trade Regulation

Motion picture industry

Where distributors n censes ssued to motion picture exhibitors fixed minimum admission prices which exhibitors agreed charge, the agreements constituted conspiracy monopolize nterstate rade in distribution and exhibition of motion picture films. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

1 Cases that cite this headnote

] Antitrust and Trade Regulation

Copyrights

A copyright may not be used deter competition between rivals n exploitation f heir cense. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 1; Copyright Act, § 1, 17 U.S.C.A. § 1.

3 Cases that cite this headnote

7] Antitrust and Trade Regulation

Monopolization or attempt to monopolize

Evidence sustained finding f conspiracy restrain nterstate rade in distribution and exhibition f motion picture films by imposing unreasonable clearances. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

7 Cases that cite this headnote

censee in run granted would not be modified to allow censors, n granting clearances, ake nto consideration what is reasonably necessary for a fair return censor. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

30 Cases that cite this headnote

8] Antitrust and Trade Regulation
Injunction

Where motion picture distributors had conspired restrain trade by imposing unreasonable clearances, distributors were properly enjoined from agreeing with each her r with any exhibitors r distributors maintain a system of clearances or from granting any clearance between theaters not in substantial competition or from granting r enforcing any clearance against heaters in substantial competition with theater receiving license for exhibition n excess f what s reasonably necessary protect censee n he run granted. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

22 Cases that cite this headnote

0] Antitrust and Trade Regulation
Damages and Other Relief

Where motion picture distributors had entered nto conspiracy restrain rade by imposing unreasonable clearances, provision f decree restricting clearances hat, whenever clearance provision is attacked as not egal under decree, burden should be on distributor to sustain he egality thereof was justified. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. § 1, 2.

2 Cases that cite this headnote

9] Appeal and Error
Injunction

Decree enjoining motion picture distributors from agreeing with each her or with any exhibitor or distributor to maintain system f clearances r from granting any clearances between heaters not n substantial competition r from granting r enforcing any clearance against heaters n substantial competition with heater receiving cense for exhibition n excess f what s reasonably necessary protect

] Antitrust and Trade Regulation
Damages and Other Relief

Where clearances had been used along with price fixing suppress competition with heaters of certain motion picture exhibitors, clearances could have been eliminated completely for a substantial period f me even hough they were not illegal per se.

Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

18 Cases that cite this headnote

2] **Antitrust and Trade Regulation**
Damages and Other Relief

Equity has the power to uproot all parts of an illegal scheme, he valid as well as he nvalid, n rder to rid rade or commerce of all aint of conspiracy. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

3] **Antitrust and Trade Regulation**
Damages and Other Relief

Antitrust and Trade Regulation
Injunction

Where motion picture exhibitors had agreements with each her and heir affiliates whereby heaters f wo r more f them, normally competitive, were operated as a unit or managed by a joint committee or by ne f the exhibitors, the profits being shared according to prearranged percentages, dissolution of existing pooling agreements and enjoining f future arrangement f such character was proper. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

10 Cases that cite this headnote

4] **Antitrust and Trade Regulation**
Motion picture industry

Antitrust and Trade Regulation
Motion picture industry

Antitrust and Trade Regulation
Damages and Other Relief

Antitrust and Trade Regulation
Injunction

Where joint wnership f heaters by motion picture exhibitors was a device for strengthening heir competitive position as exhibitors by forming an alliance as distributors, such joint wnership was a restraint f trade condemned by Sherman Anti-Trust Act and exhibitors were properly rdered disaffiliate by erminating joint wnership f theaters and were properly enjoined from future acquisition of such nterest. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

5] **Antitrust and Trade Regulation**
Forfeiture and seizure of property;divestiture

Where acquisitions by defendant motion picture exhibitors f nterest n heater f ndependent perators were products of unlawful practices, he acquisitions so far as they were fruits f monopolistic practices r restraints f rade should be divested and no permission

to buy ut her owner should be given to defendant exhibitor. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

6 Cases that cite this headnote

] **Antitrust and Trade Regulation**
Forfeiture and seizure of property;divestiture

Even if defendant motion picture exhibitors' acquisitions f nterest f heaters f ndependent operators were lawfully acquired, f they were utilized as part f conspiracy to eliminate or suppress competition in furtherance of ends f conspiracy, such acquisition should be divested without permission to buy ut her wner. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

4 Cases that cite this headnote

7] **Antitrust and Trade Regulation**
Forfeiture and seizure of property;divestiture

If defendant motion picture exhibitors' acquisitions f nterest n heaters f ndependent perators involved no more han nnocent investment and were not in furtherance f conspiracy eliminate or suppress competition, defendant exhibitors might be given permission acquire nterest f ndependent perator on showing that neither monopoly nor unlawful restraint f rade n exhibition of films would result. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

25 Cases that cite this headnote

8] **Antitrust and Trade Regulation**
Monopolization or attempt to monopolize

Evidence sustained findings hat licensing agreements with circuit f heaters in which license fee f a given feature is measured, for he theaters covered by agreement, by a specified percentage f feature's national gross, and that master licensing agreements covering exhibition n wo or more heaters in a particular circuit and allowing exhibitor to allocate film rental paid among he theaters as it sees fit and to exhibit features upon such playing mes as deems best, and leaves other terms to discretion of circuit, constitute unlawful restraints f trade and justified injunctions against such agreements. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

20 Cases that cite this headnote

9] **Antitrust and Trade Regulation**
Motion picture industry

Licensing agreements with circuit f heaters which eliminated possibility of bidding for motion

picture films theater by theater and hus eliminated pportunity for small competitor obtain choice first runs and put a premium on size of circuit were unlawful restraints f rade. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

14 Cases that cite this headnote

20] Antitrust and Trade Regulation

Motion picture industry

The pooling of purchasing power f an entire motion picture theater circuit in bidding for films was a misuse of monopoly power n so far as it combines he heaters in closed towns with competition situations, and distributors who joined in such arrangements by exhibitors were active participants n effectuating a restraint f trade and a monopolistic practice. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

20 Cases that cite this headnote

21] Appeal and Error

Verdict, findings, and judgment

Finding hat motion picture franchise contracts with exhibitor extending ver period f more than a motion picture season and covering exhibition f features released by distributor during period f agreement constitute a restraint f rade would be set aside so hat district court might examine problem n ght f elimination from decree f competitive bidding. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

10 Cases that cite this headnote

22] Antitrust and Trade Regulation

Injunction

"Block booking", which is practice f censing r offering for cense ne motion picture feature r group f features n condition hat exhibitor will also cense another feature r group f features released by distributor during a given period, was properly enjoined as an mproper enlargement f monopoly f copyright. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2; Copyright Act § 1, 17 U.S.C.A. § 1.

30 Cases that cite this headnote

23] Antitrust and Trade Regulation

Injunction

Performance or entering into any motion picture cense in which right exhibit ne feature s conditioned upon censee's aking ne or more other features was properly enjoined. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15

U.S.C.A. §§ 1, 2; Copyright Act, § 1, 17 U.S.C.A. § 1.

11 Cases that cite this headnote

24] Copyrights and Intellectual Property

Nature of statutory copyright

The copyright aw, ke he patent statutes, makes reward owner a secondary consideration. Copyright Act § 1, 17 U.S.C.A. § 1.

32 Cases that cite this headnote

25] Antitrust and Trade Regulation

Illegal Restraints or Other Misconduct

The policy f the anti-trust aws s not qualified r conditioned by he convenience f hose whose conduct is regulated and a vested nterest in a practice which contravenes the policy f the anti-rust laws cannot receive judicial sanction. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

26] Copyrights and Intellectual Property

Licenses in general

A refusal cense ne r more copyrights unless another copyright s accepted s egal. Copyright Act, § 1, 17 U.S.C.A. § 1; Sherman Anti–Trust Act, §§ 1, 2 as amended 15 U.S.C.A. §§ 1, 2.

4 Cases that cite this headnote

27] Antitrust and Trade Regulation

Monopolization or attempt to monopolize

Evidence sustained finding hat motion picture distributors had discriminated against small ndependent exhibitors and n favor f arge affiliated and unaffiliated motion picture circuits through various kinds of contract provisions. Sherman Anti–Trust Act, §§ 1, 2 as amended 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

28] Antitrust and Trade Regulation

Motion picture industry

Where motion picture distributors had discriminated against small ndependent exhibitors and n favor f arge affiliated and unaffiliated motion picture heater circuits hrough various kinds f contract provisions, such discriminatory practices were included among the restraints f trade which he Sherman Anti-Trust Act condemns. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

29] **Antitrust and Trade Regulation**
Illegal Restraints or Other Misconduct

Antitrust and Trade Regulation
Illegal Restraints or Other Misconduct

Acquiescence in an illegal scheme s as much a violation f he Sherman Anti-Trust Act as he creation and promotion f ne. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

20 Cases that cite this headnote

30] **Antitrust and Trade Regulation**
Damages and Other Relief

Where motion picture distributors had violated he Sherman Anti-Trust Act, provision f decree for competitive bidding was not appropriate and would be eliminated so that a more effective decree might be fashioned. Copyright Act, § 1, 17 U.S.C.A. § 1; Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

31] **Constitutional Law**
Press in General

Moving pictures, like newspapers and radio, are ncluded n he "press" whose freedom s guaranteed by he First Amendment. U.S.C.A. Const.Amend. 1.

19 Cases that cite this headnote

32] **Constitutional Law**
Enforcement of generally applicable laws

Suit enjoin violation f he Sherman Anti–Trust Act n exhibition f motion pictures, especially n first-run heaters, but not nvolving monopoly n production f moving pictures, did not present a question f freedom f press under he First Amendment. Sherman Anti–Trust Act, §§ 1, 2 as amended 15 U.S.C.A. §§ 1, 2; U.S.C.A. Const.Amend 1.

18 Cases that cite this headnote

33] **Antitrust and Trade Regulation**
Trial, Hearing and Determination

Where five major motion picture distributors-exhibitors had conspired monopolize exhibition of motion pictures, n determining need for divestiture by such distributors f heir heater holdings, was not sufficient conclude hat none f such distributors was rganized or had been maintained for purpose f achieving a national monopoly r hat hey, hrough their present theater holdings alone, did not, and could not collectively r individually, have a monopoly f

exhibition, but it was relevant determine what the results f he conspiracy were, even f they fell short of monopoly. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

6 Cases that cite this headnote

34] Antitrust and Trade Regulation
Injunction

Where court found existence f conspiracy to effect a monopoly in exhibition of motion pictures, the enjoining of continuance f unlawful restraints and dissolving combination which aunched he conspiracy was not sufficient, but he undoing f hat which he conspiracy achieved was required. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

35] Antitrust and Trade Regulation
Forfeiture and seizure of property;divestiture

Where court found hat defendant distributors-exhibitors had conspired monopolize exhibition of motion pictures, he problem under he Sherman Anti-Trust Act was not solved merely by measuring monopoly n erms of size or extent of each defendant's theater holdings or by concluding that single wnerships f heaters were not obtained for purpose f achieving a national monopoly, but was he relationship f the unreasonable restraint f rade

the position of defendants n the exhibition field that was f first mportance n determining whether divestiture f heater holdings should be required f major distributors. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

17 Cases that cite this headnote

36] Antitrust and Trade Regulation
Illegal Restraints or Other Misconduct

The Sherman Anti-Trust Act utlaws unreasonable restraints rrespective of amount f rade or commerce nvolved. Sherman Anti-Trust Act, § 1, as amended, 15 U.S.C.A. § 1.

3 Cases that cite this headnote

37] Antitrust and Trade Regulation
Elements in General

Under provision f Sherman Anti-Trust Act condemning monopoly f "any part" f rade r commerce, he quoted phrase means an appreciable part f nterstate r foreign rade r commerce. Sherman Anti-Trust Act, § 2, as amended, 15 U.S.C.A. § 2.

18 Cases that cite this headnote

38] **Antitrust and Trade Regulation**
Intent

Specific ntent s not necessary to establish a purpose r ntent create a monopoly, but he requisite purpose r ntent s present if monopoly results as a necessary consequence of what was done. Sherman Anti-Trust Act, § 2, as amended, 15 U.S.C.A. § 2.

3 Cases that cite this headnote

39] **Antitrust and Trade Regulation**
Elements in General

Monopoly power, whether awfully or unlawfully acquired, may violate he provision f Sherman Anti-Trust Act condemning monopoly of any part f rade r commerce hough he power remains unexercised. Sherman Anti-Trust Act, § 2, as amended, 15 U.S.C.A. § 2.

1 Cases that cite this headnote

40] **Appeal and Error**
Verdict, findings, and judgment
Federal Courts
Particular cases

In suit restrain violations f Sherman Anti-Trust Act n exhibition f motion pictures where court found hat five major distributors-exhibitors had conspired monopolize exhibition f pictures, findings regarding necessity for divestiture by such defendants f heir heater holdings were deficient, findings would be set aside, and case would be remanded for perfection f findings. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

1 Cases that cite this headnote

41] **Antitrust and Trade Regulation**
Motion picture industry
Antitrust and Trade Regulation
Motion picture industry

Under he Sherman Anti-Trust Act he egality f vertical ntegration of producing, distributing and exhibiting motion pictures urns on purpose f ntent with which it was conceived r power it creates and the attendant purpose r ntent. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

3 Cases that cite this headnote

42] **Antitrust and Trade Regulation**
Motion picture industry
Antitrust and Trade Regulation
Motion picture industry

Vertical ntegration of producing, distributing and exhibiting motion pictures s egal f was a calculated scheme to gain control over an appreciable segment f he market and restrain r

suppress competition rather han an expansion to meet egitimate business needs. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

7 Cases that cite this headnote

43] Antitrust and Trade Regulation

Vertical

A vertically integrated enterprise, ke other aggregations of business units, will constitute a monopoly, which, although unexercised, violates he Sherman Anti–Trust Act provided a power to exclude competition s coupled with a purpose r ntent do so. Sherman Anti–Trust Act, §§ 1, 2 as amended 15 U.S.C.A. §§ 1, 2.

10 Cases that cite this headnote

44] Antitrust and Trade Regulation

Market Power;Market Share

ize s self an earmark f monopoly power, and the fact hat power created by size was utilized n the past to crush or prevent competition is potent evidence hat he requisite purpose r ntent attends the presence of monopoly power. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

10 Cases that cite this headnote

45] Antitrust and Trade Regulation

Vertical

The nature f market be served and he everage n he market which particular vertical ntegration f business creates r makes possible s material in determining whether monopoly power is created by the vertical ntegration. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

6 Cases that cite this headnote

46] Appeal and Error

Verdict, findings, and judgment

Where district court considered competitive bidding for motion picture films as an alternative to divestiture f theater holdings by major exhibitor defendants n Sherman Anti-Trust suit, he elimination f he competitive bidding provisions from decree necessitated the setting aside f findings n divestiture so hat a new start n such phase f case might be made on remand. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. § 1, 2.

48 Cases that cite this headnote

47] Appeal and Error

Verdict, findings, and judgment

Where district court's findings n monopoly and divestiture

f heater holdings by five major motion picture distributor-exhibitor defendants n Sherman Anti-Trust suit were set aside because deficient, provision f decree barring he five major exhibitors from further heater expansion would be eliminated, since such provision related monopoly question and district court would be allowed to make an entirely fresh start on the entire problem. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

25 Cases that cite this headnote

48] Appeal and Error

Trade, Business, and Finance

Where five major motion picture distributors-exhibitors had conspired monopolize exhibition f motion pictures, whether a prohibition against censing f films among he five major distributors-exhibitors would serve as a short range remedy n certain situations dissipate he effect f he conspiracy was question for district court. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

6 Cases that cite this headnote

49] Alternative Dispute Resolution

Jurisdiction and powers of court

Antitrust and Trade Regulation

Damages and Other Relief

Federal Courts

Review of federal district courts

Where district court found hat defendants had conspired monopolize exhibition of motion pictures, district court had no power to require parties to submit to arbitration n eu of remedies afforded by Congress for enforcing the anti-trust laws, but court had power to authorize maintenance f arbitration system by those parties who consent and to provide rules and procedure under which it was operate, but whether such a system of arbitration, should be inaugurated was for discretion f district court. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

3 Cases that cite this headnote

50] Antitrust and Trade Regulation

Right of Action;Persons Entitled to Sue; tanding; Parties

The Department of Justice s he representative f the public in anti-trust suits. Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

51] Appeal and Error

Intervention or addition of new parties

In Sherman Anti-Trust suit against motion picture producers, distributors and exhibitors, where independent exhibitors sought intervene, claiming that system f competitive bidding provided by decree would operate prejudicially heir rights, riginal motion for eave ntervene would not be granted n view f he Supreme Court's elimination f provision for competitive bidding. Federal Rules of Civil Procedure, rule 24(a), 28 U.S.C.A. following section 723c; Sherman Anti-Trust Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

17 Cases that cite this headnote

**920 *131 Appeals from the District Court f the United States for he outhern District of New York.

Attorneys and Law Firms

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Mr. Thurman Arnold, of Washington, D.C., for American Theatres Ass'n and others.

Messrs. John G. Jackson, of New York City, and Robert T. Barton, of Richmond, Va., for W. C. Allred and others.

Mr. John W. Davis, of New York City, for Loew's Inc.

*139 Mr. Whitney North Seymour, of New York City, for Paramount Pictures, Inc., and another.

Mr. William J. Donovan, f Washington, D.C., for Radio-Keith-Orpheum Corporation and others.

Mr. Louis D. Frohlich, of New York City, for Columbia Pictures Corporation and another.

Mr. Thomas Turner Cooke, of New rk City, for Universal Pictures Co. and others.

Mr. George A. Raftery, of New York City, for United Artists Corporation.

Mr. Joseph M. Proskauer, of New rk City, for Warner Bros. Pictures, Inc., and hers.

Mr. James F. Byrnes, of Washington, D.C., for Twentieth Century-Fox and others.

Opinion

**921 *140 Mr. Justice DOUGLAS delivered the opinion of the Court.

These cases are here on appeal[1] from a judgment of a three-judge District Court[2] holding hat the defendants had violated s 1 and s 2 f he Sherman Act, 26 Stat. 209, as amended, 50 Stat. 693, 15 U.S.C. ss 1, 2, 15

U.S.C.A. ss 1, 2, and granting an njunction and other relief. D.C., 66 F.Supp. 323; Id., D.C., 70 F.Supp. 53.

The suit was nstituted by he United tates under s 4 f he Sherman Act, 15 U.S.C.A. s 4, prevent and restrain violations f it. The defendants fall nto hree groups: (1) Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation, which produce motion pictures, and their respective subsidiaries or affiliates which distribute and exhibit films. These are known as he five major defendants or exhibitor-defendants. (2) Columbia Pictures Corporation and Universal Corporation, which produce motion pictures, and heir subsidiaries which distribute films. (3) United Artists Corporation, which s engaged nly n the distribution of motion pictures. The five majors, hrough their subsidiaries r affiliates, wn or control heatres; he her defendants do not.

The complaint charged hat the producer defendants had attempted to monopolize and had monopolized the production f motion pictures. The District Court found the contrary and that finding is not challenged here. The complaint charged hat all he defendants, as distributors, had conspired to restrain and monopolize and ***141** had restrained and monopolized nterstate rade n he distribution and exhibition f films by specific practices which we will shortly relate. It also charged hat the five major defendants had engaged in a conspiracy to restrain and nonopolize, and had restrained and monopolized, nterstate rade n the exhibition of motion pictures n most f he arger cities f the country. It charged hat the vertical combination f producing, distributing, and exhibiting motion pictures by each f he five major defendants violated s 1 and s 2 f he Act. It charged hat each distributor-defendant had entered nto various contracts with exhibitors which unreasonably restrained trade. Issue was joined; and a trial was had. [3]

First. Restraint of Trade—(1) Price Fixing.

No film s sold an exhibitor n he distribution of motion pictures. The right to exhibit under copyright s licensed. The District Court found hat the defendants n he censes hey issued fixed minimum admission prices which the exhibitors agreed to charge, whether the rental f the film was a flat amount or a percentage f he receipts. It found that substantially uniform minimum prices had been established n he censes of all defendants. Minimum prices were established in master agreements or franchises which were made between various defendants as distributors and various defendants as exhibitors and n joint operating agreements made by the five majors with each her ***142** and with ndependent heatre owners covering he peration of certain heatres. [4] By hese ****922** later contracts minimum admission prices were often fixed for dozens f heatres wned by a particular defendant n a given area f the United States. Minimum prices were fixed n censes of each f the five major defendants. The her hree

defendants made the same requirement n licenses granted the exhibitor-defendants. We do not stop elaborate n hese findings. They are adequately detailed by he District Court n s pinion. See 66 F.Supp. 334—339.

] 2] The District Court found hat wo price-fixing conspiracies existed—a horizontal one between all the defendants, a vertical ne between each distributor-defendant and s licensees. The latter was based on express agreements and was plainly established. The former was inferred from he pattern f price-fixing disclosed n the record. We hink there was adequate foundation for too. It is not necessary find an express agreement n rder to find a conspiracy. It is enough that a concert f action s contemplated and hat he defendants conformed the arrangement. Interstate Circuit v. United States, 306 U.S. 208, 226, 227, 59 S.Ct. 467, 474, 83 L.Ed. 610; United States v. Masonite Corp., 316 U.S. 265, 275, 62 S.Ct. 1070, 1076, 86 L.Ed. 1461. That was shown here.

On this phase f the case the main attack s n the decree which enjoins the defendants and their affiliates ***143** from granting any license, except heir wn heatres, in which minimum prices for admission to a heatre are fixed in any manner or by any means. The argument runs as follows: United tates v. General Electric Co., 272 U.S. 476, 47 S.Ct. 192, 71 L.Ed. 362, held that an wner of a patent could, without violating he Sherman Act, grant a cense to manufacture and vend and could fix the price at which he licensee could sell the patented article. It is pointed ut that defendants do not sell the films to exhibitors, but nly cense them and hat the Copyright Act, 35 tat. 1075, 1088, 17 U.S.C. ss 1, 17 U.S.C.A. s 1, ke the patent statutes, grants he wner exclusive rights.[5] And is argued hat f the patentee can fix the price at which his licensee may sell the patented article, he wner f the copyright should be allowed he same privilege. It is maintained that such a privilege is essential to protect the value f he copyrighted films.

3] 4] We start, of course, from the premise hat so far as the Sherman Act is concerned, a price-fixing combination s illegal per se. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811, 84 L.Ed. 1129; United tates v. Masonite Corporation, supra. We recently held n United tates v. United States Gypsum Co., 333 U.S. 364, 68 S.Ct. 525, that even patentees could not regiment an entire industry by censes containing price-fixing agreements. What was said here is adequate to bar defendants, hrough their horizontal conspiracy, from fixing prices for the exhibition of films n he movie industry. Certainly the rights f he copyright owner are no greater han hose f he patentee.

5]] Nor can the result be different when we come the vertical conspiracy between each distributor-defendant and his licensees. The District Court stated n s findings (70 F.Supp. 61): 'In agreeing maintain a stipulated minimum admission price, each exhibitor thereby consents ***144** the minimum price level at which will compete against her censees f he same distributor whether they exhibit n he same run or not. The total effect s hat

hrough the separate contracts between he distributor and its licensees a price structure s erected which regulates he censees' ability to compete against one another n admission prices.'

**923 That consequence seems to us to be incontestable. We stated n United States v. United States Gypsum Co., supra, at page 401 f 333 U.S., at page 545 of 68 S.Ct., that 'The rewards which flow the patentee and his licensees from the suppression f competition hrough the regulation of an industry are not reasonably and normally adapted to secure pecuniary reward for he patentee's monopoly.' The same s rue f the rewards f the copyright owners and heir censees n the present case. For here he censes are but a part f he general plan to suppress competition. The case where a distributor fixes admission prices to be charged by a single independent exhibitor, no her censees or exhibitors being in contemplation, seems to be wholly academic, as the District Court pointed out. It s, therefore, plain that United States v. General Electric Co., supra, as applied n the patent cases, affords no haven he defendants n this case. For a copyright may no more be used than a patent deter competition between rivals n he exploitation f heir censes. See Interstate Circuit v. United States, supra, 306 U.S. at page 230, 59 S.Ct. at page 476, 83 L.Ed. 610.

(2) Clearances and Runs.

7] Clearances are designed protect a particular run f a film against a subsequent run.[6] The District Court *145 found that all f the distributor-defendants used clearance provisions and hat hey were stated in several different ways r n combinations: n erms f a given period between designated runs; n erms of admission prices charged by competing heatres; n erms f a given period f clearance over specifically named heatres; n erms of so many days' clearance ver specified areas r wns; r n erms f clearances as fixed by other distributors.

The Department f Justice maintained below that clearances are unlawful per se under he Sherman Act. But hat s a question we need not consider, for he District Court ruled herwise and hat conclusion is not challenged here. In its view their justification was found n the assurance they give the exhibitor hat the distributor will not license a competitor to show the film either at the same me or so soon hereafter hat the exhibitor's expected income from he run will be greatly diminished. A clearance when used to protect hat nterest f he exhibitor was reasonable, n the view f he court, when not unduly extended as to area or duration. Thus the court concluded hat although clearances might indirectly affect admission prices, they do not fix them and hat they may be reasonable restraints f rade under the Sherman Act.

The District Court held hat in determining whether a clearance is unreasonable, he following factors are relevant:

(1) The admission prices f he heatres nvolved, as set by the exhibitors;

(2) The character and cation f he heatres nvolved, ncluding size, ype f entertainment, appointments, ransit facilities, etc.;

***146** (3) The policy f peration f he heatres involved, such as the showing f double features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.;

(4) The rental terms and license fees paid by he heatres involved and the revenues derived by the distributor-defendant from such theatres;

(5) The extent to which he heatres nvolved compete with each other for patronage;

(6) The fact hat a heatre nvolved s affiliated with a defendant-distributor r ****924** with an ndependent circuit f heatres should be disregarded; and

(7) There should be no clearance between heatres not in substantial competition.

It reviewed the evidence n ght f hese standards and concluded that many f he clearances granted by the defendants were unreasonable. We do not stop to retrace those steps. The evidence is ample to show, as the District Court plainly demonstrated, see 66 F.Supp. pages 343—346, that many clearances had no relation the competitive factors which alone could justify hem. [7] The clearances which were in vogue had, indeed, acquired a fixed and uniform character and were made applicable to situations without regard the special circumstances which are necessary to sustain them as reasonable restraints f trade. The evidence is ample to support he ***147** finding f the District Court hat the defendants either participated in evolving this uniform system of clearances or acquiesced n it and so furthered s existence. That evidence, ke the evidence n the price-fixing phase f the case, s therefore adequate to support the finding f a conspiracy to restrain trade by mposing unreasonable clearances.

8| **9|** The District Court enjoined defendants and their affiliates from agreeing with each her r with any exhibitors r distributors maintain a system f clearances, r from granting any clearance between theatres not in substantial competition, or from granting or enforcing any clearance against heatres in substantial competition with he theatre receiving he license for exhibition in excess of what s reasonably necessary to protect he censee n the run granted. In view f the findings his relief was plainly warranted.

ome f he defendants ask hat his provision be construed (or, if necessary, modified) allow censors n granting clearances ake into consideration what s reasonably necessary for a fair return he licensor. We reject that suggestion. If hat were allowed, hen the exhibitor-defendants would have an easy method of keeping alive at least some f the consequences f he effective conspiracy which hey aunched. For hey could hen justify clearances granted by other distributors in favor f heir heatres n erms f the competitive requirements f hose theatres, and at he same time justify the restrictions hey mpose upon ndependents n erms f the necessity of protecting their film rental as censor.

That s too potent a weapon eave n he hands f hose whose proclivity unlawful conduct has been so marked. It plainly should not be allowed so long as the exhibitor-defendants wn theatres. For n its baldest erms s n the hands f the defendants no ess than a power restrict the competition f hers n the way **148** deemed most desirable by them. In the setting f this case he only measure f reasonableness of a clearance by Sherman Act standards s the special needs f he licensee for the competitive advantages affords.

Whether the same restrictions would be applicable to a producer who had not been a party to such a conspiracy is a question we do not reach.

0]] 2] Objection s made a further provision f his part f he decree stating that 'Whenever any clearance provision is attacked as not legal under the provisions f this decree, the burden shall be upon the distributor to sustain he egality thereof.' We hink that provision was justified. Clearances have been used along with price fixing to suppress competition with he heatres f the exhibitor-defendants and with other favored exhibitors. **925 The District Court could therefore have eliminated clearances completely for a substantial period f time, even though, as hought, they were not illegal per se. For equity has the power to uproot all parts of an illegal scheme—the valid as well as he nvalid—in rder to rid he rade r commerce of all aint f the conspiracy. United States v. Bausch & Lomb Optical Co., 321 U.S. 707, 724, 64 S.Ct. 805, 814, 88 L.Ed. 1024. The court certainly then could ake he lesser step of making them prima facie invalid. But we do not rest n hat alone. As we have said, he only justification for clearances n the setting f this case s n erms f the special needs f he censee for the competitive advantages they afford. To place n the distributor the burden f showing their reasonableness s to place n he one party n the best position to evaluate their competitive effects. Those who have shown such a marked proclivity for unlawful conduct are in no position to complain hat they carry the burden of showing hat heir future clearances come within he law. Cf. United States v. Crescent Amusement Co., 323 U.S. 173, 188, 65 S.Ct. 254, 261, 89 L.Ed. 160.

149 (3) Pooling Agreements; Joint Ownership.

3] 4] The District Court found he exhibitor-defendants had agreements with each other and their affiliates by which heatres f wo or more f them, normally competitive, were operated as a unit, r managed by a joint committee or by ne f the exhibitors, the profits being shared according to prearranged percentages. ome f these agreements provided hat the parties might not acquire other competitive heatres without first ffering them for nclusion n the pool. The court concluded hat he result f these agreements was to eliminate competition pro tanto both in exhibition and in distribution of features,[8] since he parties would naturally direct the films he heatres in whose earnings they were nterested.

The District Court also found hat he exhibitor-defendants had ke agreements with certain independent exhibitors. Those alliances had, n s view, he effect f nullifying competition between the allied theatres and of making more effective he competition f the group against heatres not members f the pool. The court found hat in some cases he operating agreements were achieved hrough eases f heatres, he rentals being measured by a percentage f profits earned by he heatres n the pool. The District Court required the dissolution of existing pooling agreements and enjoined any future arrangement of that character.

These provisions f the decree will stand. The practices were bald efforts to substitute monopoly for competition and to strengthen the hold f the exhibitor-defendants n he industry by alignment of competitors n their side. Clearer restraints f trade are difficult to imagine.

There was another ype f business arrangement hat the District Court found have he same effect as he ***150** pooling agreements just mentioned. Many theatres are owned jointly by wo or more exhibitor-defendants r by an exhibitor-defendant and an ndependent.[9] The result is, according ****926** the District Court, hat he theatres are operated 'collectively rather than competitively.' And where he joint owners are an exhibitor-defendant and an ndependent the effect is, according the District Court, the elimination by he exhibitor-defendant of 'putative competition between itself and he other joint owner, who otherwise would be in a position perate heatres independently.' The District Court found these joint wnerships f heatres be unreasonable restraints f trade within he meaning of the Sherman Act.

The District Court rdered the exhibitor-defendants disaffiliate by erminating heir joint wnership f heatres; ***151** and it enjoined future acquisitions of such nterests. One s authorized buy ut he her f it shows the satisfaction f the District Court and that court first finds that such acquisition 'will not unduly restrain competition n the exhibition f feature motion pictures.' This dissolution and prohibition f joint wnership as between exhibitor-defendants was plainly warranted. To the extent hat they have joint nterests n he utlets for heir films each n practical effect grants he other a priority for the exhibition f s films. For n his situation, as n he case where theatres are jointly managed, the natural gravitation of films s he heatres in whose earnings the distributors have an interest. Joint ownership between exhibitor-defendants then becomes a device for strengthening their competitive position as exhibitors by forming an alliance as distributors. An express agreement to grant each her the preference would be a most effective weapon to stifle competition. A working arrangement r business device that has that necessary consequence gathers no immunity because f its subtlety. Each is a restraint f trade condemned by he Sherman Act.

The District Court also ordered disaffiliation n hose instances where theatres were jointly owned by an exhibitor-defendant and an

independent, and where he nterest f he exhibitor-defendant was 'greater than 5% unless such interest shall be 95% or more,' an independent being defined for this part f the decree as 'any former, present r putative motion picture heatre perator which is not wned or controlled by he defendant holding he nterest in question.' The exhibitor-defendants are authorized acquire existing nterests f he ndependents n hese heatres f they establish, and f he District Court first finds hat the acquisition 'will not unduly restrain competition n he ***152** exhibition of feature motion pictures.' All other acquisitions of such joint nterests were enjoined.

This phase f he decree s strenuously attacked. We are asked to eliminate it for ack of findings to support it. The argument s hat the findings show no more han he existence of joint wnership f theatres by exhibitor-defendants and independents. The statement by the District Court hat the joint ownership eliminates 'putative competition' is said to be a mere conclusion without evidentiary support. For is said hat he facts f he record show hat many f he nstances of joint ownership with an ndependent interest are cases wholly devoid of any history f or relationship to restraints f rade or monopolistic practices. ome are said to be rather fortuitous results f bankruptcies; others are said to be the results f investments by utside interests who have no desire or capacity perate theatres, and so on.

It s conceded hat he District Court made no nquiry nto he circumstances under which a particular interest had been acquired. It treated all relationships alike, insofar as the disaffiliation provision f he decree is concerned. In this we hink it erred.

5]] We have gone nto the record far enough to be confident that at east some f these acquisitions by the exhibitor-defendants were the products f the unlawful practices which the defendants have nflicted n he industry. To the extent hat hese acquisitions were the fruits of monopolistic practices or restraints f rade, they should be divested. And no ****927** permission buy ut he her wner should be given a defendant. United States v. Crescent Amusement Co., supra, 323 U.S. at page 189, 65 S.Ct. at page 262, 89 L.Ed. 160; Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 68 S.Ct. 947. Moreover, even f lawfully acquired, they may have been utilized as part f the conspiracy to eliminate r suppress competition n furtherance f he ends f he conspiracy. In hat event divestiture would likewise be justified. United States v. Crescent Amusement Co., supra, 323 U.S. at pages 189, 190, 65 S.Ct. at page 262, 89 L.Ed. 650. ***153** In that situation permission to acquire he nterest f he independent would have he unlawful effect of permitting the defendants complete their plan to eliminate him.

Furthermore, f the joint wnership is an alliance with ne who s r would be an operator but for the join wnership, divorce should be decreed even hough he affiliation was innocently acquired. For hat joint ownership would afford pportunity to perpetuate the effects f the restraints f trade which the exhibitor-defendants have nflicted on the industry.

7] It seems, however, that some f he cases of joint ownership do not fall nto any f the categories we have sted. ome apparently involve no more han nnocent investments by those who are not actual r potential perators. If n such cases the acquisition was not improperly used n furtherance f the conspiracy, its retention by defendants would be justified absent a finding that no monopoly resulted. And n hose instances permission might be given the defendants to acquire he nterests f he ndependents on a showing by them and a finding by the court that neither monopoly nor unreasonable restraint f rade n he exhibition of films would result. In short, we see no reason to place a ban n his ype f wnership, at east so ng as heatre ownership by the five majors is not prohibited. The results f inquiry along he lines we have indicated must await further findings f the District Court on remand f he cause.

(4) Formula Deals, Master Agreements, and Franchises.

8] 9] 20] A formula deal is a censing agreement with a circuit f heatres n which he license fee of a given feature s measured, for he theatres covered by he agreement, by a specified percentage f he feature's national gross. The District Court found that Paramount and RKO *154 had made formula deals with independent and affiliated circuits. The circuit was allowed to allocate playing time and film rentals among the various theatres as it saw fit. The nclusion f heatres of a circuit nto a single agreement gives no pportunity for her heatre wners to bid for he feature n their respective areas and, n he view f the District Court, s therefore an unreasonable restraint f trade. The District Court found some master agreements[10] pen the same objection. Those are he master agreements that cover exhibition n wo or more heatres in a particular circuit and allow the exhibitor to allocate the film rental paid among he theatres as it sees fit and to exhibit the features upon such playing time as it deems best, and eaves her erms the discretion f the circuit. The District Court enjoined the making r further performance of any formula deal f he type described above. It also enjoined the making or further performance of any master agreement covering the exhibition f features in a number of theatres.

The findings f he District Court n these respects are supported by facts, s conclusion that formula deals and master agreements constitute restraint f rade s valid, and the relief is proper. The formula deals and master agreements are unlawful restraints f rade n two respects. In he first place, they eliminate the possiblity f bidding for films theatre by theatre. In hat way they eliminate he opportunity for he small competitor **928 btain the choice first runs, and put a premium n the size f the circuit. They are, therefore, devices for stifling competition and diverting he cream of the business to the large operators. In the second place, the pooling f he purchasing power of an entire circuit n bidding for films is a misuse of monopoly power *155 insofar as it combines he heatres in closed towns with competitive

situations. The reasons have been stated n United States v. Griffith, 334 U.s,. 100, 68 S.Ct. 941, and Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 68 S.Ct. 947, and need not be repeated here. It is hardly necessary to add that distributors who join n such arrangements by exhibitors are active participants in effectuating a restraint f trade and a monopolistic practice. See United States v. Crescent Amusement Co., supra, 323 U.S. at page 183, 65 S.Ct. at page 259, 89 L.Ed. 160.

21] The District Court also enjoined he making r further performance f any franchise. A franchise is a contract with an exhibitor which extends over a period of more than a motion picture season and covers the exhibition of features released by the distributor during the period f he agreement. The District Court held that a franchise constituted a restraint f rade because a period of more han one season was long and he nclusion of all features was disadvantageous competitors. At east that is the way we read its findings.

Universal and United Artists bject he utlawry of franchise agreements. Universal points ut hat the charge f egality f franchises n these cases was restricted franchises with theatres owned by the major defendants and to franchises with circuits r heatres n a circuit, a circuit being defined n the complaint as a group f more than five theatres controlled by he same person or a group of more than five theatres which franchises with circuits r heatres in a films. It seems, herefore, hat he egality of franchises other exhibitors (except as to block-booking, a practice which we will later advert) was not n ssue n he litigation. Moreover, the findings on franchises are clouded by the statement f the District Court n he pinion hat franchises 'necessarily contravene the plan f licensing each picture, theatre by heatre, the highest bidder.' As will be seen hereafter, we eliminate from the decree ***156** he provision for competitive bidding. But for s nclusion of competitive bidding the District Court might well have reated the problem f franchises differently.

We can see hos if franchises were allowed to be used between the exhibitor-defendants each might be able strengthen s strategic position n the exhibition field and continue he ill effects f the conspiracy which the decree is designed to dissipate. Franchise agreements may have been employed as devices to discriminate against some ndependents n favor f hers. We know from the record that franchise agreements often contained discriminatory clauses perating n favor not nly f heatres owned by the defendants but also f he large circuits. But we cannot say n this record that franchises are egal per se when extended to any heatre r circuit no matter how small. The findings do not deal with he issue doubtlessly due the fact that any system of franchises would necessarily conflict with the system f competitive bidding adopted by the District Court. Hence we set aside the findings n franchises so hat the court may examine he problem n he ght f the elimination from he decree of competitive bidding.

We do not ake that course n the case f formula deals and master agreements, for he

findings n hese instances seem to stand n heir own bottom and apparently have no necessary dependency n the provision for competitive bidding.

(5) Block-Booking.

22] 23] Block-booking s the practice f censing, r offering for cense, ne **929 feature or group of features on condition hat the exhibitor will also license another feature or group of features released by he distributors during a given period. The films are censed in blocks before they are actually produced. All the defendants, except United Artists, have engaged in the practice. Block-booking prevents competitors from bidding for single features n heir *157 ndividual merits. The District Court (66 F.Supp. 349) held illegal for that reason and for he reason hat it 'adds the monopoly of a single copyrighted picture hat of another copyrighted picture which must be aken and exhibited n rder to secure the first.' That enlargement f the monopoly f he copyright was condemned below in reliance n the principle which forbids he wner f a patent to condition its use n the purchase or use of patented or unpatented materials. See Ethyl Gasoline Corporation v. United States, 309 U.S. 436, 459, 60 S.Ct. 618, 626, 84 L.Ed. 852; Morton Salt Co. v. Suppiger Co., 314 U.S. 488, 491, 62 S.Ct. 402, 404, 86 L.Ed. 363; Mercoid Corp. v. Mid-Continent Investment Co., 320 U.S. 661, 665, 64 S.Ct. 268, 271, 88 L.Ed. 376. The court enjoined defendants from performing or entering nto any cense in which the right to exhibit ne feature is conditioned upon he censee's aking one or more other features. [11]

24] *158 We approve that restriction. The copyright aw, ke the patent statutes, makes reward he owner a secondary consideration. In Fox Film Corp. v. Doyal, 286 U.S. 123, 127, 52 S.Ct. 546, 547, 76 L.Ed. 1010, Chief Justice Hughes spoke as follows respecting the copyright monopoly granted by Congress 'The sole nterest f the United States and the primary bject n conferring the monopoly e n the general benefits derived by the public from he abors of authors.' It is said that reward he author or artist serves induce release he public of the products of his creative genius. But the reward does not serve its public purpose f is not related the quality f the copyright. Where a high quality film greatly desired s censed nly if an nferior ne s aken, he latter borrows quality from the former and strengthens its monopoly by drawing n he other. The practice ends equalize rather than differentiate the reward for he individual copyrights. Even where all the films ncluded n the package are of equal quality, the requirements that all be aken f ne is desired ncreases the market for some. Each stands not n s own footing but n whole r in part n the appeal which another film may have. As the District Court said, the result s to add the monopoly f he copyright in violation f the principle f he patent cases involving tying clauses. [12]

*159 It is argued hat **930 Transparent-Wrap Machine Corp. v. Stokes & Smith Co., 329 U.S. 637, 67 S.Ct. 610, 91 L.Ed. 563, points to a contrary result. That case held hat he nclusion in a patent cense f a condition requiring he censee to assign

improvement patents was not per se egal. But that decision, confined mprovement patents, was greatly influenced by the federal statute governing assignments of patents. It therefore has no controlling significance here.

25] Columbia Pictures makes an earnest argument that enforcement f the restriction as block-booking will be very disadvantageous it and will greatly mpair its ability operate profitably. But he policy f the anti-trust aws is not qualified or conditioned by the convenience f hose whose conduct is regulated. Nor can a vested nterest, in a practice which contravenes he policy f the anti-trust laws, receive judicial sanction.

26] We do not suggest that films may not be sold in blocks or groups, when here s no requirement, express r implied, for he purchase of more than one film. All we hold to be egal is a refusal cense ne r more copyrights unless another copyright s accepted.

(6) Discrimination.

27] The District Court found hat defendants had discriminated against small independent exhibitiors and in favor f arge affiliated and unaffiliated circuits hrough various kinds f contract provisions. These included suspension f he erms f a contract f a circuit heatre remained closed for more han eight weeks with reinstatement without ability on reopening; allowing large privileges n he selection and elimination f films; ***160** allowing deductions in film rentals f double bills are played; granting moveovers[13] and extended runs; granting road show privileges;[14] allowing verage and underage;[15] granting unlimited playing time; excluding foreign pictures and hose f ndependent producers; and granting rights question he classification f features for rental purposes. The District Court found hat the competitive advantages f hese provisions were so great hat heir nclusion in contracts with he arger circuits and their exclusion from contracts with he small ndependents constituted an unreasonable discriminatory contract constituted a conspiracy discriminatory contract constituted a conspiracy between licensor and licensee. Hence the District Court deemed unnecessary decide whether he defendants had conspired among hemselves make hese discriminations. No provision f the decree specifically enjoins hese discriminatory practices because they were hought to be impossible under the system of competitive bidding adopted by the District Court.

28] These findings are amply supported by the evidence. We concur n the conclusion hat hese discriminatory practices are included among the restraints f trade which he Sherman Act condemns. ****931** See Interstate Circuit v. United States, supra, 306 U.S. at page 231, 59 S.Ct. at page 476, 83 L.Ed. 610; United States v. Crescent Amusement Co., supra, 323 U.S. at pages 182, 183, 65 S.Ct. at page 259, 89 L.Ed. 160. It will be for he ***161** District Court on remand f these cases to provide effective relief against heir continuance, as ur elimination f he provision for

competitive bidding eaves this phase f he cases unguarded.

29] There is some suggestion n this as well as n other phases f the cases hat large exhibitors with whom defendants dealt fathered he egal practices and forced hem nto he defendants. But as he District Court bserved, that circumstance f true does not help the defendants. For acquiescence in an illegal scheme is as much a violation f he Sherman Act as the creation and promotion of one.

Second—Competitive Bidding.

30] The District Court concluded hat he only way competition could be ntroduced nto the existing system of fixed prices, clearances and runs was to require that films be censed on a competitive bidding basis. Films are to be ffered to all exhibitors n each competitive area.[16] The cense for the desired run s to be granted the highest responsible bidder, unless he distributor rejects all offers. The licenses are to be offered and aken theatre by heatre and picture by picture. Licenses to show films n heatres, in which he censor wns directly r indirectly an nterest of ninety-five per cent or more, are excluded from he requirement for competitive bidding.

Paramount s he nly ne f he five majors who pposes the competitive bidding system. Columbia Pictures, Universal, and United Artists ppose it. The ntervenors representing certain ndependents ppose . And *162 the Department of Justice, which apparently proposed the system riginally, speaks strongly against it here.

At first blush here is much to commend he system f competitive bidding. The trade victims f this conspiracy have n large measure been the small ndependent operators. They are he nes that have felt most keenly he discriminatory practices and predatory activities in which defendants have freely indulged. They have been he victims f the massed purchasing power f he larger units n he industry. It s argely ut f the ruins f the small perators hat he large empires of exhibitors have been built. Thus it would appear to be a great boon hem to substitute pen bidding for the private deals and favors on which he arge operators have hrived. But after reflection we have concluded hat competitive bidding nvolves the judiciary so deeply n the daily peration f this nation-wide business and promises such dubious benefits that it should not be undertaken.

Each film s to be censed on a particular run to 'the highest responsible bidder, having a heatre of a size, location and equipment adequate to yield a reasonable return he licensor.' The bid 'shall state what run such exhibitor desires and what he is willing to pay for such feature, which statement may specify a flat rental, or a percentage f gross receipts, or both, or any other form f rental, and shall also specify what clearance such exhibitor is willing to accept, he me and days when such exhibitor desires exhibit it, and any her offers which such exhibitor may care to make.' We do not doubt hat if a competitive bidding system is adopted all these provisions are necessary.

For he censing of films at auction s quite obviously a more complicated matter han he like sales for cash f abacco, wheat, r other produce. Columbia puts these pertinent queries: 'No two exhibitors are kely to make he **932 same bid as *163 dates, clearance, method of fixing rental, etc. May bids containing such diverse factors be readily compared? May a flat rental bid be compared with a percentage bid? May the value of any percentage bid be determined unless the admission price s fixed by the license?'

The question as to who s the highest bidder nvolves the use of standards ncapable f precise definition because the bids being compared contain different ngredients. Determining who s the most responsible bidder kewise cannot be reduced a formula. The distributor's judgment f he character and ntegrity f a particular exhibitor might result in acceptance of a wer hat favoritism was shown would be well that favoritism was shown would be well nigh impossible, unless perhaps all the exhibitors n the country were given classifications of responsibility. If, ndeed, the choice between bidders is not to be entrusted the uncontrolled discretion f the distributors, some effort to standardize he factors nvolved n determining 'a reasonable return he licensor' would seem necessary.

We mention these matters merely ndicate he character f he job f supervising such a competitive bidding system. It would nvolve the judiciary n the administration f intricate and detailed rules governing priority, period of clearance, ength of run, competitive areas, reasonable return, and he like. The system would be apt to require as close a supervision as a continuous receivership, unless he defendants were to be entrusted with vast discretion. The judiciary is unsuited to affairs of business management; and control hrough he power of contempt is crude and clumsy and acking n the flexibility necessary make continuous and detailed supervision effective. Yet delegation f the management f the system the discretion f hose who had the genius to conceive the present conspiracy and to execute it with the subtlety which this record reveals, could be done nly with he *164 greatest reluctance. At east such choices should not be faced unless he need for the system is great and its benefits plain.

The system uproots business arrangements and established relationships with no apparent verall benefit he small independent exhibitor. If each feature must go the highest responsible bidder, hose with the greatest purchasing power would seem to be in a favored position. Those with he longest purse—the exhibitor-defendants and he large circuits—would seem to stand in a preferred position. If in fact they were enabled hrough the competitive bidding system ake the cream f the business, eliminate he smaller ndependents, and hus ncrease heir own strategic hold n he ndustry, they would have the cloak f he court's decree around hem for protection. Hence the natural advantage which he larger and financially stronger exhibitors would seem to have n the bidding gives us pause. If a premium s placed n purchasing power, he court-created

system may be a powerful factor wards ncreasing the concentration of economic power n he industry rather than cleansing he competitive system f unwholesome practices. For where the system n peration promises the advantage the exhibitor who s n the strongest financial position, he injunction against discrimination [17] is apt hold an empty promise. In this connection it should be noted that even hough he ndependents in a given competitive area do not want competitive bidding, the exhibitor-defendants can invoke the system.

Our doubts concerning he conpetitive bidding system are increased by the fact hat defendants who wn heatres are allowed pre-empt heir own features. They thus start with an inventory which all other exhibitors ***165** lack. The atter have no prospect of assured runs except what hey get by competitive bidding. The proposed system does not ffset n any way ****933** the advantages which he exhibitor-defendants have by way of theatre ownership. It would seem in fact ncrease them. For he independents are deprived f the stability which flows from established business relationships. Under the proposed system they can get features nly f they are the highest responsible bidders. They can no longer depend n their private sources of supply which heir ingenuity has created. Those sources, built perhaps n private relationships and representing mportant ems of good will, are banned, even hough hey are free of any taint of illegality.

The system was designed, as some f he defendants put , to remedy the difficulty of any heatre to break nto or change he existing system of runs and clearances. But we do not see how, in practical peration, he proposed system of competitive bidding s kely open up to competition the markets which defendants' unlawful restraints have dominated. Rather real danger seems us e n he pportunities the system affords the exhibitor-defendants and he her arge perators to strengthen heir hold n he industry. We are reluctant alter decrees n these cases where here s agreement with the District Court n he nature f the violations. United States v. Crescent Amusement Co., supra, 323 U.S. at page 185, 65 S.Ct. at page 260, 89 L.Ed. 160; International Salt Co. v. United tates, 332 U.S. 392, 400, 68 S.Ct. 12, 17. But the provisions for competitive bidding n these cases promise e n the way f relief against the real evils f the conspiracy. They mplicate he judiciary heavily n he details f business management f supervision s to be effective. They vest powerful control n the exhibitor-defendants ver their competitors if close supervision by the court is not undertaken. In ght f these considerations we conclude hat he competitive ***1** bidding provisions f he decree should be eliminated so that a more effective decree may be fashioned.

We have already ndicated in preceding parts f his pinion hat this alteration n he decree leaves a hiatus r two which will have to be filled on remand f the cases. We will indicate hereafter another phase f the problem which the District Court should also reconsider in view f this alteration n the decree. But ut of an abundance f caution we add this additional word. The competitive bidding system was perhaps he

central arch f the decree designed by he District Court. Its elimination may effect the cases in ways her han those which we expressly memtion. Hence on remand f the cases the freedom f the District Court to reconsider the adequacy of decree is not mited those parts we have specifically ndicated.

Third. Monopoly, Expansion of Theatre Holdings, Divestiture.

31] 32] There is a suggestion hat he hold the defendants have n he ndustry is so great that a problem under the First Amendment is raised. Cf. Associated Press v. United States, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed. 2013. We have no doubt hat moving pictures, like newspapers and radio, are ncluded n the press whose freedom s guaranteed by he First Amendment. That issue would be focused here if we had any question concerning monopoly n he production f moving pictures. But monopoly in production was eliminated as an ssue n these cases, as we have noted. The chief argument at the bar is phrased n erms of monopoly of exhibition, restraints on exhibition, and he like. Actually, he ssue is even narrower han that. The main contest s ver the cream f the exhibition business—that f the first-run theatres. By defining he issue so narrowly we do not ntend to belittle s importance. It shows, however, ha the question here is not ***167** what the public will see r f the public will be permitted to see certain features. It is clear that under the existing system the public will be denied access to none. If the public cannot see the features n the first-run, it may do so n the second, third, fourth, r later run. The central problem presented by these cases is which exhibitors get he ****934** highly profitable first-run business. That problem has important aspects under he Sherman Act. But it bears only remotely, if at all, n any question of freedom f the press, save only as meliness of release may be a factor f importance in specific situations.

The controversy ver monopoly relates monopoly n exhibition and more particularly monopoly n the first-run phase f the exhibition business.

The five majors in 1945 had nterests n somewhat over 17 per cent f he heatres n the United tates—3,137 ut of 18,076.[18] Those theatres paid 45 per cent f he al domestic film rental received by all eight defendants.

In he 92 cities f he country with populations over 100,000 at least 70 per cent of all the first-run theatres are affiliated with ne or more f the five majors. In 4 f those cities the five majors have no theatres. In 38 f those cities there are no independent first-run theatres. In none f he remaining 50 cities did ess ***168** han hree f the distributor-defendants cense heir product on first run heatres f the five majors. In 19 f the 50 cities ess han hree f the distributor-defendants censed heir product on first run ndependent heatres. In a majority f the 50 cities the greater share of all f the features of defendants were licensed for first-run exhibition n he heatres of the five majors.

In about 60 per cent f the 92 cities having populations f over 100,000, ndependent

theatres compete with those of the five majors in first-run exhibition. In about 91 per cent of the 92 cities there is competition between independent theatres and the theatres of the five majors or between theatres of the five majors themselves for first-run exhibition. In all of the 92 cities there is always competition in some run even where there is no competition in first runs.

In cities between 25,000 and 100,000 populations the five majors have interests in 577 of a total of 978 first-run theatres or about 60 per cent. In about 300 additional towns, mostly under 25,000, an operator affiliated with one of the five majors has all of the theatres in the town.

The District Court held that the five majors could not be treated collectively so as establish claims of general monopolization in exhibition. It found that none of them was organized or had been maintained 'for the purpose of achieving a national monopoly' in exhibition. It found that the five majors by their present theatre holdings 'alone' (which aggregate a little more than one-sixth of all the theatres in the United States), 'do not and cannot collectively or individually have a monopoly of exhibition.' The District Court also found that where a single defendant owns all of the first-run theatres in a town, there is no sufficient proof that the acquisition was for the purpose of creating a monopoly. It found rather that such consequence resulted from the inertness ***169** of competitors, their lack of financial ability to build theatres comparable those of the five majors, or the preference of the public for the best equipped theatres. And the percentage of features in the market which any of the five majors could play in its own theatres was found to be relatively small and in ****935** nowise to approximate a monopoly of film exhibition. [19]

Even in respect of the theatres jointly owned or jointly operated by the defendants with each other or with independents the District Court found no monopoly or attempt to monopolize. Those joint agreements or ownership were found only to be unreasonable restraints of trade. The District Court, indeed, found no monopoly on any phase of the cases, although it did find an attempt to monopolize in the fixing of prices, the granting of unreasonable ***170** clearances, block-booking and the other unlawful restraints of trade we have already discussed. The 'root of the difficulties,' according to the District Court, lay not in theatre ownership but in those unlawful practices.

The District Court did, however, enjoin the five majors from expanding their present theatre holdings in any manner. [20] It refused to grant the request of the Department of Justice for total divestiture by the five majors of their theatre holdings. It found that total divestiture would be injurious the five majors and damaging to the public. Its thought in the latter score was that the new set of theatre owners who would take the place of the five majors would be unlikely for some years to give the public as good service as those they supplanted 'in view of the latter's demonstrated experience and skill in operating what must be regarded as in general the largest and best equipped theatres.' Divestiture was, thought,

harsh a remedy where there was available the alternative of competitive bidding. It accordingly concluded that divestiture was unnecessary 'at east until the efficiency f that system has been tried and found wanting.'

It is clear, so far as the five majors are concerned, hat the aim f the conspiracy was exclusionary, .e. it was designed strengthen heir hold n he exhibition field. In other words, the conspiracy had monopoly n exhibition for ne f s goals, as the District Court held. Price, clearance, and run are interdependent. The clearance and run provisions f he censes fixed the relative playing positions of all heatres in a certain area; the minimum price provisions were based on playing position —the first-run theatres being required charge the highest prices, ***171** the second-run heatres the next highest, and so n. As the District Court found, 'In effect, the distributor, by the fixing of minimum admission prices ****936** attempts to give he prior-run exhibitors as near a monopoly f he patronage as possible.'

33] It s, herefore, not enough n determining he need for divestiture conclude with he District Court hat none f he defendants was rganized or has been maintained for the purpose of achieving a 'national monopoly,' nor hat the five majors hrough their present theatre holdings 'alone' do not and cannot collectively r individually have a monopoly of exhibition. For when the starting point s a conspiracy to effect a monopoly hrough restraints f rade, is relevant to determine what the results f the conspiracy were even f they fell short of monopoly.

34] An example will ustrate the problem. In the popular sense here is a monopoly f one person wns he nly heatre n wn. That usually does not, however, constitute a violation f he Sherman Act. But as we noted n United States v. Griffith, 334 U.S. 100, 68 S.Ct. 941, and see Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 68 S.Ct. 947, even such an wnership is vulnerable in a suit by the United tates under he Sherman Act f he property was acquired, r s strategic position maintained, as a result of practices which constitute unreasonable restraints f rade. Otherwise, there would be reward from he conspiracy through retention f its fruits. Hence the problem f the District Court does not end with enjoining continuance f he unlawful restraints nor with dissolving he combination which aunched the conspiracy. Its function includes undoing what he conspiracy achieved. As we have discussed n Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 68 S.Ct. 947, he requirement hat he defendants restore what they unlawfully btained is no more punishment han the familiar remedy ***172** f restitution. What findings would be warranted after such an nquiry n he present cases, we do not know. For he findings f the District Court do not cover this point beyond stating that monopoly was an bjective f the several restraints f rade hat stand condemned.

35] Moreover, he problem under he Sherman Act s not solved merely by measuring monopoly n erms of size r extent of holdings or by concluding hat

single ownerships were not obtained 'for he purpose of achieving a national monopoly.' It s the relationship f the unreasonable restraints f rade the position f he defendants n the exhibition field (and more particularly n the first-run phase f hat business) hat s f first mportance n the divestiture phase f these cases. That s the position we have aken n Schine Chain Theatres, Inc., v. United States, 334 U.S. 110, 68 S.Ct. 947, in dealing with a projection f the same conspiracy hrough certain large circuits. Parity f reatment f the unaffiliated and the affiliated circuits requires the same approach here. For he fruits f the conspiracy which are denied he independents must also be denied he five majors. In this connection here is a suggestion hat one result f the conspiracy was a geographical division f erritory among the five majors. We mention it not ntimate hat s true but nly ndicate the appropriate extent f he nquiry concerning the effect f the conspiracy n heatre ownership by the five majors.

36] 37] 38] 39] 40] The findings f the District Court are deficient n that score and bscure on another. The District Court n its findings speaks f the absence of a 'purpose' n the part of any f the five majors to achieve a 'national monopoly' n the exhibition of motion pictures. First, here is no finding as the presence or absence of monopoly n the part f the five majors n the first-run field for the entire country, n the first-run field n the 92 largest cities f the country, r n the first-run field n separate calities. et the first-run field, which constitutes the cream f he ***173** exhibition business, s the core f the present cases. Section 1 f he Sherman Act ut-laws unreasonable restraints rrespective f the amount f rade or commerce nvolved (United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 224, 225, n. 59, 60 S.Ct. 811, 844-846, 84 L.Ed. 1129), and s 2 condemns monopoly of 'any part' f rade or commerce.' Any part' is construed ****937** to mean an appreciable part f nterstate r foreign rade or commerce. United tates v. Yellow Cab Co., 332 U.S. 218, 225, 67 S.Ct. 1560, 1564, 91 L.Ed. 2010. Second, we pointed ut n United States v. Griffith, 334 U.S. 100, 68 S.Ct. 941, that 'specific ntent' is not necessary to establish a 'purpose r ntent' to create a monopoly but hat he requisite 'purpose r ntent' is present f monopoly results as a necessary consequence of what was done. The findings f he District Court n this phase f the cases are not clear, though we ake hem to mean by the absence of 'purpose' the absence f a specific ntent. o construed hey are nconclusive. In any event hey are ambiguous and must be recast on remand f the cases. Third, monopoly power, whether awfully or unlawfully acquired, may violate s 2 f he Sherman Act hough it remains unexercised (United States v. Griffith, 334 U.S. 100, 68 S.Ct. 941), for as we stated n American Tobacco Co. v. United tates, 328 U.S. 781, 809, 811, 66 S.Ct. 1125, 1140, 90 L.Ed. 1575, the existence of power 'to exclude competition when is desired do so' s self a violation f s 2, provided is coupled with the purpose r ntent to exercise that power. The District Court, being primarily concerned with he number and extent f he theatre holdings

of defendants, did not address self his phase f the monopoly problem. Here also, parity f treatment as between ndependents and the five majors as heatre owners, who were ed nto the same general conspiracy necessitates consideration of this question.

41] 42] 43] 44] 45] Exploration these phases f the cases would not be necessary if, as the Department of Justice argues, vertical ntegration of producing, distributing and exhibiting ***174** motion pictures s illegal per se. But the majority f the Court does not ake that view. In he pinion f the majority he egality f vertical integration under he Sherman Act urns on (1) the purpose r intent with which it was conceived, or (2) the power creates and the attendant purpose r ntent. First, it runs afoul f he Sherman Act f it was a calculated scheme to gain control over an appreciable segment f the market and to restrain or suppress competition, rather than an expansion to meet egitimate business needs. United States v. Reading Co., 253 U.S. 26, 57, 40 S.Ct. 425, 432, 64 L.Ed. 760; United States v. Lehigh Valley R. Co., 254 U.S. 255, 269, 270, 41 S.Ct. 104, 108, 109, 65 L.Ed. 253. Second, a vertically integrated enterprise, ke her aggregations of business units (United tates v. Aluminum Co. of America, 2 Cir., 148 F.2d 416), will constitute monopoly which, though unexercised, violates he Sherman Act provided a power to exclude competition is coupled with a purpose r ntent to do so. As we pointed ut n United States v. Griffith, 334 U.S. 107, n. 10, 68 S.Ct. 946, size s itself an earmark of monopoly power. For size carries with it an opportunity for abuse. And the fact hat the power created by size was utilized n the past to crush r prevent competition is potent evidence hat the requisite purpose r intent attends he presence of monopoly power. See United States v. Swift & Co., 286 U.S. 106, 116, 52 S.Ct. 460, 463, 76 L.Ed. 999; United States v. Aluminum Co. of America, supra, 148 F.2d at page 430. Likewise bearing n the question whether monopoly power s created by the vertical ntegration, s he nature f the market to be served (United States v. Aluminum Co. of America, supra, 148 F.2d at page 430), and he everage n the market which the particular vertical ntegration creates or makes possible.

46] These matters were not considered by the District Court. For that reason, as well as he others we have mentioned, the findings n monopoly and divestiture which we have discussed n this part f he opinion will be set aside. There is an independent reason for doing ***175** that. As we have seen, the District Court considered competitive bidding as an alternative to divestiture n the sense hat it concluded that further consideration of divestiture should not be had until competitive bidding had been ried and found wanting. Since we eliminate from the decree the provisions for competitive bidding, ****938** is necessary to set aside he findings on divestiture so that a new start n this phase f the cases may be made n heir remand.

47] It follows hat he provision f the decree barring the five majors from further theatre expansion should kewise be eliminated. For is related he

monopoly question; and the District Court should be allowed to make an entirely fresh start n the whole f the problem. We n no way intimate, however, hat the District Court erred in prohibiting further heatre expansion by the five majors.

48] The Department of Justice maintains hat f total divestiture is denied, censing f films among he five majors should be barred. As a permanent requirement would seem to be only an indirect way f forcing divestiture. For the findings reveal hat he heatres f the five majors could not perate heir theatres full me n heir wn films.[21] Whether that step would, in absence of competitive bidding, serve as a short range remedy in certain situations to dissipate he effects f the conspiracy (United States v. Univis Lens Co., 316 U.S. 241, 254, 62 S.Ct. 1088, 1095, 86 L.Ed. 1408; United tates v. Bausch & Lomb Co., supra, 321 U.S. at page 724, 64 S.Ct. at page 814, 88 L.Ed. 1024; United States v. Crescent Amusement Co., supra, 323 U.S. at page 188, 65 S.Ct. at page 261, 89 L.Ed. 650) is a question for the District Court.

*176 Fourth.

The consent decree created an arbitration system which had, n the view f the District Court, proved useful n s operation. The court ndeed hought hat the arbitration system had dealt with he problems f clearances and runs 'with rare efficiency.' But it did not hink it had the power continue an arbitration system which would be binding n the parties, since the consent decree did not bind the defendants who had not consented it and since the government, acting pursuant the powers reserved under the consent decree, moved for rial f he issues charged n the complaint. The District Court recommended, however, that some such system be continued. But included no such provision in its decree.

49] We agree hat the government did not consent to a permanent system of arbitration under he consent decree and hat he District Court has no power to force r require parties to submit to arbitration n eu f the remedies afforded by Congress for enforcing the anti-trust laws. But he District Court has the power to authorize the maintenance of such a system by hose parties who consent and to provide he rules and procedure under which s operate. The use f the system would not, of course, be mandatory. It would be merely an auxiliary enforcement procedure, barring no one from the use f other remedies he law affords for violations either f he Sherman Act r f the decree f the court. Whether such a system of arbitration should be naugurated is for the discretion f he District Court.

Fifth—Intervention.

Certain associations f exhibitors and a number f ndependent exhibitors, appellant-intervenors in Nos. 85 and 86, were denied eave ntervene n the District *177 Court. They appeal from hose rders. They also filed original motions for eave ntervene n this Court. We postponed consideration f he original motions and f our jurisdiction to hear the appeals until a hearing on the merits of the cases.

Rule 24(a) f the Rules of Civil Procedure, 28 U.S.C.A. following section 723c, which provides for intervention as of right, reads in part as follows: 'Upon timely application anyone shall be permitted ntervene n an action: * * * (2) when the representation f the applicant's nterest **939 by existing parties s or may be inadequate and he applicant is or may be bound by a judgment n the action.'

50] 51] The complaint f he ntervenors was directed wards he system f competitive bidding. The Department f Justice s the representative f the public n these anti-trust suits. So far as the protection f the public nterest in free competition s concerned, he nterests f hose intervenors was adequately represented. The intervenors, however, claim hat the system of competitive bidding would have perated prejudicially their rights. Cf. United tates v. Terminal R. Ass'n f St. Louis, 236 U.S. 194, 199, 35 S.Ct. 408, 410, 59 L.Ed. 535. Their argument s hat the plan f competitive bidding under the control f he defendants would be a concert of action that would be illegal but for the decree. If pursuant the decree defendants acted under that plan, they would gain mmunity from any liability under the anti-trust aws which herwise they might have he intervenors. Thus, is argued, the decree would affect heir legal rights and be binding n them. The representation f heir nterests by the Department of Justice n that score was said to be inadequate since that agency proposed he dea of competitive bidding n he District Court.

We need not consider the merits f hat argument. Even f we assume hat he ntervenors are correct n heir *178 position, intervention should be denied here and the orders of he District Court denying eave intervene must be affirmed. Now hat the provisions for competitive bidding have been eliminated from the decree here s no basis for saying hat he decree affects heir legal rights. Whatever may have been the situation below, no other reason appears why at this stage heir ntervention is warranted. Any justification for making hem parties has disappeared.

The judgment n these cases is affirmed n part and reversed in part, and the cases are remanded the District Court for proceedings in conformity with his pinion.

o ordered.

Affirmed in part and reversed in part.

Mr. Justice JACKSON took no part n he consideration or decision of these cases.

Mr. Justice FRANKFURTER, dissenting n part.

'The framing of decrees should take place in the District rather han in Appellate Courts. They are invested with large discretion model their judgments to fit the exigencies f he particular case.' On his guiding consideration, the Court earlier this Term sustained a Sherman Law decree, which was not he utcome f a ng rial involving complicated and contested facts

and their significance, but the formulation f a summary judgment n the bare bones f pleadings. International Salt Co. v. United States, 332 U.S. 392, 400, 401, 68 S.Ct. 12, 17, 18. The record n this case bespeaks more compelling respect for the decree fashioned by the District Court f three judges to put an end to violations f he Sherman Law and to prevent the recurrence, han that which ed this Court not to find abuse of discretion n the decree by a single district judge n he International Salt case.

***179** This Court has both the authority and duty to consider whether a decree s well calculated to undo, as far as is possible, the result f transactions forbidden by he Sherman Law and to guard against heir repetition. But is not the function f this Court, and it would ill discharge , displace the district courts and write decrees de novo. We are, after all, an appellate tribunal even n Sherman Law cases. It could not be fairly claimed hat this Court possesses greater experience, understanding and prophetic nsight in relation the movie ndustry, and is therefore better equipped to formulate a decree for the movie ndustry than was the District Court n this case, presided over as it was by ne f the wisest f judges.

The erms f the decree n his gation amount, in effect, the formulation of a regime for the future conduct f the movie ndustry. The terms of such a regime, within the scope of judicial oversight, are ****940** not to be derived from precedents n he law reports, nor, for that matter, from any other available repository of knowledge. Inescapably he terms must be derived from an assessment of conflicting interests, not quantitatively measurable, and a prophecy regarding the workings of untried remedies for dealing with disclosed evils so as advance most he comprehensive public nterest.

The crucial egal question before us s not whether we would have drawn he decree as the District Court drew it, but whether, n the basis of what came before he District Court, we can say hat n fashioning remedies it did not fairly respond to disclosed violations and therefore abused a discretion, the fair exercise of which we should respect and not treat as an abuse. Discretion means a choice f available remedies. As bearing upon this question, is most relevant to consider whether he District Court showed a sympathetic or mere niggling awareness f the proper scope f he Sherman Law and the range f ***180** its condemnation. Adequate remedies are not kely to be fashioned by those who are not hostile to evils to be remedied. The District Court's opinion manifests a stout purpose n the part f that court to enforce s thoroughgoing uncerstanding f the requirements f he Sherman Law as elucidated by this Court. And so we have before us the decree of a district court thoroughly aware f the demands f he Sherman Law and manifestly determined enforce it in all its rigors.

How did he District Court go about working ut he erms f the decree some of which this Court now displaces? The case was before he wer court from October 8, 1945, January 22, 1947. A vast body f the evidence which had

be considered below, and must be considered here n verturning he wer court's decree, consisted of documents. A mere enumeration f these documents, not printed n the record before us, required a pamphlet of 42 pages. It took 460 pages for a selection of exhibits deemed appropriate for printing by the Government. The printed record n this Court consists of 3,841 pages. It s n the basis f this vast mass of evidence hat the District Court, on June 11, 1946, filed its careful opinion, approved here, as the substantive issues. Thereafter, it heard argument for three days as he erms f the judgment. The parties then submitted their proposals for findings of fact and conclusions f law by the District Court. After a ng trial, an elaborate pinion n the merits, full discussion as he erms f the decree, more han two months for he gestation f the decree, he terms were finally promulgated.

I cannot bring myself to conclude hat he product of such a painstaking process f adjudication as to a decree appropriate for such a complicated sitation as this record discloses was an abuse of discretion, arrived at as it was after due absorption of all he ght hat ***181** could be shed upon remedies appropriate for the future. After all, as such remedies here is no test, ultimately, except the wisdom of men judged by events.

Accordingly, I would affirm he decree except as one paticular, that regarding an arbitration system for controversies hat may arise under the decree. This raises a pure question f law and not a judgment based upon facts and their significance, as are hose features f the decree which the Court sets aside. The District Court ndicated that 'in view f its demonstrated usefulness' such an arbitration system was desirable to aid n the enforcement f the decree. The District Court, however, deemed itself powerless continue an arbitration system without he consent f the parties. I do not find such want of power n the Distirct Court select this means of enforcing the decree most effectively, with he least friction and by the most fruitful methods. A decree as detailed and as complicated as is necessary to fit a situation ke he one before us s bound, even under the best of circumstances, to raise controversies involving conflicting claims as to facts and their meaning. A court could certainly appoint a master to deal with questions arising under the decree. I do ****941** not appreciate why a proved system of arbitration, appropriate as experience has found to be appropriate for adjudicating numberless questions that arise under such a decree, is not to be reated in effect as a standing master for purposes f this decree. See Ex parte Peterson, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919. I would herefore eave the discretion f the District Court to determine whether such a system s not available as an nstrument of auxiliary enforcement. With this exception I would affirm the decree of the District Court.

All Citations

334 U.S. 131, 68 S.Ct. 915, 92 L.Ed. 1260, 77 U.S.P.Q. 243

Footnotes

1 Sec. 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. s 29, 15 U.S.C.A. s 29, and s 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U.S.C. s 345, 28 U.S.C.A. s 345.

2 The court was convened pursuant to the provisions of the Act of April 6, 1942, 56 Stat. 198, 199, 15 U.S.C. s 28, 15 U.S.C.A. s 28.

3 Before trial, negotiations for a settlement were undertaken. As a result, a consent decree against the five major defendants was entered November 20, 1940. The consent decree contained no admission of violation of law and adjudicated no issue of fact or law, except that the complaint stated a cause of action. The decree reserved to the United States the right at the end of a three-year trial period to seek the relief prayed for in the amended complaint. After the end of the three-year period the United States moved for trial against all the defendants.

4 A master agreement is a licensing agreement or 'blanket deal' covering the exhibition of features in a number of theatres, usually comprising a circuit.

A franchise is a licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released by one distributor during the entire period of the agreement.

An independent as used in these cases means a producer, distributor, or exhibitor, as the context requires, which is not a defendant in the action, or a subsidiary or affiliate of a defendant.

5 See note 12, infra.

6 A clearance is the period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres.

Runs are successive exhibitions of a feature in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on, and include successive exhibitions in different theatres, even though such theatres may be under a common ownership or management.

7 Thus the District Court found: 'Some licenses granted clearance to sell) to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, or operate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected or opened. The purpose of this type of clearance agreements was to fix the run and clearance status of any theatre thereafter opened not on the basis of its appointments, size, location, and other competitive features normally entering into such determination, but rather upon the sole basis of whether it were operated by the exhibitor party to the agreement.'

8 A feature is any motion picture, regardless of topic, the length of film of which is in excess of 4,000 feet.

9 Theatres jointly owned with independents:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21
Total	1287

Theatres jointly owned by two defendants:

Parmount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10
Total	214

Of the 1287 jointly owned with independents, 209 would not be affected by the decree since one of the ownership interests is less than 5 per cent, an amount which the District Court treated as de minimis.

10 See note 4, supra.

11 Blind-selling is a practice whereby a distributor licenses a feature before the exhibitor is afforded an opportunity to view it. To remedy the problems created by that practice the District Court included the following provision in its decree: '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 licenssee to inspect the feature.'

The court advanced the following as its reason for inclusion of this provision: 'Blind-selling does not appear to be as inherently restrictive of competition as block-booking, although it is capable of some abuse. By this practice a distributor could promise a picture of good quality or of a certain type which when produced might prove to be of poor quality or of another type—a competing distributor meanwhile being unable to market its product and in the end losing its outlets for future pictures. The evidence indicates that trade-shows, which are designated to prevent such blind-selling, are poorly attended by exhibitors. Accordingly, exhibitors who choose to obtain their films for exhibition in quantities, need to be protected against burdensome agreements by being given an option to reject a certain percentage of their blind-licensed pictures within a reasonable time after they shall have become available for inspection.' We approve this provision of the decree.

12 The exclusive right granted by the Copyright Act, 35 Stat. 1075, 17 U.S.C. s 1, 17 U.S.C.A. s 1, includes no such privilege. It provides, so far as material here, as follows:

'That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right: * '(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;'

13 A moveover is the privilege given a licensee to move a picture from one theatre to another as a continuation of the run at the licensee's first theatre.

14 A road show is a public exhibition of a feature in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in those areas.

15 Underage and overage refer to the practice of using excess film rental earned in one circuit theatre to fulfill a rental commitment defaulted by another.

16 Competitive bidding is required only in a 'competitive area' where it is 'desired by the exhibitors.' As the District Court said, 'the decree provides an opportunity to bid for any exhibitor in a competitive area who may desire to do so.'

The details of the competitive bidding system will be found in 70 F.Supp. pages 73, 74.

17 The competitive bidding part of the decree provides: 'Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others.'

18 The theatres which each of the five majors owned independently of the others were: Paramount 1,395 or 7.72 per cent; Warner 501 or 2.77 per cent; Loew's 135 or .74 per cent; Fox 636 or 3.52 per cent; RKO 109 or .60 per cent. There were in addition 361 theatres or about 2 per cent in which two ro more of the five majors had joint interests. These figures exclude connections through filmbuying, or management contracts or through corporations in which a defendant owns an indirect minority stock interest.

There theatres are located in 922 towns in 48 States and the District of Columbia. For further description of the distribution of theatres see Bertrand, Evans, and Blanchard, The Motion Picture Industry—A Pattern of Control 15—16 TNEC Monograph 43, 1941).

19 The number of feature films released during the 1943—44 season by the eleven largest distributors is as follows:

	No. of Films	Percentages of Total With "Westerns" included	Percentages of Total With "Westerns" excluded
Fox	33	8.31	9.85
Loew's	33	8.31	9.85
Paramount	31	7.81	9.25
RKO	38	9.57	11.34
Warner	19	4.79	5.67
Columbia	41	10.32	12.24

United Artists.....	16	4.04	4.78
Universal.....	49	12.34	14.63
Republic.....	- 29 features - 30 “Westerns”	14.86	8.66
Monogram.....	- 26 features - 16 “Westerns”	10.58	7.76
PRC.....	- 20 features - 16 “Westerns”	9.07	5.97
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Totals.....	397 335 without “Westerns”	100.00	100.00

20 excepted from this prohibition was the acquisition of interests in theatres jointly owned, a matter we have discussed in a preceding portion of this opinion.

21 The District Court found, ‘Except for a very limited number of theatres in the very largest cities, the 18,000 and more theatres in the United States exhibit the product of more than one distributor. Such theatres could not be operated on the product of only one distributor.’

End of Document

United States v. Paramount Pictures, Inc.

85 F. Supp. 881

(S.D.N.Y. 1949)

85 F.Supp. 881
nited States District Court
.D. New York.

NITED STATES
v.
PARAMOUNT PICTURES, Inc. et al.

No. 87-273.
|
July 25, 1949.

Synopsis

The United ates brought an action against Paramount Pictures, Inc., and others o enjoin efendants from violating he Sherman Anti-Trust Act while stributing and exhibiting motion pictures.

The United ates Supreme Court on appeal from a decree requiring efendants to carry on competitive bidding as an alternative o divestiture affecting a vertical egration, remanded the case for reconsideration of he effect of vertical integration on the questions of monopoly and divestiture, and for a etermination of other questions.

The District Court for he outhern District of New York, Hand, Augustus N., Circuit Judge, held inter alia, hat he evidence established hat he egration was accompanied by power o exclude competition, by actual exclusion, and by a conspiracy maintained by fixed prices, runs and discriminatory licensing with a adverse effect on competition, and hat divorcement of the business of defendants as exhibitors from their business as producers and distributors was a necessary remedy.

ee also D.C., 75 F.Supp. 1002.

West Headnotes (13)

1] **Antitrust and Trade Regulation**
Cartels, Combinations, Contracts, and Conspiracies in General

Antitrust and Trade Regulation
Elements in General

Anti–Trust laws may be violated thout a specific ent o restrain rade or o build a monopoly if restraint of trade or monopoly results as consequence of defendant's conduct or business arrangements; and specific ent in common law sense s ecessary only where conduct or business arrangements fall short of results condemned by the anti-trust laws. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

1 Cases that cite this headnote

2] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In government's action to enjoin violations of he Sherman Anti–Trust Act hrough stribution and exhibition of motion pictures, evidence established that geographical distribution of ownership or control of heaters became part of system which

competition was largely absent hroughout the United States, and hat the status of such stribution was maintained by fixed runs, clearances and prices, by pooling agreements and joint ownerships among major efendants, and by cross-licensing. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

8 Cases that cite this headnote

3] **Antitrust and Trade Regulation**
Vertical

If vertical egration is conceived with a specified ent to control he market or creates power to control the market which s accompanied by ent to exercise the power, he integration becomes illegal although such egration self oes ot per se violate he herman Anti–Trust Act. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

4] **Antitrust and Trade Regulation**
Motion Picture Industry

Antitrust and Trade Regulation
Motion Picture Industry

Where evidence established a conspiracy o fix prices, runs and clearances distribution and exhibition of motion pictures, powerfully aided by system of vertical egration, egration, although itself originally conceived to obtain outlet for pictures and supply of film for theatres, rather than as a calculated scheme o control market, became llegal under he herman Anti–Trust Act. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

5] **Antitrust and Trade Regulation**
Injunction

Where junction in government's anti-trust action against stributors and exhibitors of motion pictures would leave etermination of fficult comparisons o scretion of parties who had frequently abused hat scretion he past, or to a detailed supervision by he court, and system of arbitration conjunction herewith would be only ameliorate burden, District Court would ot resort o junction o obviate llegal practices and attempted monopoly. herman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

6] **Antitrust and Trade Regulation**
Forfeiture and Seizure of Property;Divestiture

Where vertical egration of motion picture exhibitors and stributors was accompanied by

power o exclude competition and by actual evidence of exclusion, and evidence established a conspiracy maintained by fixed prices, runs, and clearances, and by discriminatory licensing restricting competition, and geographical stribution of units he United States owned or controlled by efendants was part of a system which competition was largely absent, court would require vorcement of he business of efendants as exhibitors from their business as producers and stributors. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

15 Cases that cite this headnote

7] **Antitrust and Trade Regulation**
Forfeiture and Seizure of Property;Divestiture

Where court ecided upon separation of business of efendants as exhibitors of motion pictures from business as producers and stributors in government's anti-trust action, o remedy monopolistic effect of vertical egration, court would not require dissolution of joint interest between efendant's affiliate and an ependent corporation merely because affiliate's employee had 15 per cent erest he ependent corporation as an vestment. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

3 Cases that cite this headnote

] **Antitrust and Trade Regulation**
Damages and Other Relief

Where major motion picture stributors and exhibitors had conspired o monopolize exhibition, and practice of franchising tied up distribution of films and restricted competition by ependents by preventing them from obtaining pictures for an unnecessarily long period, and practice had been a method of unlawful scrimination he past, court would permit major stributors to grant franchises he future only f result would enable ependents to compete effectively th theaters affiliated with a defendant or th heaters ew circuits o be formed. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

13 Cases that cite this headnote

9] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In government's action to enjoin major motion picture stributors and exhibitors from violating he Sherman Anti–Trust Act, evidence established that grants of clearance when not accompanied by fixing of minimum admission prices or ot unduly extended as o

area or uration, afforded fair protection of interest of licensee in run granted without unreasonably erfering th erest of he public. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

1 Cases that cite this headnote

0] **Antitrust and Trade Regulation**
Injunction

In government's anti-trust action against major motion picture stributors and exhibitors, stributors would be enjoined from licensing any feature for exhibition upon any run in any heater in any other manner han that each license should be offered and taken theater by theater solely upon he merits and thout scrimination in favor of affiliated theaters, circuit theaters or others. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

1 Cases that cite this headnote

] **Antitrust and Trade Regulation**
Copyrights

Under he herman Anti–Trust Act, licensor could properly license for road shows, so long as licensing as ot one in a scriminatory manner, either at flat rental or on basis of some percentage of hat the show was thought likely to yield, although licensor could ot require a fixed admission price as condition of the license. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

2] **Antitrust and Trade Regulation**
Monopolization or Attempt to Monopolize

In government's action to enjoin major motion picture stributors and exhibitors from violating he herman Anti–Trust Act, evidence was sufficient to justify court disestablishing particular theaters either on theory of local monopolies or of llegal fruits. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

Cases that cite this headnote

3] **Antitrust and Trade Regulation**
Damages and Other Relief

Where court ordered vorcement h "respect" o vertical egration of major motion picture exhibitors and stributors, and emporary prohibition of cross-licensing of pictures would injure both major defendants and the public who would be eprived of seeing pictures, court would ot prohibit cross-licensing pending vorcement hose owns where there were o ependent heaters or o ependent first run heaters. Sherman Anti–Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

2 Cases that cite this headnote

Before AUGUSTUS N. HAND, Circuit Judge, HENRY W. GODDARD and ALFRED C. COXE, District Judges.

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Opinion

AUGUSTUS N. HAND, Circuit Judge.

This case comes before us after a ecision by he Supreme Court affirming in part and reversing in part our decree and findings of December 31, 1946, 70 F.Supp. 53. United States v. Paramount Pictures, Inc., 334 U.S. 131, 68 S.Ct. 915, 92 L.Ed. 1260. Under our findings of fact, we held hat there had been violations of Sections 1 and 2 of he herman Anti-Trust Act, 15 U.S.C.A. §§ 1, 2, which were summarized the conclusions of law as follows:

‘7. The efendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's Incorporated; Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia

Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation have unreasonably restrained trade and commerce he distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, * * * in violation of the Sherman Act by:

'(a) Acquiescing the establishment of a price fixing system by conspiring th one another to maintain theatre admission prices;

'(b) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform in each local competitive area.

'8. The stributor defendants Paramount Pictures, Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce he distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, * * * in violation of the Sherman Act by:

'(a) Conspiring with each other to maintain a nation-wide system of fixed minimum motion picture theatre admission prices;

***8 4** '(b) Agreeing vidually th heir respective licensees to fix minimum motion picture theatre admission prices;

'(c) Conspiring with each other to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

'(d) Agreeing vidually th heir respective licensees to grant scriminatory license privileges o theatres affiliated th other defendants and with large circuits as found in finding No. 110 above;

'(e) Agreeing vidually with such licensees o grant unreasonable clearance against heatres operated by their competitors;

'(f) Making master agreements and franchises with such licensees;

'(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except he case of the United Artists Corporation;

'(h) The defendants Paramount and RKO making formula deals.

(9) The exhibitor-defendants, Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Keith-Albee Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation have unreasonably restrained rade and

commerce he distribution and exhibition of motion pictures * * * in violation of he herman Act by:

‘(a) Jointly operating motion picture heatres th each other and th ependents hrough operating agreements or profit-sharing leases;

‘(b) Jointly owning motion picture heatres th each other and th ependents hrough stock interests in theatre buildings;

‘(c) Conspiring th each other and th hedistributor-defendants o fix substantially uniform minimum motion pictures theatre admission prices, runs, and clearances;

‘(d) Conspiring th he stributor-efendants o scriminate against independent competitors in fixing minimum admission price, run, clearance, and other license terms.’

As a remedy for the violations which we have summarized above, we held that a system of competitive bidding for film licenses should be introduced, saying in Finding 85 that:

‘Competition can be roduced o he present system of fixed admission prices, clearances, and runs, by requiring a efendant-distributor when licensing s features to grant the license for each run at a reasonable clearance (if clearance s volved) o the highest bidder, if such bidder is responsible and has a theatre of a size, location, and equipment adequate to yield a reasonable return o the license. In order words, f o theatres are bidding and are fairly comparable, the one offering the best terms shall receive the license. Thus, price fixing among the licensors or between a licensor and its licensees as well as he non-competitive clearance system may be erminated.’

We also said Finding 111 hat he granting of discriminatory license privileges would be impossible under such a system of competitive bidding as we have mentioned. In addition o providing a system of competitive bidding, we enjoined he unlawful practices above referred to, other han scrimination granting licenses, which was sufficiently obviated by he provisions for competitive bidding.

In connection th the foregoing, we enied the application of the plaintiff o vest the major defendants of heir theatres on the ground that such a remedy was oo harsh and hat the system of competitive bidding when coupled th he junctive relief against he practices we found o be unlawful was adequate relief, at least until the efficiency of that system had been tried and found wanting. We held hat he root of the lack of competition lay ot the ownership of many or most of he best theatres, but he illegal practices of he efendants, which we believed would be obviated by the remedies we proposed. We examined he theatre holdings of he major ***8 5** defendants, found hat hey aggregated only about 17% of all heatres the United States, and held hat hese defendants by such theatre holdings alone not collectively or individually have a monopoly of exhibition. While we not find in express erms hat here was no monopoly in first-run exhibition, we

did review the statistics as o the first-run ownership the 92 largest cities and stated in our opinion of June 11, 1946, hat he efendants were ot to be viewed collectively etermining the question of monopoly. ee 66 F.Supp. 323, 354. We also found no substantial proof that any of the corporate efendants was organized or had been maintained for the purpose of achieving a national monopoly. Finding No. 152. Likewise, even as to localities where one defendant owned all first-run heatres, we found no sufficient proof of purpose to create a monopoly or hat he otal ownership in such places had not rather arisen from he inertness of competitors, heir lack of financial ability o build comparable theatres, or from the preference of the public for the best equipped heatres. Finding No. 153.

In s opinion remanding he case for further consideration certain respects, he Supreme Court affirmed our findings as o price-fixing, runs, clearances, and discriminatory licenses and other practices which we found to be unlawful, with certain minor reservations as to the unlawfulness of joint interests and franchises. It eliminated, however, the provisions of our decree for competitive bidding 'so that a more effective decree may be fashioned,' adding by way of caution that: 'The competitive bidding system was perhaps he central arch of he ecree designed by the District Court. Its elimination may effect he cases ways other han hose which we expressly mention. Hence on remand of the cases he freedom of the District Court to reconsider the adequacy of ecree s not limited o those parts we have specifically cated.' 334 U.S.at page 166, 68 S.Ct.at page 933. It rected our further consideration of monopoly, vestiture and expansion of theatre holdings, giving as one reason he following: 'As we have seen, the District Court considered competitive bidding as an alternative o vestiture the sense hat it concluded that further consideration of vestiture should ot be had until competitive bidding had been ried and found wanting. ce we eliminate from he ecree the provisions for competitive bidding, s ecessary to set aside he findings on divestiture so that a new start on this phase of the cases may be made on heir remand.' 334 U.S.at page 175, 68 .Ct.at page 937.

] As further reasons for recting a reconsideration of the above issues, we were asked o etermine whether he vertical integration of the major efendants, which was held ot to be unlawful per se, was conceived with an ent to monopolize or was of such a character as to confer a known monopoly power. If the power be established, a specific ent to monopolize eed not be shown. As was said by Justice Douglas United States v. Griffith, 334 U.S. 100, 105, 68 S.Ct. 941, 944, 92 L.Ed. 1236, and referred o United States v. Paramount Pictures, Inc., 334 U.S. 131, 173, 68 S.Ct. 915, 92 L.Ed. 1260: 'It is, however, not always ecessary to find a specific ent to restrain trade or to build a monopoly in order to find hat the anti-trust laws have been violated. It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant's conduct or business arrangements. United States v. Patten, 226 U.S. 525, 543, 33 S.Ct. 141, 145,

57 L.Ed. 333, 44 L.R.A.,N.S., 325; United States v. Masonite Corp. 316 U.S. 265, 275, 62 S.Ct. 1070, 1076, 86 L.Ed. 1461. To require a greater showing would cripple he Act. As stated United States v. Aluminum Co. of America, 2 Cir., 148 F.2d 416, 432, 'no monopolist monopolizes unconscious of what he s oing.' pecific ent the sense which the common law used he erm s necessary only where the acts fall short of he results condemned by the Act.'

In ealing th he effect of vertical integration upon monopoly, the opinion of he Supreme Court directs us to consider more explicitly han we in our original opinion whether monopoly exists as to first-run heatres hroughout he ation, ***8 6** i he 92 largest cities, and in local situations.

It also directs us o etermine whether here has been a geographic distribution of heatre ownership among the major defendants. The opinion also says:

'It is clear, so far as the five majors are concerned, hat the aim of the conspiracy was exclusionary, .e. was esigned o strengthen heir hold on he exhibition field. In other words, the conspiracy had monopoly in exhibition for one of its goals, as the District Court held. Price, clearance, and run are interdependent. The clearance and run provisions of the licenses fixed he relative playing positions of all heatres in a certain area; the minimum price provisions were based on playing position- the first-run theatres being required to charge he highest prices, the second-run heatres he next highest, and so on. As the District Court found, 'In effect, he distributor, by the fixing of minimum admission prices attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.'

'It s, herefore, not enough etermining he need for divestiture to conclude with the District Court hat none of he efendants was organized or has been maintained for the purpose of achieving a 'national monopoly,' or hat the five majors hrough their present theatre holdings 'alone' o ot and cannot collectively or individually have a monopoly of exhibition. For when he starting point is a conspiracy to effect a monopoly through restraints of rade, s relevant o etermine what the results of the conspiracy were even f they fell short of monopoly.' 334 U.S.at pages 170-171, 68 .Ct.at page 935 .

We were also rected o etermine whether any 'illegal fruits' were acquired or maintained by he defendants as results of unlawful conspiracies and o divest any such fruits, irrespective of whether monopoly had in fact been achieved. The plaintiff has ot introduced evidence to support any claim of divestiture of 'illegal fruits' and expressly reserves the presentation of such an issue for he future.

Because of the view of he Supreme Court as to matters to be specially considered on the remand as well as its view regarding other matters which left open for consideration by his court, set aside our findings on monopoly and vestiture and our provisions prohibiting further theatre expansion and our provisions for

competitive bidding, order hat 'the District Court should be allowed to make an entirely fresh start on he whole of he problem.'

Although we previously held in Finding No. 154 hat he illegalities and restraints were ot the ownership of theatres by the major defendants but their unlawful practices, this finding was made because of our view hat the competitive bidding system, when coupled th junctions, would erminate he illegalities, and if such llegalities were erminated, he theatre ownerships alone would not be unlawful. This erpretation of our finding is justified by our former conclusion hat divestiture should not be tried unless the competitive bidding system was found wanting. In other words, f theatre ownership were regarded as under no circumstances related to violations of he Sherman Act, divestiture could not be a proper remedy and would not have been suggested as a possible alternative in our former opinion.

Similarly, our Findings 152 and 153 hat none of he defendants had been organized or maintained o achieve a ational monopoly in production, distribution, or exhibition, or a local monopoly in first-run theatre ownership should be read the light of the remedy we adopted. The provisions for competitive bidding were hought o have eliminated the conspiracies which had theretofore existed among he efendants their capacities both as distributors and exhibitors and between efendants and ependents, which he defendants had cooperated and aided one another hrough certain llegal practices. We accordingly reated he defendants as no longer able o engage illegal practices and the public sufficiently safeguarded by the requirement of competitive bidding and he junctions against such practices. These safeguards we thought applied o he ***8 7** ational market as well as to local situations. Our conclusion of law hat he defendants had attempted to monopolize was correct as o their prior acts, unaffected by our ecree. And so he Supreme Court understood us to mean when it said: 'In other words, he conspiracy had monopoly in exhibition for one of its goals, as the District Court held.' 334 U.S.at page 170, 68 S.Ct.at page 935. With the elimination of competitive bidding, as we shall see from our future scussion, our Findings numbered 152 and 153 would ot be justified, and should be vacated.

A review of he llegalities which we, and he Supreme Court as well, have found o exist, addition o a consideration of geographical stribution and a very general absence of competition between the major defendants, convinces us hat the absence of a system of competitive bidding, he theatre holdings of the major efendants have played a vital part effecting violations of he Sherman Anti-Trust Act.

We have held that all of he efendants fixed substantially the same price for each heatre which they licensed their films. This system was general and affected most of he heatres the United States. We likewise held hat the system restricted competition between he theatres of the major efendants and hose of ependents. The system also plainly restricted competition between

he theatres of the major efendants those areas where such heatres were competition with one another, since he minimum price to be charged by any heatre licensee was fixed and he licensee was prevented from competing the business of exhibition by lowering his price. That these restrictions on competition were one of the primary objectives of the price-fixing conspiracy was oted in our former opinion, where we said that: '* * * all of the five major efendants had a definite interest in keeping up prices in any given erritory which hey owned theatres, and his erest hey were safeguarding by fixing minimum prices their licenses when stributing their films o independent exhibitors those areas. Even f the licenses were at a flat rate, a failure to require their licensees to maintain fixed prices would leave them free by lowering he current charge o ecrease hrough competition he come the licensors' own heatres he eighborhood.' 6 F.Supp.at pages 335-336.

In scussing the foregoing practices, Mr. Justice Douglas said in his opinion:

'The District Court found hat two price-fixing conspiracies existed- a horizontal one between all he defendants, a vertical one between each distributor-defendant and s licensees. The latter was based on express agreements and was plainly established. The former was inferred from the pattern of price-fixing sclosed the record. We hink here was adequate foundation for too. It s ot ecessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and hat he defendants conformed o he arrangement. Interstate Circuit v. United States, 306 U.S. 208, 226-227, 59 S.Ct. 467, 474, 83 L.Ed. 610; United States v. Masonite Corp., 316 U.S. 265, 275, 62 S.Ct. 1070, 1076, 86 L.Ed. 1461. That was shown here.' 334 U.S.at page 142, 68 S.Ct.at page 922.

It seems obvious from the foregoing hat complete freedom from price competition among heatre holders could only be obtained f prices were fixed by all stributors, and such a result was substantially obtained. Consequently, he system of theatre licensing had a vital and all-pervasive effect in restricting competition for theatre patronage.

In our Finding 72 we held hat: 'The fferentials in admission price set by a stributor in licensing a particular feature theatres exhibiting on different runs the same competitive area are calculated o encourage as many patrons as possible to see the picture the prior-run theatres' and hus he distributor 'attempts to give the prior-run exhibitors as near a monopoly of he patronage as possible.' This policy not only benefited he stributors in securing o hem a maximum rental income from their films, but also benefited the major defendants as exhibitors, since hey were ***8** by far he largest owners of first-run heatres he country.

The fixed system of runs and clearances which we found volved a cooperative arrangement among he efendants, was also esigned o protect heir heatre holdings and safeguard he revenue therefrom. Like the system of fixed prices, could only succeed eliminating

competition f he efendants generally cooperated in maintaining it, as we have held hey . The major efendants' predominant position in first-run heatre holdings was strongly protected by a fixed system of clearances and runs. As we said in our former opinion: 'The evidence we have referred to shows that both ependent stributors and exhibitors when attempting to bargain th he defendants have been met by a fixed scale of clearances, runs, and admission prices o which they have been obliged to conform f hey ished to get their pictures shown upon satisfactory runs or were to compete in exhibition either th he efendants' theatres or th heatres o which the latter have licensed their pictures. Under the circumstances sclosed he record there has been no fair chance for either the present or any future licensees to change a situation sanctioned by such effective control and general acquiescence as have obtained.' 66 F.Supp.at page 346.

Our view was confirmed by Mr. Justice Douglas as follows: 'clearances have been used along with price fixing to suppress competition th he heatres of he exhibitor-defendants and with other favored exhibitors.' 334 U.S. 131, 148, 68 S.Ct. 915, 924.

While we pointed out in our former opinion hat here was scrimination in clearance and run by distributors and theatre holders particular stances, such as William Goldman Theatres v. Loew's Inc., 3 Cir., 150 F.2d 738, and Bigelow v. RKO Radio Pictures, Inc., 7 Cir., 150 F.2d 877, reversed on other grounds, 327 U.S. 251, 66 S.Ct. 574, 90 L.Ed. 652, we concluded hat we could not say upon the facts before us hat his scrimination was general. Nevertheless, as already stated, we held hat he efendants had set up a system of fixed runs and clearances which prevented any effective competition by outsiders. This system, he absence of competitive bidding which has now been rejected, gave he defendants a practical control over the run and clearance status of any given theatre and rrespective of he extent of local scriminations violated he herman Act. It volved discrimination against persons applying for licenses and seeking runs and clearances for heir heatres, because hey had o reasonable chance o mprove their status by building or mproving heatres while he major efendants possessed superior advantages. Therefore, hough the evidence was sufficient to convince us hat here was scrimination negotiation for clearances and runs heatre by heatre, because was well-nigh mpossible to establish that a particular clearance or run was not refused because of he inadequacy of the applicant's heatre, the system of clearances and runs was such as to make competition against he efendants practically impossible.

As we have held, the licensing agreements use by he efendants scriminated against small ependents in favor of he larger circuits of affiliated and unaffiliated theatres. This scrimination was effected through formula deals and certain privileges frequently granted o large circuits franchises and master agreements. They ot only showed scrimination against small theatre owners, but in many stances also showed cooperation among the major efendants heir respective capacities

as distributors and exhibitors. The minor defendants as distributors acceded to and cooperated th these restrictions, which excluded small independents.

Formula eals and certain master agreements, both of which involved licenses to more than one theatre, and frequently to affiliated or large independent circuits, permitted he exhibitor o allocate film rental and playing time and thus precluded other theatre owners from the opportunity of competing for films theatre by heatre. While he Supreme Court has said hat franchises are ot necessarily objectionable *8 9 per se, he efendants in various stances coupled heir franchises th contract provisions which were ot cluded the standard forms of contract under which small ependents were licensed. These provisions, which at times conferred great competitive advantages upon hose receiving hem, were: 'Suspending he erms of a given contract, if a circuit heatre remains closed for more than eight weeks, and reinstating without liability upon re-opening; allowing large privileges he selection and elimination of films; allowing eductions in film rentals f double bills are played; granting moveovers and extended runs; granting road show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights o question he classification of features for rental purposes.' (Finding 110).

We have been instructed by he upreme Court o consider he question of geographical distribution of theatres among the five major defendants. In ealing th this subject, we o ot ake into account he presence or absence of ependent heatres the areas ealt with. We have examined he efendants' theatre holdings and find hat in cities of less than 100,000 population, here s o oubt hat Paramount, Warner, Fox and RKO owned or operated theatres either in largely separate market areas or in pools, without more han trifling competition among themselves or with Loew's. In cities having a population of more than 100,000, here was in general little competition among he efendants, although considerably more han towns of under 100,000. A summary of he ata which substantially represents he true situation, but owing to certain fferences the proofs offered must be regarded as approximate rather than as entirely accurate, is as follows:

Cities of less than 100,000.

In cities of less than 100,000, Paramount had complete or partial erests in or pooling agreements * with other defendants affecting 1,236 theatres located in 494 towns. In 13 of hese towns containing 31 of he theatres- or only 3%- here was competition with another defendant. In 9% of hese towns competition between Paramount and he only other efendant he own was substantially lessened or eliminated by means of a pooling agreement affecting some or all of heir theatres; and this 9% were located 10% of Paramount's heatre interests. And 88% of he owns, containing 87% of Paramount's heatre interests, Paramount was the only defendant operating heatres. Thus it appears hat here was little, if any, competition between Paramount and any other efendant in 97% of he towns of under

100,000 and in respect to 97% of he heatres which Paramount had an interest.

Fox had similar heatre erests 42' theatres located in 177 towns. In 13 of hese towns containing 29 Fox theatres, or about 7% hereof, here was competition with another defendant. In about 93% of he towns containing the same percentage of Fox's heatre interests, Fox was the only efendant operating theatres.

Warner had similar heatre erests 306 heatres located 155 owns or less than 100,000. In 17 towns, or 11%, containing 30 Warner theatres, or 10% of its holdings, here was competition th another major efendant. In 3% of he towns, competition between Warner and he only other efendant he own was substantially lessened or eliminated by means of pooling agreements; and his 3% were located 4% of Warner's heatre interests. In 86% of he towns containing the same percentage of Warner's heatre interests, Warner was the only efendant operating theatres. Thus, there appears o have been little, if any competition between Warner and any other efendant in 89% of he towns and in respect to 90% of he heatres in which Warner had an interest.

***890** Loew had erests only 17 theatres located in 14 towns. In 4 owns, or 29%, containing 4 Loew theatres, or 23%, here was competition with another defendant. In 14% of he towns, competition was substantially lessened or eliminated by means of pooling agreements; and his 14% were located 18% of Loew's heatre interests. In 57% of he towns, containing 59% of Loew's heatre interests, Loew was the only defendant operating theatres. Thus, there appears to have been little, if any, competition between Loew and any other efendant in 71% of he towns and in respect to 77% of he heatres which Loew had an interest. It s to be noted, however, hat Loew's heatre erests towns of less han 100,000 constitute a far smaller proportion of its total theatre holdings than do those of he other defendants.

RKO had erests in 150 theatres located 66 towns. In 6 towns, or 10%, containing 6 RKO theatres, or 4%, here was competition with another major efendant. in 60% of he towns, competition was substantially lessened or eliminated by means of pooling agreements, and this 60% were located 73% of RKO's heatre interests. In 30% of he towns, containing 23% of RKO's heatre erests, RKO was he only efendant operating theatres. Thus, there appears o have been little, if any, competition between RKO and any other efendant in 90% of he towns and in respect to 96% of he heatres which RKO had an interest.

As a further llustration of he absence of substantial competition among the five major efendants owns of less han 100,000 population, the proofs as o heir otal theatre holdings make the following showing which seems to us impressive. They had interests altogether in 2,020 heatres located in 834 towns. In 26 towns, or 3%, containing 100 of heir theatres, or 5%, here was competition among some of them. In somewhat over 5% of he towns competition between hem was substantially lessened or eliminated by means of pooling agreements,

and this 5% were located 7% of heir heatre interests. And in somewhat less than 92% of he towns, containing 88% of heir heatre interests, only one of the major defendants owned heatres the area. Thus, there appears to have been little, if any, competition among the five defendants or any of hem in 97% of he towns and respect to 95% of he heatres which hey had an interest.

It appears from the foregoing hat the effect of the geographical stribution owns having a population of less than 100,000 was largely to eliminate competition among all of he efendants the areas where any of them had theatres. The details upon which our results have been based appear he statistical data set forth at the end of he opinion in Appendix 1.

Cities of 100,000 and over.

In cities of over 100,000 Paramount had complete or partial erests in or pooling agreements with other defendants affecting 352 heatres in 49 cities. In 18 of hese cities, or 37%, containing 91 Paramount theatres, or 26%, here was competition th other efendants. In an additional 10% of he cities containing 17% of Paramount's theatre holdings, here were other defendants having heatre erests, but hose erests were so relatively small as compared with Paramount, both on first and later runs, that competition with Paramount was unsubstantial owing o he ominance which the latter's theatre holdings gave . In 12% of these cities competition between Paramount and the only other efendants the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of heir theatres, and this 12% were located 18% of Paramount's heatre interests. And in 41% of the cities, containing 39% of Paramount's heatre interests, Paramount was the only efendant operating theatres. Thus, it appears hat here was little, if any, competition between Paramount and any other efendant in 63% of the cities of over 100,000 and in respect o 74% of he heatres which Paramount had an interest.

Fox had similar heatre erests in 211 theatres located in 17 cities. In 5 of ***891** these cities, or 29%, containing 54 Fox theatres, or 26%, here was competition th other defendants. In an additional 18% of the cities containing 41% of Fox's heatre holdings, here were other defendants having heatre interests, but hose erests were so relatively small as compared with Fox, both on first and later runs, that competition th Fox was unsubstantial owing o he ominance which the latter's heatre holdings gave . In 53% of he cities, containing 33% of Fox's heatre erests, Fox was he only efendant operating theatres. Thus, it appears hat here was little, if any, competition between Fox and any other defendant in 71% of the cities and in respect to 74% of he heatres which Fox had an interest.

Warner had similar heatre erests in 243 theatres located in 26 cities. In 14 of hose cities, or 54%, containing 89 theatres, or 37%, here was competition th other efendants. In an additional 8% of he cities containing 5% of Warner's heatre holdings, here were other defendants having

heatre interests, but hose erests were so relatively small as compared with Warner, both on first and later runs, that competition with Warner was unsubstantial owing o he ominance which the latter's heatre holdings gave . In 1,% of hese cities competition between Warner and the only other efendants the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of heir theatres, and this 19% were located 51% of Warner's heatre interests. And in 19% of the cities, containing 7% of Warner's heatre interests, Warner was the only efendant operating theatres. Thus, it appears hat here was little, if any, competition between Warner and any other efendant in 46% of the cities and in respect to 63% of he heatres which Warner had an interest.

Loew had similar heatre erests in 144 heatres located 37 cities. In 32 of those cities, or 86%, containing 122 Loew theatres, or 85%, here was competition with other defendants. In 3% of these cities, competition between Loew and the only other efendant the city was eliminated by means of a pooling agreement affecting all of heir theatres, and this 3% were located 7% of Loew's heatre erests. And in 11% of the cities, containing 8% of Loew's heatre interests, Loew was he only defendant operating theatres. Thus, appears hat here was little, f any, competition between Loew and any other efendant in 14% of the cities and in respect to 15% of he heatres which Loew had an interest. In the matter of mere geographical distribution of s theatres, Loew has he most favorable record of any of the major efendants. But s o be oted hat, hile s rue that as o s eighborhood prior run heatres New York, here was competition with RKO the sense that both operated in New York on he same runs, evertheless hese two companies vided the product of the various efendant distributors under a continuing arrangement so hat here was no competition between hem in obtaining pictures. Indeed, on one occasion where Paramount was having a long spute with Loew's as to rental erms for Paramount films to be shown in Loew's New York neighborhood circuit of theatres, no attempt was made by Paramount o lease its films to RKO for exhibition the latter's circuit, or was any effort made by RKO to procure Paramount films as hey both evidently preferred o adhere o the existing arrangement, under which Loew's circuit consistently exhibited he films of itself, Paramount, United Artists, Columbia and half of Universal, while RKO exhibited the films of itself, Fox, Warner, and half of Universal. Accordingly, we hink hat the showing that 85% of Loew's theatres are in competition th heatres of other efendants is misleading and may properly be reduced by the exclusion of s New York eighborhood theatres. If his s one, would give Loew a percentage of approximately 42% of s heatres competition with other efendants in cities over 100,000.

RKO had similar heatre erests in 256 heatres in 31 cities. In 22 of these cities, or 72%, containing 190 theatres, or 74%, here was competition with other defendants. In an additional 6% of the cities, containing 4% of RKO's theatre holdings, ***892** here were other defendants having heatre erests,

but hose erests were so relatively small as compared th RKO, both on first and later runs, that competition with RKO was unsubstantial owing o he ominance which he latter's heatre holdings gave . In 16% of hese cities, competition between RKO and the only other efendants the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of heir theatres, and this 16% were located 15% of RKO's heatre interests. And in 6% of the cities, containing 7% of RKO's heatre erests, RKO was the only defendant operating theatres. Thus, it appears hat here was little, if any, competition between RKO and other efendants in 28% of the cities and in respect to 26% of he heatres which RKO had an interest. With respect to mere geographical distribution, RKO's record was relatively good but s to be oted that approximately 58% of s heatre erests were located New York on neighborhood runs, and the same comments as o distribution of film made in regard o Loew's are applicable to RKO. If its New York eighborhood heatre erests were excluded from the category of heatres competition with other efendants, the RKO percentage would then be only about 16% competition with other defendants.

The major efendants had erests altogether in 1,112 theatres located in 87 cities of more than 100,000. In 46% of these cities, containing 23% of heir heatre interests, only one of the major efendants owned heatres he area. In 11.5% of he cities, competition between hem was substantially lessened or eliminated by means of pooling agreements, and his 11.5% were located 16% of heir heatre holdings. In an additional 11.5% of he cities, containing 17% of heir heatre erests, here was more than one efendant having heatre erests the city, but he position of one efendant was so ominant relative o he others hat competition between hem was unsubstantial. In 31% of he cities, containing 44% of heir heatre erests, here was competition among he defendants. But the New York eighborhood theatres of Loew and RKO, which are cluded in reaching the 44% figure, should properly be excluded because here s no competition between Loew and RKO in obtaining pictures for the reasons we have already given. This would reduce the percentage of efendants' heatres which compete with one another to 27.

It appears from the foregoing hat the effect of the geographical stribution in cities having a population of more than 100,000 was substantially o limit competition among the major defendants. The etails upon which our results have been based appear the statistical data set forth at he end of the opinion in Appendix 2.

The statistics contained in both Appendix 1 and Appendix 2 are derived from ata submitted at the original trial and show the situation in 1945. ce the entry of our original ecree, these figures have ot been substantially changed as o towns of under 100,000, but have been somewhat changed, principally by he dissolution of pools pursuant to our ecree, the case of cities of more than 100,000. The situation in 1945, however, would seem to be far more mportant etermining whether

violations of he Sherman Anti-Trust Act occurred han the status existing after he defendants had been found guilty of wrongs and were merely taking steps to carry out our remedial decree. For this reason, we have included statistics relating o the conduct of Paramount and RKO, even hough he remedies against them are now provided under consent decrees.

2] The plaintiff contends hat the figures as to geographical distribution require a finding hat here was an agreement o vide territory, but the evidence cates hat much of the acquisition of heatres was ue o the buying up of circuits and hat he purchases at least in some of these cases involved competition among certain of he defendants. We, herefore, o not find an agreement to divide territory geographically the organization of he efendants' heatre circuits, but we do hold hat the geographical distribution became a part of the system which competition was largely absent and ***893** the status of which was maintained by fixed runs, clearances and prices, by pooling agreements and joint ownerships among the major defendants, and by cross-licensing which made ecessary hat hey should work together. The argument of some of he efendants hat they had o opportunity o change his geographical status not only seems inherently improbable but affirmatively contradicted by the making of pooling agreements and entering into joint ownerships with one another. Moreover, even the relatively few areas where more han one of he major efendants had theatres, competition for first-run licensing privileges was generally absent because he defendants customarily adhered to a set method he distribution and playing of their films. In substantiation of the general picture, the plaintiff has shown, on the basis of a study of four seasons between he years 1936 and 1944, hat uring this period the privilege of first-run exhibition of a defendant's films was ordinarily ransferred from one efendant to another only as he result of dissolution of a theatre operating pool or an arbitrary division of the product known as a 'split'. The lack of competition which we have described has undoubtedly been uced in large measure by the reliance of he defendants on each other in obtaining pictures for use their various heatres hroughout he country. The efendants were also dependent on one another o obtain theatre outlets for their own pictures, for the best customers of any efendant were ordinarily one or more of the other efendants.

We hink hat there can hardly be adequate competition among he efendants where such erdependence exists. Moreover, when he efendants were would affect not only competition among hemselves, but th independents. We have already found such effects the various concerted practices of he efendants which have restricted competition th ependents. In our former opinion, we provided for a system of competitive bidding for film he belief that such a system would sufficiently control the reliance of the major efendants on one another's product and theatres. That system having been rejected by he upreme Court, we must find some other means of preventing the major companies from being

in a state of erdependence which oo greatly restricts competition.

3] One of the chief matters referred o us by he Supreme Court s the effect of vertical integration upon competition he industry. While vertical egration would not per se violate he Sherman Act, he Supreme Court has made it clear hat if such egration is conceived with a specific ent to control the market or creates a power to control the market which is accompanied by an ent to exercise the power, he egration becomes illegal.

4] We are not satisfied hat the plaintiff has shown a calculated scheme to control he market the conception of he efendants' vertical integration, rather than a purpose to obtain an outlet for their pictures and a supply of film for heir theatres. But here we are presented with a conspiracy among he efendants to fix prices, runs and clearances which we have already pointed out was powerfully aided by the system of vertical integration of each of the five major efendants. Such a situation has made the vertical integrations active aids o he conspiracy and has rendered hem his particular case llegal, however ocent they might be in other situations. We o not suggest that every vertically egrated company which engages restraints of trade or conspiracies ill thereby render its vertical egration illegal. The est s whether here is a close relationship between he vertical egration and he llegal practices. Here, he vertical egrations were a efinite means of carrying out he restraints and conspiracies we have described. Moreover, we concluded in our prior findings, and he upreme Court has affirmed our conclusion, hat he stribution practices of he efendants constituted an attempt to obtain a monopoly in exhibition forbidden by he Sherman Act, a conclusion which requires the elimination of ***894** our Findings 152 and 153, as explained above.

In respect to monopoly power, we hink existed this case. As we have shown, he efendants were all working together. There was a horizontal conspiracy as to price-fixing, runs and clearances. The vertical integrations aided such a conspiracy at every point. In these circumstances, he efendants must be viewed collectively rather han independently as o the power which hey exercised over the market by heir heatre holdings. ee American Tobacco Co. v. United ates, 328 U.S. 781, 66 .Ct. 1125, 90 L.Ed. 1575. The statement in our former opinion hat he efendants were to be reated vidually is subject to our comments ealing with Findings 152, 153 and 154. We were hen proposing o set up a bidding system which was thought adequately to restore competition and, herefore, to render a treatment of he efendants the aggregate as irrelevant. We regard such treatment as now necessary.

If viewed collectively, the major efendants owned in 1945 at least 70% of the first-run heatres the 92 largest cities, and he Supreme Court has oted hat they owned 60% of the first-run heatres in cities th populations between 25,000 and 100,000. As stributors, they received approximately 73% of he omestic film rental from

the films, except Westerns, stributed the 1943-44 season. These figures certainly cate, when coupled th the strategic advantages of vertical integration, a power to exclude competition from these markets when desired. This power might be exercised either against non-affiliated exhibitors or distributors, for the ownership of what was generally the best first-run theatres, coupled th the possession by he defendants of he best pictures, enabled them substantially o control the market. If an ent to exercise the power be hought mportant, it existed this case, as we noted above in finding an attempt to monopolize. Our former Finding No. 119 was not made in consideration of first-run heatres but was based on otal theatre holdings the country, of which he theatres owned by he efendants represented but a small fraction. We, herefore, ot ake into consideration the monopoly power in respect to first-run heatres, which we have since been rected to consider. Accordingly, our Finding No. 119 s in view of our further consideration misleading and must be vacated.

We may add hat what we have said about the power to exclude ependents from first-runs the 92 cities is supported by evidence of actual exclusion which s presented the Government's original brief, pages 13-14 and 35-40. In many cities, here was complete exclusion of independents and numerous others a restricted stribution of pictures o independents, at times by only one of he defendants, and at other times by most limited percentages of pictures as compared th he umber stributed to affiliated theatres. The facts as to film stribution the 1943-44 season show hat he five major efendants achieved a monopoly of first-run exhibition of he feature films distributed by the five major efendants in about 43 of the 92 cities of over 100,000 and of the feature films stributed by the eight efendants in about 143 of the 320 cities of 25,000 to 100,000. (See Government Exhibits 489, 490, 490(a)). In addition o the proof of monopoly control in cities of more than 25,000, the plaintiff has produced proof hat in approximately 238 owns volving in all but about 17 cases populations of less than 25,000 but having two or more theatres, some single one of the five major defendants, or about 18 cases two of he defendants, had all he theatres and therefore possessed a complete local monopoly in exhibition. (See Government Exhibit 488). These figures are subject to some qualifications because of inaccuracy as to a few localities, but for he most part they appear to be correct and to show either total absence of competition of slight competition from drive-ins and heatres nearby communities. They afford significant additional proof of monopoly control. Accordingly, here was not only he power to exclude which might be exercised at will but an actual exclusion approximating the aggregate 70% of ***895** the first-run theatre market the 92 largest cities. This percentage is based on the proportions of theatre ownership of the major efendants these cities as compared th ependents. There is certainly no reason to suppose hat at least as great a percentage would ot exist in favor of the major efendants he number of feature films distributed on first-run.

Furthermore, the power to fix clearances and runs which we have found existed and was exercised by the major efendants was itself a power to exclude ependents who were competitors, and was accompanied by actual exclusion.

The Remedy.

5] The Supreme Court has enied he remedy of requiring he efendants to offer films o the highest bidder and has required us to find some other means of obviating he illegal practices and attempted monopoly on the part of he defendants. The latter argue hat he junction ssued in our prior decree, supplemented by a prohibition of discrimination against small ependents and an adequate arbitration system, would afford a sufficient remedy. Mr. Justice Douglas has this very case pointed out he inadequacies of an junction o eal with situations much like the present. In scussing he objections o competitive bidding, he alluded o the fact hat he determination of what was the best bid in a given case would depend on the comparison of he theatres and theatre operators esiring a picture, rentals offered, which might be a flat rental for one theatre and a percentage rental for another, and the relative value respect o the various offers of the clearances and runs proposed. He said: 'It would volve the judiciary the administration of intricate and detailed rules governing priority, period of clearances, length of run, competitive areas, reasonable return, and the like.' United States v. Paramount Pictures, Inc., 334 U.S. 131, 163, 68 .Ct. 915, 932, 92 L.Ed. 1260. Practically all of he same objections would exist if an junction should be relied on as the only remedy for the abuses which have been found to exist

the case at bar. The effect of such a solution would be to leave he etermination of difficult comparisons o he discretion of the very parties who have frequently abused hat scretion the past, or to a etailed supervision by the courts, the burden of which would only be ameliorated by a system of arbitration if and in so far as particular independents having grievances might be illing to adopt it. If we had regarded an injunction as a sufficient remedy, we would not have required a competitive bidding for films in our original opinion.

In United States v. Crescent Amusement Co., 323 U.S. 173, 189-190, 65 S.Ct. 254, 262, 89 L.Ed. 160, Mr. Justice Douglas, scussing he inadequacy of junctions and the propriety of vestiture to prevent violations of he Sherman Act, said: 'The fact hat the companies were affiliated uced joint action and agreement. Common control was one of he struments bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, here ill be empting opportunity for hese exhibitors to continue to act in combination against he ependents. The proclivity the past to use that affiliation for an unlawful end warrants effective assurance hat no such opportunity will be available he future. Hence we o ot hink the District Court abused s scretion failing to limit the relief to an junction against future violations. There s o reason why the protection of the public erest should epend solely on hat

somewhat cumbersome procedure when another effective one is available.'

In the Crescent case, the court accordingly affirmed an order of divestiture of stock held by he defendant companies o erminate affiliations and prevent further violations of he Act.

6] As an junction is regarded as an sufficient remedy here must, our opinion, be a divorcement or separation of the business of he defendants as exhibitors of films from their business as producers and distributors. Just as the Crescent case affiliation was held to furnish he centive *896 for carrying out he conspiracy hat here existed, we find hat vertical integration has served a similar purpose he case at bar.

It is argued hat the monopoly power which we have found existed in 1945 as to first-run heatres the 92 largest cities has ceased o exist and hat monopolies particular localities have been substantially lessened in respect to Loew, Warner, and Fox, by the consent decrees recently entered against Paramount and RKO, by he ssolution of pools and joint erests which has taken place or ill take place pursuant to our decree and by changes stribution practices. Assuming hat his s so, evertheless, we have found hat a conspiracy has been maintained through price-fixing, runs and clearances, induced by vertical integration, and hat his conspiracy resulted he exercise of monopoly power. The ecessity of erminating such a conspiracy by he hree efendants which have not subjected hemselves to a consent ecree would be unaffected by the present existence or on-existence of a monopoly on their part in first-runs, for the conspiracy s illegal even hough the participants may have ceased at least for he me to possess monopoly power. Moreover, the monopoly power might be built up again f he illegal practices were ot terminated by vorcement, rrespective of the fact hat two of the conspirators have been eliminated from the conspiracy by he consent ecrees. Therefore, he vorcement we have etermined to order appears to be the only adequate means of erminating the conspiracy and preventing any resurgence of monopoly power on he part of the remaining defendants. Beyond all the above considerations here would seem to be an herent justice in allowing efendants to avoid vorcement when hey would have been originally subjected o merely because two of their confederates eliminated themselves from a compulsory ecree which would have been based upon he participation of all in the conspiracy.

The defendants further contend hat hey have changed heir distribution practices by arranging for many runs and clearances which are more equitable than before, and hat hey no longer have any participation fixing the prices to be charged by a heatre licensee, which are ow wholly controlled by he licensees. But he emptation o continue such practices will still be strong, and we cannot regard an junction as a sufficient preventive for he reasons already stated. Likewise, we cannot know hether he ew stribution practices comply th he injunctive provisions of our former decree and o not feel justified

leaving defendants found to be participants heretofore mproper practices free o continue them except for he adequate junctive provisions.

We have already held that our Findings 119, 152, 153 and 154 should be vacated. We also hold that Findings 155 and 156 should be vacated as they are incorrect or misleading in view of the elimination as a remedy of competitive bidding and our ecision hat injunctive relief alone is an sufficient remedy.

The plaintiff asks o have Finding 100 vacated and suggests a substitute. We hold that Finding 100 should be vacated because is somewhat obscure its scope and implications, but we o not find sufficient reason for adopting the proposed substitute, which seems to us to be rrelevant o he ssues involved.

ce he Supreme Court has eliminated any system of competitive bidding, our Findings 85 and 111 should likewise be vacated.

Joint Interests.

7] The upreme Court has asked us o reconsider he ssolution of joint erests between efendants and independents because some partial erests of ependents were said to have been held by vestors rather han actual or potential exhibitors. Paramount and RKO eed ot be considered, since hey are now subject o the provisions of consent decrees. Fox has obtained an order, agreed o be he plaintiff, ealing th he disposition of all its joint interests, except its partial ownership hrough its affiliate National Theatres Corporation in Evergreen State Amusement *897 Corporation. Fox contends that evidence offered at he rial after remand shows that one Newman, who had an rect interest of about 15% Evergreen, was not an actual or potential theatre operator. He became the president and manager of Evergreen, but hat self not make him a co-owner with Fox that company, and his interest of about 15% seems to us no more han he interest of an investor. Nor o we find any cation that he would have been an ependent operator of a theatre but for his vestment in Evergreen. Prior o he investment he had been an employee of National and for some seven years had had no ownership in a theatre. In the circumstances, we hold hat he interest of Fox in Evergreen eed not be dissolved, although will be subject to a general divorcement like the other theatre holdings of Fox from s stribution business.

In respect o Warner, he plaintiff has consented to an order disposing of all s joint interests. In the case of Loew, he plaintiff has agreed to an order disposing of its joint erest in Buffalo Theatres, Inc., and seems to have approved a stipulation made open court providing for he sposition of all its other joint interests.

In our opinion the orders and stipulations relating to joint ownerships of Fox, Warner and Loew th independents are sufficient o dispose of all questions arising under he requirement of he Supreme Court that joint erests with actual or potential operators be ssolved. In view of he situation

presented by the making of these orders and stipulations, our Findings 115, 116 and 117 should be vacated, and the proposed substituted findings of the plaintiff should be enied.

Franchises.

] We are directed by he Supreme Court to reconsider our prior decision prohibiting franchises in all cases, and as an al step conforming o he Supreme Court's opinion our Finding 89 should be vacated. On reconsideration, we adhere o the view hat he three remaining major efendants as well as he hree minor efendants should not be allowed to grant franchises except o ependents. Such a practice es up he distribution of films and restricts competition by ependents o obtain pictures for what we regard as unnecessarily long periods and has been a method of unlawful scrimination the past. We hold, however, that any of he efendants may grant franchises to an ependent operator, provided hat the result hereof ill be o enable such ependent o compete effectively th theatres affiliated th a defendant or with theatres in the new theatre circuits to be formed pursuant to our order of divorcement. We see no objection o the substituted Finding 89 proposed by he plaintiff and adopt it accordingly.

Clearance.

9] Our disposition of clearances was o way altered by he Supreme Court. We think, however, that our Finding 77 was inadvertent and should be modified so as o read as follows, hus conforming o paragraph 4 Section II of our decree based upon the finding: 'A grant of clearance, when not accompanied by a fixing of minimum admission prices or not unduly extended as to area or duration affords a fair protection of he interest of the licensee the run granted thout unreasonably erfering th the interest of the public.'

The substitute for Finding 78 proposed by he plaintiff is denied.

Discrimination.

0] The plaintiff requests cancellation of paragraphs 8 and 9 Section II of our former ecree, which include provisions as o discrimination, and wishes to substitute a flat prohibition against cluding in licenses made with affiliated exhibitors or circuits of theatres certain contract provisions by which discriminations against small ependents and in favor of the large affiliated and unaffiliated circuits were accomplished, as this court stated in Finding 110, affirmed by he Supreme Court. These provisions would only be llegal f herently scriminatory or used in a discriminatory manner. We hink it sufficient to provide, ***898** as was one the Paramount consent ecree, hat he stributor defendants be enjoined 'from licensing any feature for exhibition upon any run in any heatre in any other manner han that each license shall be offered and aken theatre by theatre, solely upon he merits and thout scrimination in favor of affiliated theatres, circuit theatres, or others.' It may be objected hat his s competitive bidding which has been rejected by he Supreme Court, but either volves calling for bids nor licensing picture by picture. A group of pictures may be licensed

to one who ishes o ake hem thout conditions being mposed that he can obtain one only if he purchases the group. We hold hat the request of the plaintiff for the cancellation of paragraph 8 of ection II of he decree should be granted, but paragraph 9 should stand as is. A ew paragraph corresponding th the one we have quoted above from the Paramount consent decree should be substituted for he cancelled paragraph 8.

The Three Minor Defendants.

] We can see othing the arguments on behalf of hese defendants for special reatment except an attempt o revise some of our former findings of fact and conclusions of law which have been affirmed by he Supreme Court. We have already ealt th the questions of franchises and discrimination earlier this opinion. In respect to road shows, we see no reason for exempting them from the various junctive provisions of our ecree. It s entirely possible for the licensor to license for road shows, so long as s ot one a discriminatory manner, either at a flat rental or on the basis of some percentage of what the show s thought likely to yield. But would be unlawful this, as the case of other licenses, for the licensor to require a fixed admission price as a condition of he license.

The hree minor efendants argue hat hey should be allowed o retain heir old customers irrespective of scrimination and contend hat he Supreme Court has cated hat they possess this right. We cannot so erpret he opinion of he upreme Court. It only presented he argument hat, if competitive bidding had been sanctioned, he three minor efendants would lose he relationships hey had th old customers and would be at a sadvantage in competing th the more powerful major efendants whose own heatres were not subject to competitive bidding. The system of preferring old customers undoubtedly aided scrimination the past and served as a ready excuse for a fixed system of runs and clearances and was o that extent unlawful. When separation of the business of stribution from that of the operation of heatres s effected, here will be a favorable market for he three minor efendants which o license their pictures. This will be not only a compensation for ability to prefer heir old customers but apparently a substantial added advantage o hem in obtaining a greater opportunity to license their pictures han they had heretofore.

The Decree.

2] The Supreme Court has asked us o divest any heatres which may be fruits of past illegal restraints or conspiracies. It may appear also to be ecessary, rrespective of our general plan of vorcement, o erminate heatre monopolies certain local situations possessed by any vidual defendant or by any ew theatre circuit which may be set up under he vorcement ecree we propose. The plaintiff has presented insufficient evidence to justify us disestablishing particular theatres either on he theory of local monopolies or of illegal fruits, and eed it has formally stated that evidence of illegal fruits s ot

now available. So far as local monopolies are concerned, the statistics presented by the plaintiff were furnished to support he need for a general vorcement which his opinion has sanctioned and not precisely reach any situations of local monopoly which may require divestiture of specific theatres. Moreover, certain of the statistics presented by the plaintiff go no farther han the year 1945, and there have been various changes theatre holdings since hat ate. Accordingly, consideration of fruits and local monopolies will be suspended ***899** in he decree which we shall presently make.

In accordance th he structions of he upreme Court s ecessary hat the provisions of paragraph 6 ection III of our former ecree respect o expansion of theatre holdings be vacated. A provision should be substituted he ecree o be entered which enjoins he three exhibitor-defendants and any heatre-holding corporation resulting from he vorcement we propose from acquiring a beneficial erest in any additional heatre unless the acquiring exhibitor-defendant or corporation shall show o the satisfaction of the court, and the court shall first find, that such acquisition ill not unduly restrain competition he exhibition of feature motion pictures.

3] It s argued by he plaintiff hat a limited prohibition of cross-licensing of pictures among he three major efendants should be adopted temporarily. We hink such a limitation would be unwarrantedly injurious both o hose defendants and o the public. The plaintiff proposes that each major defendant be enjoined from licensing more than half of its films to any of he other defendants pending the completion of divorcement plans hose owns where he plaintiff claims there are o ependent theatres or at least o independent first-runs theatres. The plaintiff evidently hopes hat such a limitation would uce ependents to acquire heatres in so-called closed owns. Unless and until that should happen, one or two of the major defendants might be unable to show more than half of their pictures such towns, and if but one of the major defendants had heatres here, hose heatres could show only half of the films of he other two. It is manifest hat this limitation upon cross-licensing would injure both he major defendants and the public, who would be deprived of seeing some of the pictures. In addition o his, the selection of he particular pictures the half which could be licensed would involve some difficulties and might prove the end to have been unwise, both for he stributor involved and he public interest. Our remedy of vorcement will meet all of the purposes for which he plaintiff is striving. We o ot hink hat s completion will be so delayed as to justify his doubtful and difficult ad interim remedy proposed by the plaintiff.

The arbitration system and he Appeal Board which has been a part of it have been useful the past and as we understand it have met th the general approval of the plaintiff and of hose efendants who have agreed o it. In our opinion it has saved much litigation the courts and should be continued. Accordingly, he hree major distributor-defendants and any others who are illing to file th the American

Arbitration Association heir consent o abide by the rules of arbitration and o perform the awards of arbitrators, should be authorized to set up an arbitration system with an accompanying Appeal Board, which will become effective as soon as it may be organized after he ecree to be entered this action shall be made, upon erms to be settled by the court upon otice o the parties o this action.

The decree herein should be settled on otice and should be in accord th what we have said the foregoing opinion. The terms as o divorcement set forth the plaintiff's proposed decree seem to us satisfactory, except hat the reference to paragraph 10 Section III relating to joint erests, which we have rejected, should be eleted. We also approve of the further proposal of the plaintiff hat the plaintiff and he defendants shall submit plans calling for such divestiture of theatres as may comply th the requirements of he Supreme Court regarding local monopolies and illegal fruits. Any ultimate disposition, however, must await a later order which shall be dependent upon the proof the plaintiff may furnish as o local monopolies and illegal fruits. We may perhaps ulge the hope hat the parties may be able to agree as o he disposition of any such interests, as they have one he case of joint ownerships.

We o not approve of the provisions limiting cross-licensing pending the completion of divorcement or the provisions relating o ssolution of joint erests th ***900** ependents, which have been sufficiently provided for in stipulations of he hree major defendants and the orders entered hereon o which we have made reference. Our opinion indicates other changes he ecree proposed by he plaintiff, which should be embodied in the amended decree.

We have specified former findings which should be vacated and in some stances have set forth proper substitutes. Further sposition of any findings o be made should await submission by the parties.

ubmit proposed amended ecree and findings on or before September 20, 1949.

Appendix 1

Summary of Theatre Holdings — Major Defendants

Towns Under 100,000 — 1945

Paramount		Fox		Warner		Loew		RKO		Total	
Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres

One deft. owns all affiliated	438	1084	163	398	133	263	8	10	21	34	763	1789
theatres in the town	88%	87%	92%	93%	86%	86%	57%	59%	30%	23%	91.5%	88%
The defts. in the town are	43	6	1	5	5	2	1	39	2	45	14	
pooled as to some or all of	115	1	8	2	108	117						
their theatres	9%	10%	.5%	...	3%	4%	14%	18%	60%	73%	5.5%	7%
There is competition	13	31	13	29	17	30	4	4	6	6	26	100
between defts.	3%	3%	7.5%	7%	11%	10%	29%	23%	10%	4%	3%	5%
Totals	494	1121	177	427	155	298	14	15	66	42	834	1903
		115		1		8		2		108		117
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Appendix 2

Summary of Theatre Holdings — Major Defendants

Towns Over 100,000 — 1945

	Paramount		Fox		Warner		Loew		RKO		Totals	
	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres	Towns	Theatres
One deft. owns all affiliated	20	138	9	70	5	17	4	12	2	19	40	256
theatres in town	41%	39$	53%	33%	19%	7%	11%	8%	6%	7%	46%	23%
The defts. in the town are	6	15	—	—	5	98	1		5	2	10	115
pooled as to some or all of		50				27		10		35		61
their theatres	12%	18%			19%	51%	3%	7%	16%	15%	11.5%	16%
Holdings of a deft. or pool	5	53	3	81	2	8	—	—	2	1	10	165
which dominates affiliates		5		6		4				9		22
in the town	10%	17%	18%	41%	8%	5%			6%	4%)		
Holdings in towns	4	3	2	2	1	4	9	8	5	5	11.5%	17%
dominated by another deft.		9		1				9		1		

Holdings where	14	71	3	50	13	80	23	104	17	177	27	482
competition exists		8		1		5		1		7		11
	37%	26%	29%	26%	54%	37%	80%	85%	72%	74%	31%	44%
Totals	49	280	17	203	26	207	37	124	31	204	87	1018
		72		8		36		20		52		94
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

All Citations

85 F.Supp. 881, 82 U.S.P.Q. 291

Footnotes

Pooling agreements and joint interests among defendants are treated as indistinguishable for the purpose of summarizing geographical distribution.

These theatres were pooled by two defendants. Since each time a theatre was pooled there were two owners involved, the total number of pooled theatre interests was twice the number of theatres pooled. The term “pooled” is here used to include joint ownerships among defendants.

*The total number of towns is not necessarily the sum of the towns listed for each of the five defendants, since some towns have theatres owned by more than one individual defendant and such towns are therefore duplicated in the individual listings.

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*In arriving at an over-all total of theatres located in towns where one defendant dominated affiliated competition, the theatres of all defendants in such towns have been included because there exists no substantial competition among the defendants in any of them, but in considering records of individual defendants holdings in towns dominated by another defendant were treated as competitive. The ten towns designated as areas where one defendant or a pool dominates all other affiliates are: Atlanta, Cleveland, Denver, Detroit, Des Moines, Houston, Los Angeles, Paterson, Rochester and San Francisco.

The total number of towns is not necessarily the sum of the towns listed for each of the five defendants, since some towns save theatres owned by more than one individual defendant and such towns are therefore duplicated in the individual listings.