

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

WARNER BROS. (F.E.), INC.

Claim No. CN-0439

Decision No. CN- 450

Under Title V of the International Claims  
Settlement Act of 1949, as amended by  
Public Law 89-780

AMENDED PROPOSED DECISION

This claim, in the amount of \$523,465.00, is based upon the following items:

1.	Estimated replacement cost of motion picture film confiscated or destroyed to avoid confiscation	\$ 171,746.00
2.	Estimated residual of these motion picture films	\$ 322,100.00
3.	Estimated replacement cost advertising access- ories, stationery, office supplies, etc. confis- cated or destroyed to avoid confiscation	\$ 10,000.00
4.	Estimated replacement cost furniture, fixtures and office equipment	\$ 15,000.00
5.	Cash on hand and in Communist Banks and Out- standing Accounts Receivable at July 23, 1949	\$ 3,036.00
6.	Cash (American Currency) on hand	\$ 1,583.00
	Total	\$ 523,465.00

In its Proposed Decision the Commission denied the claim since claimant had failed to establish that it was a national of the United States within the meaning of the Act. No determinations were made as to the issues of ownership of the claimed property, a taking by the Chinese Communist regime, and value.

Based on the newly submitted evidence, the Commission now finds that claimant's predecessor in interest was incorporated in 1932 under

the laws of the State of Delaware and at all times pertinent to the statute, 50 per centum or more of the outstanding capital stock was owned by nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has submitted company records showing shipment of products to China; inventories of features, trailers, and short subjects prepared on claimant's stationery with each page of the list duly countersigned by an official of the firm for authenticity of the contents; copy of inventory of advertising accessories on hand in China on September 24, 1949; copies of inventories and other evidence reflecting the furniture, fixtures, office equipment on hand in China and evidence relating to cash and bank accounts.

The Commission finds that claimant, WARNER BROS. (F.E.), INC., was engaged in the business of the distribution of motion pictures on the mainland of China. It maintained a head office in Shanghai, branch offices in Chungking, Canton and Tientsin, with shipping points and representatives in other cities of China. Incident to its business, claimant was the owner of certain personal property consisting of prints of features, trailers and shorts; advertising accessories, and cash, hereinafter more fully described. A report of the SCMP (Survey of China Mainland Press) discloses that certain of the property in claimant's offices was placed under the military control of the Chinese Communist regime on January 11, 1951. The Commission finds that, under the Act, to all intents and purposes, said date is the date of taking of claimant's property hereinafter more fully identified.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the

claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The prints shipped to China by claimant were made from negatives of various productions previously produced by claimant. The prints had been exhibited or were to be exhibited in various areas or exhibition zones in the larger cities of China, or areas throughout the smaller towns and hamlets. Thus, the product was in various stages of the depletion cycle applicable to such product, at the time of loss, with some prints apparently to be released or in active use in the aforesaid exhibition zones, others in a rerun category, while others were to be junked as no longer having utility for exhibition purposes.

Officials of the claimant have submitted their affidavits and statements indicating the cost of manufacturing film product in the years immediately prior to loss, including cost per foot of black and white prints, or those in color. Claimant has computed a value of the prints on a replacement cost at the time of loss. The value for the prints is stated as \$48,646.00 and includes all film material which was in existence and in distribution after World War II. In addition, a \$123,100.00 amount is asserted for duty, shipping and engraving charges for some 169 features and short subjects that were imported into China in 1946, 1947 and 1948. No claim is made for said aforementioned charges for product imported prior to World War II, the distribution of which was continued after the war. The total value of the product in China was asserted in the amount of \$171,746.00 at the time of loss.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property, the Commission finds that the most appropriate basis for evaluating the film product at the time of loss is to consider factors relating to cost of manufacture and shipment, as well as depreciation incident to the shipment, exhibition and storage of the product in China. (See Claim of Metro-Goldwyn-Mayer, Inc. et al., Claim No. CU-2225 and Claim of Paramount Inter-American Films, Inc. et al., Claim No. CU-1664.)

The Commission has considered these factors, including those relating to depreciation of the film products, and finds that the reasonable value of the prints is as follows:

<u>Recapitulation</u>				
<u>Type of Print</u>	<u>Number of Prints</u>	<u>Average Footage</u>	<u>Depreciated Value per Print</u>	<u>Total Value</u>
<u>35-mm. Features</u>				
Black and white	138	10,000	\$ 150.00	\$ 20,700.00
Color	14	10,000	300.00	4,200.00
<u>35-mm. Trailers</u>				
Black and white	175	400	15.00	2,625.00
Color	20	400	15.00	300.00
<u>35-mm. Shorts</u>				
Black and white	<u>51</u>	1,000	35.00	<u>1,785.00</u>
	398			\$ 29,610.00
Engraving costs, duty and shipping charges post-World War II				<u>123,100.00</u>
				\$152,710.00

The Commission further finds that incident to claimant's work it was also the owner of certain personal property which was taken by the Chinese Communist regime on January 11, 1951, as follows:

1. Advertising accessories, stationery, office supplies of branch offices	\$ 10,000.00
2. Furniture, fixtures and office equipment (ass branches)	15,000.00
3. Cash on hand and in Chinese banks	<u>4,619.00</u>
	\$ 29,619.00

In summary, the Commission finds that claimant suffered a loss in the total amount of \$182,329.00.

Destroyed Property

A part of this claim, for \$10,856.00, is based upon the loss of 50 black and white feature prints; 87 black and white trailers, and 8 black and white shorts which claimant states were destroyed by its employees in order to avoid confiscation.

The Commission has carefully considered this aspect of the claim. The Commission is constrained to deny this portion of the claim for the reason that such property was not the subject of nationalization, expropriation, intervention or other taking of, or special measures, within the contemplation of the Act. (Section 503(a), supra) since the Chinese Communist regime did not, in fact, take this property. It was no longer in existence and capable of being taken. Accordingly, this portion of the claim is hereby denied. (See Claim of RKO General, Inc., Claim No. CU-3341.)

Residual Earnings

A part of this claim, in the amount of \$322,100.00, is based on the loss of prospective earnings or film rental income which might have been realized by claimant had not the Chinese Communist regime taken claimant's property. The Commission has had many opportunities to consider claims of this nature. It has noted that claims based on the loss of prospective earnings are generally not allowed under international law. Also, the profits or earnings of the claimant enterprise, if any, which may have been realized did not belong to the claimant since its title in and to the enterprise and film product was extinguished when the Chinese Communist regime took the property. However, claimant is being allowed interest on the value of the property taken by the Chinese Communist regime, as discussed hereafter. Accordingly, the portion of the claim based on film rental or profits for the period following the confiscation on

January 11, 1951, is denied for the reason that the record contains no evidence to show that any profits belonging to the claimant were taken by the Chinese Communist regime. (See Claim of United Shoe Machinery Corporation, Claim No. SOV-40,353, 10 FCSC Semiann. Rep. at 238; Claim of Aris Gloves, Inc., Claim No. CZ-1170, 17 FCSC Semiann. Rep. 239 [July-Dec. 1962]; and Claim of Metro-Goldwyn-Mayer, Inc., *supra*.)

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Clarence Burton Day and Ethelwyn C. Day, Claim No. CN-0030, 1968 FCSC Ann. Rep. 86); and in the instant claim it is so ordered. Accordingly, it is

ORDERED that the Proposed Decision be amended to reflect the foregoing.

CERTIFICATION OF LOSS

The Commission certifies that WARNER BROS. (F.E.), INC. suffered a loss in the amount of One Hundred Eighty-two Thousand Three Hundred Twenty-nine Dollars (\$182,329.00) with interest at 6% per annum from January 11, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D. C.,  
and entered as the Amended  
Proposed Decision of the  
Commission

APR 28 1971

*Lyle S. Garlock*  
Lyle S. Garlock, Chairman  
*Theodore Jaffe*  
Theodore Jaffe, Commissioner

**CERTIFICATION**  
This is a true and correct copy of the decision of the Commission which was entered as the Final Decision on JUN 9 1971

*Thomas H. ...*  
Clerk of the Commission

The statute does not provide for the payment of claims against the Chinese Communist regime. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Chinese Communist regime.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, (1970).)

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IN THE MATTER OF THE CLAIM OF

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Under Title V of the International Claims Settlement Act of 1949, as amended by Public Law 89-780

PROPOSED DECISION

This claim in the amount of \$523,465.00 against the Chinese Communist regime under Title V of the International Claims Settlement Act of 1949, as amended, based upon the loss of personal property in China, was filed by Warner Bros.-Seven Arts (F.E.), Inc. Subsequently, the Commission was informed that the name of the corporation was changed to WARNER BROS. (F.E.), INC.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§1643-1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Section 504(a) of the Act provides that a claim shall not be considered unless the property on which the claim is based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered, shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Claimant states that the loss occurred when the Communists took over the mainland of China, that is, in October 1949.

Claimant further states that in 1949 the owner of the property for which the claim is made was Warner Bros. First National Pictures, Inc., a corporation organized on October 5, 1932 under the laws of the State of Delaware. At that time, the entire capital stock of Warner Bros. First National Pictures, Inc. was owned by Warner Bros. Pictures International Corporation, a New York corporation, and the entire stock of Warner Bros. Pictures International Corporation was owned by Warner Bros. Pictures, Inc., a corporation traded on the New York Stock Exchange. An officer of claimant corporation states that on information and belief more than 50 per centum of the stock of the latter corporation was owned by United States nationals.

The record shows that on July 15, 1967 Seven Arts Associated Corporation, a Delaware corporation, bought all of the assets of Warner Bros. Pictures, Inc. The aforesaid Seven Arts Associated Corporation was a wholly owned subsidiary of Seven Arts Productions, Ltd., a Canadian corporation. Ultimately, on July 8, 1969, Kinsey National Service, Inc., a New York corporation, purchased all of the assets of the Canadian corporation.

It is evident that from July 15, 1967 until the filing of the claim (July 3, 1969), the claim was not owned by a national of the United States as defined in sections 504(a) and 502(1)(B) of the Act but by Seven Arts Productions, Ltd., a Canadian corporation.

In view of the foregoing, the Commission finds that the claim was not owned continuously by a national of the United States from the date of the loss to the filing of the claim, as required by the statute.

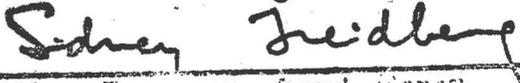
Therefore, the Commission cannot consider this claim and the claim is hereby denied.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

JUN 10 1970

  
\_\_\_\_\_  
Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

  
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Sidney Friedman, Counsel

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