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4-5-2020

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Evan Goldberg

Cardozo Arts & Entertainment Law Journal

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Recommended Citation

Goldberg, Evan, "Going to the Movies, from the Comfort of Your Own Home" (2020). *AEIJ Blog*. 236.
<https://larc.cardozo.yu.edu/aelj-blog/236>

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Going to the Movies, from the Comfort of Your Own Home

BY [EVAN GOLDBERG](#) / ON APRIL 5, 2020



While the fight between movie studios and theater chains over the exclusivity period has been ongoing, who would have thought it would take a pandemic taking place for this issue to come to a head. We are living in a crazy time. Businesses are closed, including movie theaters, the general public is confined to their respective houses, schools are all online. In light of this, a number of studios have sought to bring some level of entertainment, and even distraction, to everyone stuck at home. Some of the biggest studios in Hollywood are taking part in this, such as Disney, Universal Studios, Warner Bros., Lionsgate, and Sony.^[1]

In response to the COVID-19 shutdown of non-essential businesses, many studios have decided to push back the releases of their blockbuster movies. This includes Paramount's "A Quiet Place Part II," Universal's "Fast and Furious 9," and Disney's "Mulan" and "Black Widow."^[2] The studios decided that the box office profits that would be lost by not releasing these movies in theaters would be too great.^[3] However, the studios determined that it would be beneficial to them to release some movies directly to On Demand services, specifically those that have been released in theaters recently.^[4] These movies include

Universal's "The Hunt" and "Emma," Disney's "Onward," Sony's "Bloodshot," and Lionsgate's "I Still Believe."^[5] Additionally, Universal plans to release "Trolls World Tour," which will be the only movie to be released online that has not been released in theaters.^[6] The main reasoning behind these decisions is simple: the studios are trying to salvage as much of the profits as possible that they are going to lose from theaters closing. Due to these closings, the overall box office sales are set to lose around \$600 million in March and \$800 million in April.^[7] However, there is a secondary motive for the studios to release movies in this manner. That would be to test out this distribution model, one that shortens the exclusivity period and brings movies to the home in a much quicker fashion.^[8] Some studios expect this to be the distribution model of the future, which is seen with the rise of streaming services such as Netflix and Disney Plus.^[9]

So, what exactly is the exclusivity period, and why is it such a confrontational issue for studios and movie theaters? Essentially, it is a period of about 90 days in which theaters have exclusive access to show movies, before they are released to On Demand and online platforms. This fight between studios and theaters has become more relevant as streaming services such as Netflix have continued to grow. Specifically, this issue reared its head in the last few years, when Netflix made the decision to release some of its movies for a limited time in theaters.^[10] In response to this, major theater chains such as Regal Cinemas, AMC, and Cinemark refused to show the movies.^[11] They were concerned that it would be a waste of money, as consumers would not go to see the movies in theaters when they can just see it from the comfort of their own homes a few weeks later.^[12] That is the importance of the 90 day exclusivity period for theaters. The major theater chains are concerned about the type of precedent that would be set if they agreed to a deal with Netflix.^[13] Would they now lose this 90-day period for Universal movies? Would Disney just completely forgo theater releases for their movies and just send them directly to Disney Plus, its online streaming service? These are questions that major theater chains and independent theaters alike must ask, and both stand to lose significantly should the exclusivity period be done away with.

Although the fight with Netflix brought this issue to everyone's attention, our current situation may be just the thing to really bring it to the forefront of the movie industry. With studios releasing their movies online in a much quicker fashion than normal, they can test out the effectiveness of that type of distribution model as compared to contracting with theaters first. Should they continue to seek contracts with theaters, the studios may see a significant increase in their power in these negotiations. As one film distribution executive stated, "studios could emerge from the crisis in a better position to negotiate terms with the major theater chains."^[14] Clearly, it would put major theater chains in quite the predicament. They may now be forced to acquiesce to the demands of the studios, just to get the movies a studio is creating for even a short time. If this new distribution model is successful, studios will be able to dictate exactly what they want from the theater chains, and there will be nothing the theaters can do. Aside from losing any leverage they may have had in these negotiations, theaters may now lose a lot of their business. The success of this distribution model would

restore all the power in the movie industry back in the studios, which has not been the case since *United States v. Paramount Pictures* was decided in 1948.^[15] That case made it illegal for the major studios to own their own theaters, and made them contract with theater chains such as AMC and Regal to show their movies.^[16] The Department of Justice has sought to strike down this case, and should that happen, along with the exclusivity period becoming non-existent, major theater chains will cease to exist, or at the very least lose most of their purpose.^[17] In essence, the success of this distribution model would completely cripple the negotiating power of the theater chains and make them give in to whatever the studios demand. Furthermore, with the studios gaining this new negotiating power, there may be a big push by the major studios to have *Paramount Pictures* struck down. If that case were to be overturned, these studios would completely control the industry. The major studios would now be able to own their own theaters and play their own movies in them for as long as they want, completely doing away with the 90-day exclusivity period. There would be nothing the theater chains and independent theaters could do about it, they would be left with absolutely no leverage in negotiations and no way to make money. That is what the movie industry is facing at the moment, and it is an issue that we will not have an answer to until we have returned to normal life.

Evan Goldberg is a Second Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts and Entertainment Law Journal. Evan is interested in media and entertainment law and is specifically intrigued by the legalization of sports betting across the country.

^[1] Sarah Witten, *Movie Theater Trade Group Doesn't Expect Studios to Launch Blockbusters on Streaming Platforms While Cinemas are Shut Down*, CNBC (Mar. 23, 2020, 1:20 PM), <https://www.cnbc.com/2020/03/23/dont-expect-movies-to-go-to-streaming-while-cinemas-are-shut-down.html>.

^[2] Travis Clark, *31 Movies Drastically Impacted by the Coronavirus, Including "Black Widow" and "Fast and Furious 9"*, Business Insider (Mar. 18, 2020, 10:11 AM), <https://www.businessinsider.com/movies-impacted-by-coronavirus-no-time-to-die-mulan-sonic-2020-3>.

^[3] Adam Epstein, *Universal Pictures is Releasing its Current Movies Online Because of Coronavirus*, Quartz (Mar. 16, 2020), <https://qz.com/1819462/universal-is-releasing-its-current-movies-online-because-of-coronavirus/>.

^[4] *Id.*

^[5] Witten, *supra* note 1.

[6] *Id.*

[7] Daniel B. Kline, *Here's What Movie Theaters Are Losing Due To Coronavirus*, The Motley Fool (Mar. 19, 2020, 7:40 AM), <https://www.fool.com/investing/2020/03/19/what-movie-theaters-losing-due-to-coronavirus.aspx>.

[8] Epstein, *supra* note 3; Brooks Barnes and Nicole Sperling, *Studio's Movies in Theaters Will be Offered for In-Home Rental*, The New York Times (Mar. 16, 2020), <https://www.nytimes.com/2020/03/16/business/media/coronavirus-universal-home-movies.html>.

[9] Epstein, *supra* note 3; Barnes and Sperling, *supra* note 8.

[10] David Sims, *Why Big Movie Chains Won't Show Martin Scorsese's Netflix Epic*, The Atlantic (Aug. 28, 2019), <https://www.theatlantic.com/entertainment/archive/2019/08/netflix-irishman-wont-be-shown-major-theaters-martin-scorsese/596989/>.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Ryan Faughnder, *Universal's Coronavirus Movie Strategy: A Short Term Fix, or a Sign of Change?*, The Los Angeles Times (Mar. 17, 2020, 3:58 PM), <https://www.latimes.com/entertainment-arts/business/story/2020-03-17/after-universal-breaks-the-theatrical-window-what-other-studios-will>.

[15] David Sims, *Trump's Justice Department Wants to Change the Movie Industry*, The Atlantic (Nov. 20, 2019), <https://www.theatlantic.com/entertainment/archive/2019/11/justice-department-movie-industry-paramount-ruling/602311/>.

[16] *Id.*

[17] *Id.*