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Democracy Dies in Darkness

For the entertainment industry, an HBO Max move is causing peak upset

Wall Street and Silicon Valley have largely embraced Warner Bros.' decision to shift all movies to digital until 2022. But Hollywood is alarmed — and seeking ways to fight back.

By Steven Zeitchik

In mid-October, Warner Bros. chief Ann Sarnoff spoke to a prestigious entertainment law summit sponsored by the University of Southern California's Gould School of Law. In front of dozens of Hollywood's most important negotiators, Zooming in from all over Los Angeles, she declared that her studio was committed to releasing movies in theaters for the foreseeable future.

"She said that this would be a priority in 2021," said a lawyer who represents Warner Bros.-based clients that attended. "Even when the moderator pressed her," said the lawyer, speaking on the condition of anonymity because they were not authorized to talk about the event, "she said it was unequivocally true."

That truth was abruptly reversed last week when Warner Bros., citing the pandemic, announced that all 17 films it scheduled for release in the United States in 2021 would premiere on HBO Max in addi-



Timothee Chalamet, left, and Rebecca Ferguson in a scene from the upcoming film "Dune." (Chia Bella James/Warner Bros. Entertainment/AP)

tion to theaters. The news stunned the legal players at the USC summit and their high-end clients, many of whom are calling the turnaround a failure of both communication and substance.

Since WB announced the digital pivot, Wall Street has embraced the company — the stock of parent AT&T has risen 6 percent since Thursday, with analysts saluting AT&T chief executive John Stankey

and his handpicked WarnerMedia chief executive, Jason Kilar.

Silicon Valley pundits also have commended the move, often strongly, for its triumph over legacy practice. "The future got here years ago, and it was called Netflix," the veteran tech journalist Kara Swisher tweeted Tuesday. "Get on board, all you overpaid Hollywood babies."

But within the entertainment business, the decision to take films such as “Dune” and “The Matrix 4” to home platforms has provoked both widespread anger and a commitment to fight, at times even doing the Hollywood impossible: uniting parties on opposite sides of the table.

The objections come from groups far beyond theater owners to include producers, directors, publicists, managers, agents, lawyers and financiers. In interviews — often on the condition of anonymity because they still hold out hope of reaching settlements or mending fences with the studio — these personalities say they object to the HBO Max move not out of quaint traditionalism but simple economics.

They argue the deal shuts off the “waterfall” — the industry’s term not just for the billion global dollars that a Hollywood blockbuster can produce but for revenue that flows from the full complement of DVD, digital, rental and merchandising that finances much of their own payouts.

The HBO Max move is shaping up as more than just a question of where movies can be seen but of the soul of Hollywood itself: whether it should be governed by the mix of art, commerce and relationships that have animated it for decades or move into a new era in which it functions predominantly as a supplier to and sup-

porter of the world’s largest distribution platforms.

The shift, they say, takes a battle that has been brewing for years and brings it right into the Hollywood citadel. Silicon Valley long ago invaded Hollywood from the north, with outside companies such as Netflix, Amazon and Apple starting entertainment units, often using their deep pockets to pluck talent from legacy companies. (Amazon founder and chief executive Jeff Bezos owns The Washington Post.)

Old-line Hollywood has responded by building fortresses of its own — Disney with Disney Plus, Comcast with new streaming service Peacock.

But experts say Warner Bros. amounts to a kind of tech coup from within: It’s what happens when a telecom takes over a legacy firm and hires a digital outsider to run it.

“Stankey and Kilar have had their sights on this strategy since before Jason climbed aboard,” said the investment banker Lloyd Greif of Los Angeles-based Greif & Co., who closely follows the company. “Why else recruit the founder of Hulu and a senior Amazon executive to be your studio head?” he added, referring to Kilar’s previous jobs.

Since the pair took over, WarnerMedia has privileged HBO Max over other units, investing in the former while streamlining other departments

to compete more directly with Netflix.

The most outspoken critic of the HBO Max move was Christopher Nolan, the director who has often worked at Warner Bros. and whose films have grossed nearly \$5 billion in theaters worldwide. While promoting the digital release of his “Tenet” this week (the one major movie Warner Bros. did recently release in theaters), Nolan said the studio was submarining its long-term financial fortunes.

The decision “makes no economic sense,” he told the Hollywood Reporter. “They don’t even understand what they’re losing.” He added, “Warner Bros. had an incredible machine for getting a filmmaker’s work out everywhere, both in theaters and in the home, and they are dismantling it as we speak.”

Nolan also told “Entertainment Tonight” that Warner Bros. was “us[ing] the pandemic as an excuse for sort of grappling for short-term advantage.”

The filmmaker isn’t the only one objecting.

Legendary Pictures, the financier behind “Dune” and another 2021 WB title, “Godzilla vs. Kong,” is contemplating legal action to force an exclusive theatrical release, according to a person familiar with the company’s plans who was not authorized to speak about them publicly.

As the majority financier of those films, Legendary has significant legal clout over their releases. The firm has another piece of leverage. It is owned by Dalian Wanda, the Chinese entertainment company that also is one of the biggest operators of movie screens in China — a country Warner Bros. still needs to release its movies. (HBO Max is not available overseas.)

A spokesman for Legendary declined to comment for this story.

Warner Bros. could end up needing American theater chains, too, even if it doesn't expect to make much money from them domestically. The company is still seeking box offices overseas in places where U.S. companies operate screens. The Kansas City, Mo.-based AMC, minority-owned by Wanda, is the world's largest chain, with nearly 3,000 screens in Europe, too; the company's leader, Adam Aron, penned a blistering letter to Warner Bros. last week.

Regal parent Cineworld, the world's second-largest chain, is a major presence in Britain. And Dallas-based Cinemark has nearly 1,500 screens in 15 Latin American countries. All three giants could choose to play other studios' movies instead of Warner Bros.' titles when a glut of product arrives post-lockdown.

In some cases, the goal of Hollywood players will be not

to stop a release but to extract more money. Under their contracts, top talent often receive another tier of payment known as "box office bonuses," which awards a percentage of global box office dollars above a certain threshold. Several stars who can earn these bonuses have movies on the WB list, including Denzel Washington ("The Little Things"), Keanu Reeves ("The Matrix 4"), Will Smith ("King Richard"), Margot Robbie ("The Suicide Squad") and LeBron James ("Space Jam").

The need to pay out these stars could cost Warner Bros' tens of millions of dollars or more, compounding the loss of box office.

"Those will be fun conversations," said Sky Moore, a partner at the Los Angeles firm of Greenberg Glusker who has negotiated many talent deals in Hollywood. "Everybody gets their pencils out when a movie changes course like this. And when it's big names, there are going to be a lot of big numbers written." Moore said the deal in many cases could be calculated as a percentage of a hypothetical sale to a streaming service on the open market — a high figure that could reach \$125 million or more.

The agencies could be further inspired to fight because of how they were cut out of the decision-making process, learning of WB's intent only on the day of the announce-

ment, with little chance to weigh in. That presents "an existential issue" for them, one prominent Hollywood executive said, since knowing about and influencing studios' distribution decisions is why clients give them 10 percent of their paychecks in the first place.

In the face of the industry pressure, Sarnoff went on CNBC on Tuesday to try to contain the fallout. She said on the network's "Squawk Box" show that WB was "working through the system with our talent, with their agents. I think the more they see the visibility of how they will be paid, we're finding that people are understanding the economics. And this is unprecedented, so anything new is always a little bit difficult to work through for the first time."

A Warner Bros. spokeswoman said Sarnoff was not available for further interviews.

If they are sufficiently unhappy, actors could move to another studio for future projects, though their options may be limited. Sony Pictures could be an acquisition target, Paramount has flipped movies to streamers, and Disney tends to work with a tight circle of talent. Universal, for now, remains willing to play the theatrical game but only for the biggest movies. It recently struck deals with AMC and Cinemark that would give the chains three weekends of exclusivity but only for the big-

gest franchise films. (WB says it plans to return to theaters in 2022, but many agents remain skeptical.)

The controversy highlights the importance of talent relations to studios. For years the Warner Bros. film studio was run by Alan Horn, known as a deft glad-hander of agents, actors, directors and the sensitive skin that can enrobe them. Talent that landed at the studio tended to stick around.

Horn was pushed out by Time Warner management in 2011, at age 68, to make way for younger leaders, and the next year would find a new act at Disney, which needed his diplomacy skills to finesse its own talent relations after a rocky period.

But even after Horn's departure, Warner Bros. maintained a strong reputation with Hollywood's creative community, partly thanks to Toby Emmerich, a longtime executive at Warner Bros. label New Line, a unit seen as particularly creator-friendly. Emmerich was promoted several years ago to a lead role at WB, preserving that reputation.

But Warner Bros. has undergone a series of personnel shake-ups under Stankey that prefigure the HBO Max controversy.

In 2019, Stankey, then Warner Media chief executive, and AT&T executives ousted HBO chief executive Richard Plepler, known for his strong

talent relations, and partly replaced him with Robert Greenblatt, the longtime NBC executive and producer, who was tasked with overseeing HBO Max. Greenblatt in turn was let go this summer.

Several prominent movie executives have since exited, including Jessie Henderson, an executive vice president of feature films for HBO Max, and longtime Warner Bros. marketing and distribution guru Blair Rich. Emmerich remains.

Non-Hollywood supporters of the move have said that all of these disruptions are simply the pangs of innovation; they're what's necessary to bring the company into fighting shape in the 21st century.

Many in the industry, on the other hand, are calling the moves the unwelcome rattle of an outsider, and compare AT&T to other companies far from the U.S. entertainment world who entered in recent decades with disruptive goals — they include Japan's Matsushita, which bought MCA; Vivendi, which bought Universal; and America Online, which bought Time Warner. None of those acquisitions worked out, they noted, and the companies soon uncoupled.

AT&T's moves stand in contrast to the approach taken by Hollywood's ultimate legacy firm, Disney. That company's film studio, which accounted for more than \$11 bil-

lion in box office and the five highest grossing global releases in 2019, has proceeded more cautiously to digital even during the pandemic, releasing some films on Disney Plus but holding back its biggest titles for a theatrical-first release in 2021. The company is expected to move several more titles to digital at an investor conference Thursday but to preserve theatrical for its biggest releases, including Marvel titles under the company's Kevin Feige.

In the meantime, some filmmakers at Warner Bros. may also seek to gain leverage. One movie that could end up forcing a theatrical release is "Reminiscence," the director Lisa Joy's science fiction drama starring Hugh Jackman. According to a person familiar with the deal, the producers' agreement with Warner Bros. contains a clause that protects an exclusive theatrical release, and it could be enforced to delay the film's appearance on HBO Max.

That clause may not be a surprise given the identity of Joy's brother-in-law: Christopher Nolan.