

How Warner Bros. Managed to Piss Off All of Hollywood in One Fell Swoop

This article examines new strategic models that film distributors have adopted in response to plummeting box office numbers. As movie theaters have closed, streaming services have been a lifeboat for production studios – but perhaps at the expense of others in the industry.

Unsurprisingly, movie theater box offices have been devastated by the Covid-19 pandemic, down over 70% from 2019.¹ Theaters across the country have been forced to shut their doors, many permanently,² and blockbuster releases such as *Black Widow* and the new Bond film have been pushed back repeatedly.³

In response, this week WarnerMedia, an AT&T subsidiary, announced its decision to release the entire 2021 Warner Bros. (Warner) film slate in theaters and on HBO Max simultaneously.⁴ HBO Max, which launched in May, is owned by WarnerMedia. HBO Max subscribers will have access to Warner's seventeen upcoming releases, including *The Matrix 4* and the *Space Jam* sequel for one month; the films will then continue playing in cinemas for their traditional theatrical release periods.

This announcement came as a shock to cinema chains, actors, directors, and producers – many were given just 90 minutes' warning; some only seven⁵; others, such as *Dune* director Denis Villeneuve, were given none at all.⁶ Warner has long been considered a premiere studio for blockbuster releases, drawing star talent such as Christopher Nolan, who partnered with the distributor for *Tenet*, *The Dark Knight*, *Inception*, and *Interstellar*. HBOMax, on the other hand, has struggled to gain subscribers and was even labeled “the worst streaming service” by Nolan in response to Warner's announcement.⁷

Warner is now facing threats of legal action from theater owners, production companies, and film stars.

AMC Entertainment, the world's largest theater chain, contends that justifying the strategic move as a Covid-response is pretextual – rather, Warner is “sacrificing” the profits of its film studio department, and those of its creative partners, to “subsidize” its own failing streaming start-up.⁸ AMC's CEO Adam Aron vowed to do everything possible to protect AMC from the impending damage.⁹ The cinema chain recently went head-to-head with Universal Pictures over a similar “hybrid” release strategy. AMC announced it would immediately cease showing Universal films,

¹ <https://www.cnn.com/2020/10/14/media/box-office-coronavirus/index.html>.

² <https://www.hollywoodreporter.com/news/moviegoing-on-the-brink-after-nealy-700-theaters-reclose-overnight-in-north-america>.

³ <https://www.cnn.com/2020/10/03/media/no-time-to-die-james-bond-delayed-2021/index.html>.

⁴ <https://deadline.com/2020/12/warnermedia-legendary-challenge-dune-godzilla-vs-kong-streamer-battles-looming-1234651283/>.

⁵ <https://www.forbes.com/sites/siladityaray/2020/12/08/warners-2021-hbo-max-release-plan-slammed-by-christopher-nolan-as-legendary-entertainment-reportedly-readies-lawsuit/?sh=3493c9621b5d>.

⁶ <https://variety.com/2020/film/news/dune-denis-villeneuve-blasts-warner-bros-1234851270/>

⁷ *Supra*, note 5.

⁸ *Id.*

⁹ *Id.*

further stating that the same policy would apply to any filmmaker that “abandons” traditional cinematic practices “absent good faith negotiations.”¹⁰ Traditionally, studios make films digitally available 90 days after a theatrical opening.¹¹ Eventually Universal agreed to delay digital releases for seventeen days in exchange for shortened theatrical release windows.¹²

Legendary Entertainment (Legendary), a production partner of Warner, whose films *Dune* and *Godzilla vs. Kong* are included in the 2021 release strategy, are preparing to file suit.¹³ Legendary financed 75% of *Dune*, whose budget was upwards of \$160M.¹⁴ A key aspect of the impending lawsuit is that, after blocking a potential deal between Legendary and Netflix, in which Netflix offered pay \$250M for *Godzilla*, Warner neglected to enter into negotiations with other distributors or competing streaming services such as Amazon Prime Video or Hulu, before deciding to release the films on its sister platform.¹⁵ Breach of fiduciary duty claims, specifically of self-dealing, are expected to be brought.¹⁶ Studios are especially scrutinous of the business decision – which applies to next year’s *entire* film slate – because the Pfizer and Moderna vaccines are right around the corner, and Warner’s statement made no mention of returning to traditional release structures in the wake of a re-opened economy.¹⁷

Representatives for stars such as Keanu Reeves, Denzel Washington, and Margot Robbie have also voiced frustration with the studio, and raised the possibility of legal action.¹⁸ The complaint is two-fold: first, talent agencies William Morris Endeavour and Creative Artists argue that their clients were treated unfairly by Warner by being kept in the dark, and thereby prevented from entering negotiations.¹⁹ This claim comes off the back of Warner’s November decision to release *Wonder Woman 1984* on HBO Max alongside its Christmas Day theatrical release.²⁰ Significantly, Warner approached *Wonder Woman* star Gal Gadot and its director Patty Jenkins to discuss the distribution plan and ended up paying \$10M+ to each, as compensation for loss in back-end bonuses and residuals.²¹ Intertwined with the corrosive effects that a lack of transparency brings about in business relationships, the hybrid release model raises serious concerns over the financial future of film workers. Actors, directors, writers, producers – even camera grips and on-set electricians – are paid in a two-tier structure.²² The first check is upfront and guaranteed; the second is contingent on ticket-sales, and comes after the studio has recouped its expenses.²³ If the film fails, there is no second check, but when it comes to big-scale releases

¹⁰ <https://variety.com/2020/film/news/amc-theatres-trolls-world-tour-dispute-1234592445/>

¹¹ *Id.*

¹² <https://www.cnbc.com/2020/07/28/amc-strikes-historic-deal-with-universal-shortening-number-of-days-films-need-to-run-in-theaters-before-going-digital.html>.

¹³ *Supra*, note 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; <https://www.npr.org/2020/12/11/945462768/christopher-nolan-says-warner-bros-shift-to-streaming-new-movies-a-great-danger>.

¹⁸ <https://variety.com/2020/film/news/caa-blasts-warner-bros-hbo-max-1234851004/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ <https://www.nytimes.com/2020/12/07/business/media/warner-bros-hbo-max-movies-pay.html>.

²² <https://www.npr.org/2020/12/11/945462768/christopher-nolan-says-warner-bros-shift-to-streaming-new-movies-a-great-danger>; *id.*

²³ *Id.*

like *Dune* and *Matrix 4*, the back-end check could be massive. However, the possibility of ever seeing that second payday becomes less likely when films are available to stream, hence, talent representatives argue, the necessity for negotiations.

--*Chandler Gerard-Reimer*

Chandler is a 2L from Los Angeles and a graduate of New York University, where she minored in Irish History, which is a very practical and lucrative degree – just ask her parents. In her free time, she likes to horseback ride and listen to audiobooks read by narrators with British accents.