

1 JAY P. SRINIVASAN, SBN 181471
jsrinivasan@gibsondunn.com
2 MINAE YU, SBN 268814
myu@gibsondunn.com
3 JONATHAN N. SOLEIMANI, SBN 295673
jsoleimani@gibsondunn.com
4 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
5 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
6 Facsimile: 213.229.7520

7 ORIN SNYDER (*pro hac vice forthcoming*)
osnyder@gibsondunn.com
8 GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
9 New York, NY 10166-0193
Telephone: 212.351.4000
10 Facsimile: 212.351.4035

11 Attorneys for Defendant MGM DOMESTIC
12 TELEVISION DISTRIBUTION LLC

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 STARZ ENTERTAINMENT, LLC,

18 Plaintiff,

19 v.

20 MGM DOMESTIC TELEVISION
DISTRIBUTION LLC,

21 Defendant.

CASE NO. 2:20-cv-04085-DMG-KS

**DEFENDANT MGM DOMESTIC
TELEVISION DISTRIBUTION LLC'S
NOTICE OF MOTION AND MOTION
TO DISMISS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. Dolly M. Gee
Hearing Date: Sept. 11, 2020
Time: 9:30 am
Courtroom: 8C, 8th Floor
Trial Date: Not set
Action Filed: May 4, 2020

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 11, 2020, at 9:30 a.m., or as soon
3 thereafter as the matter may be heard before the Honorable Dolly M. Gee, in Courtroom
4 8C of the United States District Court, Central District of California, located at 350 W.
5 First Street, Los Angeles, CA 90012, Defendant MGM Domestic Television
6 Distribution LLC (“MGM”) will and hereby does move this Court to dismiss the causes
7 of action of Plaintiff Starz Entertainment LLC (“Starz”) pursuant to Rule 12(b)(6) of the
8 Federal Rules of Civil Procedure on the following grounds:

9 First, MGM moves to dismiss all of Starz’ causes of action arising under the
10 Copyright Act that are based on alleged infringements that occurred three years before
11 the parties entered into a tolling agreement effective March 24, 2020. Under the U.S.
12 Supreme Court’s holding in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663
13 (2014), no relief or recovery of any kind is permitted under the Copyright Act for
14 infringing acts occurring more than three years prior to the plaintiff filing suit. For
15 of 340 titles at issue in this action, no infringing act could have occurred as a matter of
16 law within the three-year look-back period because the license periods for these titles
17 expired before March 24, 2017. Accordingly, there is no relief that the Court may grant
18 for those pictures. Further, Starz has not alleged that any infringements continued into
19 the three-year lookback period prescribed by *Petrella* other than for one title, *Bill and*
20 *Ted’s Excellent Adventure*. Accordingly, Starz has failed to allege a copyright violation
21 within the three-year statute of limitations for 339 of the 340 titles at issue.

22 Second, Starz’s copyright and breach of contract and breach of implied covenant
23 claims are also subject to dismissal on statute of limitations grounds, which is four years
24 for copyright claims and three years for contract-based claims. Thus, any copyright
25 infringement claims that accrued before March 24, 2017 and any claims for breach of
26 contract that accrued before March 24, 2016 are time-barred. Starz alleges that MGM
27 infringed its copyright licenses and breached the parties agreements by permitting public
28 exhibition of the titles at issue on third-party platforms during the license period for each

1 title. Starz is conclusively foreclosed as a matter of law from alleging any timely
2 copyright claims for 127 titles whose license windows expired before March 24, 2017,
3 or any timely breach-of-contract or implied-covenant claims for 4 titles whose license
4 windows expired before March 24, 2016. Moreover, although Starz pleaded that MGM
5 violated its rights starting in 2015 or earlier, it has failed to identify any title for which
6 an alleged infringement or breach occurred within either limitations period for 339 of
7 the 340 titles at issue in the Complaint. Accordingly, Starz has failed to properly allege
8 any timely claims, warranting dismissal.

9 This Motion is made following the conference of counsel pursuant to Local Rule
10 7-3, which took place by a telephonic conference on June 29, 2020. Plaintiff's counsel
11 indicated at that time that Plaintiff will oppose MGM's motion to dismiss any of
12 Plaintiff's claims.

13 This Motion is based upon this Notice of Motion and Motion, the attached
14 Memorandum of Points and Authorities, the Declaration of Blake Flynn and the exhibits
15 attached thereto, MGM's Request for Judicial Notice, Declaration of Jay Srinivasan In
16 Support of MGM's Request for Judicial Notice and all pleadings and papers on file in
17 this action, and such oral argument and other evidence and/or argument as the Court
18 shall consider prior to or at the time of the hearing on this motion.

19
20 DATED: July 6, 2020

GIBSON, DUNN & CRUTCHER LLP

21
22
23 By: /s/ Jay P. Srinivasan
JAY P. SRINIVASAN

24
25 Attorneys for Defendant
26 MGM DOMESTIC TELEVISION
27 DISTRIBUTION LLC
28

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND AND SUMMARY OF ALLEGATIONS 3

 A. The Parties and Their Library Agreements..... 3

 B. Starz Claims that MGM Breached the Library Agreements and Infringed Its Copyright By At Least 2015 or Potentially Earlier. 6

 C. Starz Affirmatively Alleges That Consumers, the General Public, and Market Participants Were All Aware of the Alleged Infringement. 6

III. LEGAL STANDARD..... 8

IV. ARGUMENT..... 9

 A. The Copyright Act’s Three-Year Statute of Limitations Precludes Starz From Recovering Damages For More Than a Third of Its Alleged Copyright Claims as a Matter of Law. 9

 B. The Court Should Dismiss Starz’s Time-Barred Claims..... 12

 1. Starz’s Copyright Claims Based on Infringement that Occurred Before March 24, 2017 Are Time-Barred as a Matter of Law. 12

 2. Starz’s Breach of Contract and Implied-Covenant Claims Are Time-Barred For Alleged Breaches that Occurred Before March 24, 2016..... 18

 C. Any Amendment Would be Futile..... 22

V. CONCLUSION 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
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25
26
27
28

TABLE OF AUTHORITIES

Page(s)

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3

4 *Aryeh v. Canon Bus. Sols., Inc.*,

5 55 Cal. 4th 1185 (2013)..... 19

6 *Ashcroft v. Iqbal*,

7 556 U.S. 662 (2009)..... 8

8 *Bay Area Laundry and Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of*

9 *Cal.*,

10 522 U.S. 192 (1997)..... 13

11 *Bell Atl. Corp. v. Twombly*,

12 550 U.S. 544 (2007)..... 8

13 *Brisbane Lodging, L.P. v. Webcor Builders, Inc.*,

14 216 Cal. App. 4th 1249 (2013) 19

15 *Burnett v. Twentieth Century Fox Film Corp.*,

16 491 F. Supp. 2d 962 (C.D. Cal. 2007)..... 23

17 *Coto Settlement v. Eisenberg*,

18 593 F.3d 1031 (9th Cir. 2010) 9, 14

19 *Daniels-Hall v. Nat'l Educ. Ass'n*,

20 629 F.3d 992 (9th Cir. 2010) 9

21 *DM Research, Inc. v. Coll. of Am. Pathologists*,

22 170 F.3d 53 (1st Cir. 1999)..... 8

23 *Flowers v. Interscope Records, Inc.*,

24 2010 WL 11639969 (N.D. Cal. Nov. 15, 2010) 15

25 *Fourstar v. Ness*,

26 276 F. App'x 661 (9th Cir. 2008)..... 23

27 *Fox v. Ethicon Endo-Surgery, Inc.*,

28 35 Cal. 4th 797 (2005) 19

Goldberg v. Cameron,

482 F. Supp. 2d 1136 (N.D. Cal. 2007)..... 15, 16, 17, 18

TABLE OF AUTHORITIES
(continued)

Page(s)

1
2
3
4
5
6
7
8
9
10
11
12
13
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28

Grisham v. Philip Morris U.S.A., Inc.,
40 Cal. 4th 623 (2007) 20

Guar. Trust Co. of N.Y. v. York,
326 U.S. 99 (1945)..... 18

Hebrew Acad. of San Francisco v. Goldman,
42 Cal. 4th 883 (2007) 21

Heidari v. Dog Ear Publ’g LLC,
2012 WL 1980352 (N.D. Cal. June 1, 2012)..... 17, 18

Huynh v. Chase Manhattan Bank,
465 F.3d 992 (9th Cir. 2006) 9

Knieval v. ESPN,
393 F.3d 1068 (9th Cir. 2005) 9, 14

Krieger v. Nick Alexander Imps., Inc.,
234 Cal. App. 3d 205 (1991) 18

Menzel v. Scholastic, Inc.,
2019 WL 6896145 (N.D. Cal. Dec. 18, 2019) 12

Minden Pictures, Inc. v. Buzzfeed, Inc.,
390 F. Supp. 3d 461 (S.D.N.Y. 2019) 15, 16, 18

In re Napster, Inc. Copyright Litig.,
2005 WL 289977 (N.D. Cal. Feb. 3, 2005)..... 14, 15, 17, 18

NBCUniversal Media, LLC v. Superior Court,
225 Cal. App. 4th 1222 (2014) 20, 21

Orkin v. Taylor,
487 F.3d 734 (9th Cir. 2007) 21

Papazian v. Sony Music Entm’t,
2017 WL 4339662 (S.D.N.Y. Sept. 28, 2017) 12

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2019 WL 9228987 (S.D.N.Y. Sept. 30, 2019) 12

TABLE OF AUTHORITIES
(continued)

Page(s)

1
2
3
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6
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8
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11
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572 U.S. 663 (2014).....3, 10, 11, 13

Plumlee v. Pfizer, Inc.,
664 F. App’x 651 (9th Cir. 2016)..... 20, 21

Polar Bear Prods., Inc. v. Timex Corp.,
384 F.3d 700 (9th Cir. 2004) 15

Roley v. New World Pictures, Ltd.,
19 F.3d 479 (9th Cir. 1994) 14

Roth v. Am. Gen. Life Ins. Co.,
2020 WL 2527053 (C.D. Cal. Feb. 7, 2020) 22

Seven Arts Filmed Entm’t Ltd. v. Content Media Corp. PLC,
733 F.3d 1251 (9th Cir. 2013) 9

Siddiqi v. JPMorgan Chase Bank, N.A.,
2018 WL 7501123 (C.D. Cal. Nov. 30, 2018) 20

In re Silicon Graphics, Inc. Sec. Litig.,
183 F.3d 970 (9th Cir. 1999) 23

Silver v. Hamrick & Evans, LLP,
2019 WL 988686 (C.D. Cal. Jan. 4, 2019) 23

Sohm v. Scholastic Inc.,
959 F.3d 39 (2d Cir. 2020) 11, 12

STARZ Entm’t LLC, v. Buena Vista Television Inc.,
Case No. 2:07-cv-1895 (C.D. Cal.) (filed March 22, 2007)..... 18

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007)..... 9

Tsemetzin v. Coast Fed. Sav. & Loan Ass’n.,
57 Cal. App. 4th 1334 (1997) 19

Union Carbide Corp. v. Superior Court,
36 Cal. 3d 15 (1984) 19

TABLE OF AUTHORITIES
(continued)

Page(s)

United Mine Workers v. Gibbs,
383 U.S. 715 (1966) 954 F.2d 1087 (5th Cir. 1992) 18

Valley Surgical Ctr. LLC. v. Cty. of L.A.,
2016 WL 7017208 (C.D. Cal. Dec. 1, 2016)..... 21, 22

Wu v. John Wiley & Sons, Inc.,
2015 WL 5254885 (S.D.N.Y. Sept. 10, 2015) 12

Statutes

17 U.S.C. §507(b)9, 10, 12, 13, 14

Cal. Civ. Proc. Code § 337(a)..... 18

Other Authorities

3 M. Nimmer & D. Nimmer, Copyright § 12.05[B][1][b], p. 12–150.4
(2013)..... 10

1
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I. INTRODUCTION

1
2 Plaintiff Starz Entertainment LLC (“Starz”) is trying to turn a routine licensing
3 dispute with Defendant MGM Domestic Television Distribution LLC (“MGM”) into an
4 overblown federal copyright case. Starz, a pay television network, seeks to blame
5 MGM, a film and television studio, for Starz’s decline in marketplace standing. But
6 Starz’s competitive weakness is the result of secular market disruption from cord-cutting
7 and streaming competition, not a run-of-the-mill licensing dispute with MGM. Though
8 the Complaint points the finger at MGM for “significantly damag[ing]” Starz’s
9 distributor relationships and hampering its ability to attract and retain subscribers, Starz’s
10 parent company Lionsgate has touted substantial increases in Starz’s subscriber base and
11 a successful transition to new distribution arrangements in its recent earnings calls and
12 financial reports. Whatever motivated Starz to file this lawsuit now, its claims are
13 massively overstated and commercially insignificant. And while MGM will fully
14 expose a host of other fatal defects in Starz’s larded-up Complaint in due time, this
15 motion properly seeks dismissal of hundreds of incurably time-barred claims as a matter
16 of law before the parties and the Court expend significant time and resources on
17 meritless litigation.

18 The two “library” agreements at issue granted Starz the right to distribute certain
19 MGM film and television-series titles for limited time periods (referred to as “windows”)
20 in specific territories exclusively on certain defined distribution platforms, with MGM
21 retaining the right to concurrently exploit those titles on other platforms. Although
22 entertainment content owners and licensees maintain rights-tracking databases and
23 contract-management systems to preemptively identify instances of overlapping
24 windows (or “collisions”) with other third-party licensees, these systems are dependent
25 on human input and operation, so error sometimes occur. While such often-technical
26 collisions are customarily resolved in the ordinary course of business through “make
27 goods” or other negotiated concessions, Starz flatly refused to meaningfully engage with
28 MGM or discuss these issues on a title-by-title basis after the matter first surfaced and

1 MGM provided a preliminary assessment in November 2019. This could be because the
2 vast majority of Starz’s claims are stale, trivial, or entirely baseless, involving license
3 windows that expired long ago and collisions that were brief, economically insignificant,
4 or non-existent. Indeed, nearly *one-third* of Starz’s exaggerated claims relate to a
5 license of a television series that is nearly **60** years old (108 episodes of the 1950s
6 television show *Bat Masterson*). Moreover, this license expired several years ago, and
7 so claims relating to it are therefore barred by every applicable statute of limitations.

8 Starz alleges that in 2015 “and perhaps earlier,” MGM permitted third parties to
9 exhibit some of the deep library titles licensed to Starz when the content should have
10 been “exclusive” to Starz, thereby breaching the library agreements and/or infringing
11 Starz’s copyrights. The exclusive license windows for each title were individually
12 negotiated and varied from title to title, ranging from less than a month to fifteen months.
13 The dates of the licenses also vary by title. Starz further alleges that because third-party
14 exhibition of titles licensed to Starz was so open and well-known to the content-
15 consuming public, Starz’s existing and potential subscribers and distribution partners
16 were aware of it. Yet despite the alleged open and notorious nature of MGM’s alleged
17 conduct, Starz did not file suit until May 2020.¹

18 The statute of limitations prescribed by the Copyright Act is three years. Under
19 the U.S. Supreme Court’s holding in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S.
20 663 (2014), Starz cannot recover damages for any copyright infringement that occurred
21 prior to three years before it filed suit. This limitation on recovery is absolute and cannot
22 be altered by any tolling rules. Accordingly, insofar as Starz seeks to recover copyright
23 infringement damages for titles whose license windows expired prior to March 24, 2017,
24 which information is alleged in the Complaint or set forth in agreements incorporated

25
26 ¹ Although Starz did not file its Complaint until May 4, 2020, the parties entered into
27 a tolling agreement roughly 41 days earlier, on March 24, 2020. *See* RJN,
28 Declaration of Jay Srinivasan (“Srinivasan Decl.”), Ex. C (Tolling Agreement); *see also* RJN at 4 (citing authorities demonstrating tolling agreements
may be considered on a 12(b)(6) motion). Accordingly, for purposes of this
Motion, MGM treats the Complaint as having been filed on March 24, 2020.

1 by reference therein, such copyright claims should be dismissed with prejudice as a
2 matter of law.

3 Many of Starz's claims are independently subject to dismissal on statute-of-
4 limitations grounds. The limitations period that governs Starz's claims is three years for
5 the copyright claims and four years for the breach of contract and breach of the implied
6 covenant of good faith and fair dealing claims. Thus, any copyright infringement claims
7 that accrued before March 24, 2017 and any claims for breach of contract that accrued
8 before March 24, 2016 are time-barred, but more fundamentally, the claims involving
9 127 titles whose license windows expired *prior* to the applicable statute of limitations
10 period *cannot be cured by amendment*. The library agreements and amendments
11 thereto clearly state the license windows for the titles at issue, and therefore Starz is
12 conclusively foreclosed as a matter of law from alleging any timely copyright claims for
13 the 127 titles whose license windows expired before March 24, 2017, or any timely
14 breach-of-contract or implied-covenant claims for the seven titles whose license
15 windows expired before March 24, 2016. Although Starz pleaded that MGM violated
16 its rights starting in 2015 or earlier, it has failed to identify any title for which an alleged
17 infringement or breach occurred within either limitations period except for *Bill & Ted's*
18 *Excellent Adventure*. This defect in pleading warrants dismissal of 339 of the 340 titles
19 at issue in the Complaint.

20 **II. BACKGROUND AND SUMMARY OF ALLEGATIONS**

21 **A. The Parties and Their Library Agreements.**

22 Starz is a provider of "premium subscription video programming with over 26.2
23 million subscribers" that "operates a suite of 17 STARZ, STARZEncore and MoviePlex
24 premium cable television channels and corresponding on-demand services" featuring a
25 library of "popular original television series and exclusive movies and television series."
26 Compl. ¶ 20. MGM is a leading entertainment company that controls the rights to
27 distribute thousands of feature films and television episodes across all platforms, which
28 it licenses to third parties for a specified period of time under specified terms and

1 conditions. All 1,022 separate causes of action Starz asserts in this lawsuit are based on
 2 two licensing agreements executed by Starz and MGM in 2013 and 2015 (the “Library
 3 Agreements”).² Compl. ¶¶ 2, 62, 70, 77, 83–85, 88–90.

4 The first of the two Library Agreements at issue is dated as of July 26, 2013 (the
 5 “2013 Library Agreement”). Compl. ¶ 27. Although Starz did not attach a copy of the
 6 agreement to the Complaint, the terms of the 2013 Library Agreement, including the
 7 license period for the titles at issue, are referenced throughout the Complaint and serve
 8 as the basis of its causes of action. *See, e.g.*, Compl. ¶¶ 7, 8, 27–32, 45, 50–52, 62, 63,
 9 77–78, 85, 91. Under the 2013 Library Agreement and amendments thereto, MGM
 10 granted Starz a license to exhibit 421³ titles *only* by means of pay television and SVOD
 11 (subscription-video-on-demand) services in the English and Spanish languages for a
 12 defined window of time, which window varied by title. RJN, Declaration of Blake Flynn
 13 (“Flynn Decl.”), Ex. A (2013 Agreement) ¶ 3; Compl. ¶¶ 27, 29. This grant covered
 14 only the United States and its territories and, to the extent MGM controlled the pay
 15 television rights, Bermuda as well.⁴ RJN, Flynn Decl. Ex. A ¶ 4. MGM did not grant
 16 Starz any license or right to exhibit the titles in any other form of distribution, territory,
 17 or language. *Id.* ¶¶ 3, 10.

18
 19
 20 ² Specifically, for each of the 340 alleged “pictures” at issue, Starz asserts separate
 21 claims for direct copyright infringement (Counts 1–340), contributory copyright
 22 infringement (Counts 341–680), and vicarious copyright infringement (Counts 681–
 1020). Starz also asserts claims for breach of contract (Count 1021) and breach of
 the implied covenant of good faith and fair dealing (Count 1022).

23 ³ Starz’s Complaint misleadingly counts each episode of a television series as a
 24 separate, individual “[p]icture” licensed under the agreement. Compl. ¶ 67; *id.* at Ex.
 25 A, Rows 17–124 (counting each episode of the television series *Bat Masterson* as a
 26 separate “picture”). For purposes of this Motion only and without waiving its right
 27 to challenge this improper characterization, MGM accepts Starz’s inflated number of
 separate “pictures” at issue in this lawsuit. But as a practical matter, each episode of
 a television series does *not* constitute a separate title in the Library Agreements; Starz
 has presumably counted them this way to artificially pump up its alleged damages.

28 ⁴ In addition, MGM granted Starz a non-exclusive license to exhibit the titles in the
 Bahamas in the English language. Flynn Decl. Ex. A ¶ 4. This aspect of the grant is
 not at issue in this lawsuit.

1 As part of the agreement, MGM also contractually agreed to refrain from
2 exhibiting or licensing the covered titles in the covered territories during each title’s
3 window of exclusivity by means of free television and basic cable, meaning MGM could
4 not license the titles in these distribution formats during Starz’s exclusive windows on
5 pay television or SVOD. *Id.* ¶ 10(a); Compl. ¶ 29. But MGM expressly reserved for
6 itself the right to continue to exhibit or authorize the exhibition of each title during its
7 license period by means of theatrical, home video, electronic sell-through, and pay-per-
8 view (including transactional video-on-demand and near-video-on demand). RJN,
9 Flynn Decl. Ex. A ¶ 10(a) & (b). In other words, MGM remained free to exhibit every
10 title subject to the 2013 Library Agreement even when it was “exclusively” licensed to
11 Starz in these other formats, including by making such titles available on iTunes or
12 Amazon on a pay-per-view basis.

13 The second library agreement at issue in this case is dated as of May 7, 2015 (the
14 “2015 Library Agreement”). Compl. ¶ 33. As with the 2013 Library Agreement, Starz
15 did not attach a copy of the 2015 Library Agreement to its Complaint, but its terms are
16 referenced throughout the Complaint. *See, e.g.*, Comp. ¶¶ 7, 8, 33–37, 45, 50–52, 62,
17 63, 77–78, 85, 91. Under the 2015 Library Agreement, MGM granted Starz a license to
18 exclusively exhibit 540⁵ titles on materially similar terms as the 2013 Library Agreement
19 as described above. *Id.* ¶ 34; RJN, Flynn Decl. Ex. B (2015 Agreement) ¶ 3.

20 The exclusivity windows and the license fees for each title covered by the 2013
21 and 2015 Library Agreements were individually negotiated and vary from title to title.
22 For the Court’s convenience, MGM has prepared a chart (“Schedule A”) listing the titles
23 that Starz alleges are at issue along with the window for which Starz licensed the
24 exclusive right to exhibit that title on pay television and SVOD, which information
25 comes from the face of the Library Agreements. *See* Schedule A attached hereto. Each
26

27
28 ⁵ As noted above, for purposes of this Motion only, MGM accepts Starz’s count of the
titles licensed under the 2015 Library Agreement, but reserves its right to contest the
number of titles at issue.

1 title in the attached Schedule A tracks the numbers assigned by Starz in the left column
2 of Exhibit A to its Complaint (Dkt. 1-1). For 120 of the titles (highlighted in yellow)
3 listed in Schedule A, the window for Starz’s exclusive license expired between three and
4 four years before this lawsuit was filed. *See* Schedule A attached hereto. In addition,
5 for seven titles (highlighted in green), Starz’s window of exclusivity expired four or
6 more years before this lawsuit was filed. *Id.*

7 **B. Starz Claims that MGM Breached the Library Agreements and Infringed Its**
8 **Copyright By At Least 2015 or Potentially Earlier.**

9 Starz broadly alleges that MGM breached the Library Agreements and the implied
10 covenant of good faith and fair dealing, and infringed Starz’s alleged copyright in the
11 titles at issue “by at least 2015 (and potentially earlier)” by granting licenses to third
12 parties during “the very time periods in which STARZ had the exclusive rights” for each
13 of the 340 titles at issue. Compl. ¶ 8; *see also* ¶¶ 63, 85, 91. To be actionable, the
14 alleged breaches/infringements must have occurred during the time period when Starz’s
15 pay television and SVOD license was exclusive for that particular title. Starz does not
16 contend that it has any rights to any of the 340 titles except during the exclusive license
17 period applicable to each title per the Library Agreements. RJN, Flynn Decl. Ex. A ¶¶ 1,
18 3, 4, 10; Ex. B ¶¶ 1, 3, 4, 10.

19 Notably, Starz does not allege how long the alleged infringements and breaches
20 occurred after 2015; although MGM is limited to the Complaint and the documents
21 incorporated by reference therein for purposes of this Motion, the reality is that Starz
22 knows that MGM did not breach the Library Agreements or infringe Starz’s copyright
23 license any time in the past four years for the majority of the 340 titles identified in
24 Starz’s Complaint.

25 **C. Starz Affirmatively Alleges That Consumers, the General Public, and**
26 **Market Participants Were All Aware of the Alleged Infringement.**

27 The Complaint does not specifically allege how and when MGM committed any
28 of the alleged misconduct except for one of the 340 titles, but Starz clearly and forcefully
alleges that MGM permitted third parties to exhibit the titles at issue on popular public

1 platforms readily accessible by consumers, such as major pay television channels and
2 streaming services. *See, e.g.*, Compl. ¶ 57 (alleging that “MGM made many of the
3 infringed Pictures available for viewing on Amazon Prime Video services”); *id.* ¶¶ 77
4 (alleging that as a result of MGM’s infringement, third parties are “distributing
5 copyrighted Pictures to the public via pay television and SVOD”); *see also id.* ¶¶ 62, 64,
6 70.

7 Starz’s theories of injury and damages are thus premised entirely on the open and
8 public nature of the claimed breaches and infringements. The Complaint alleges that
9 “the perceived lack of exclusivity caused by MGM’s infringement of the Pictures has
10 devalued STARZ in the eyes of some and significantly damaged STARZ’s relationship
11 with at least one major distributor.” *Id.* ¶ 55; *see also id.* ¶ 42. But not only were
12 sophisticated industry participants apparently aware of MGM’s alleged misconduct,
13 Starz also alleges that when ordinary consumers searched for movies or television shows
14 online, the search results necessarily revealed MGM’s breaches. *Id.* ¶ 43; *see also id.*
15 ¶ 3 (“[T]he manner in which MGM licensed the STARZ exclusive works to one of
16 STARZ’s distributors caused consumers searching for a Picture on that distributor’s
17 service to be directed to a version of that movie made available directly from MGM to
18 subscribers of that platform”), ¶ 56 (“[W]hen a viewer searched online for a Picture to
19 watch and learned that the Picture was available either on STARZ or a third-party service
20 (when it should have been available only on STARZ) that viewer was encouraged not to
21 subscribe to STARZ, but instead to use the competing service.”). Based on these
22 allegations of widespread public awareness, Starz alleges harm to its reputation and
23 goodwill among consumers and distributors. *Id.* ¶ 60.

24 In addition, Starz alleges that it too was able to discover MGM’s alleged breaches
25 and infringement through a simple Internet search. According to Starz, in August 2019,
26 “a STARZ employee noticed that *Bill & Ted’s Excellent Adventure*, a movie that STARZ
27 had the exclusive right to exhibit, was being exhibited on Amazon Prime Video
28 services.” *Id.* ¶ 44. Starz further alleges that it then “discovered that 22 of the

1 approximately 70 MGM movies then available on STARZ were streaming on Amazon
2 Prime Video services.” *Id.* ¶ 46 (emphasis omitted). Then, through an “internal
3 review,” Starz alleges it identified “nearly 100 additional movies . . . that appear to have
4 been licensed to third parties during time periods in which STARZ enjoyed exclusivity.”
5 *Id.* ¶ 52 (emphasis omitted). Overall, Starz alleges that its own investigation has
6 revealed that its licenses to over 150 titles have allegedly been infringed/breached. *Id.*
7 ¶ 8. But, save for one movie, Starz fails to allege how it discovered these
8 infringements/breaches, when these alleged infringements/breaches occurred, or what
9 alleged conduct constituted the infringements/breaches.

10 III. LEGAL STANDARD

11 “To survive a motion to dismiss, a complaint must contain sufficient factual
12 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*
13 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
14 570 (2007)). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
15 relief’ requires more than labels and conclusions, and a formulaic recitation of the
16 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citations omitted);
17 *see also DM Research, Inc. v. Coll. of Am. Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999)
18 (“Conclusory allegations in a complaint, if they stand alone, are a danger sign that the
19 plaintiff is engaged in a fishing expedition.”).

20 As discussed more fully in MGM’s Request for Judicial Notice, in ruling on a
21 motion to dismiss, “courts must consider the complaint in its entirety, as well as other
22 sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss[,]”
23 including documents “incorporated into the complaint by reference, and matters of
24 which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,
25 551 U.S. 308, 322 (2007); *accord Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038
26 (9th Cir. 2010). This “incorporation by reference” doctrine extends to situations where,
27 as here, “the plaintiff’s claim depends on the contents of a document, the defendant
28 attaches the document to its motion to dismiss, and the parties do not dispute the

1 authenticity of the document, even though the plaintiff does not explicitly allege the
 2 contents of that document in the complaint.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th
 3 Cir. 2005); *accord Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010);
 4 *Coto*, 593 F.3d at 1038; *see also* RJN at 2-3.

5 A claim, *or any portion thereof*, may be dismissed under Rule 12(b)(6) on the
 6 grounds that it is barred by the applicable statute of limitations where “the running of
 7 the statute is apparent on the face of the complaint.” *Huynh v. Chase Manhattan Bank*,
 8 465 F.3d 992, 997 (9th Cir. 2006) (citations omitted) (internal quotation marks omitted);
 9 *accord Seven Arts Filmed Entm’t Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251,
 10 1254 (9th Cir. 2013) (“A statute-of-limitations defense, if ‘apparent from the face of the
 11 complaint,’ may properly be raised in a motion to dismiss.” (citations omitted)).

12 IV. ARGUMENT

13 A. The Copyright Act’s Three-Year Statute of Limitations Precludes Starz 14 From Recovering Damages For More Than a Third of Its Alleged Copyright Claims as a Matter of Law.

15 The statute of limitations for a copyright infringement claim is three years. 17
 16 U.S.C. §507(b). In *Petrella v. Metro-Goldwyn-Mayer Inc.*, the U.S. Supreme Court
 17 interpreted this statute to hold that *no relief or recovery of any kind*, whether actual or
 18 statutory damages, is permitted under copyright law for infringing acts occurring more
 19 than three years prior to suit. 572 U.S. 663, 677 (2014) (“[A] successful plaintiff can
 20 gain retrospective relief only three years back from the time of suit. No recovery may
 21 be had for infringement in earlier years.”). For 127 of the 340 titles at issue in this
 22 lawsuit, Starz’s exclusive license expired—and any grant of copyrights conveyed in the
 23 Library Agreements reverted to MGM—by March 24, 2017, which is three years before
 24 the operative filing date of this lawsuit. Thus, all of Starz’s copyright claims associated
 25 with these 127 titles—which total 381 counts (*viz.*, 127 for copyright infringement, 127
 26 for contributory infringement, and 127 for vicarious infringement)—are barred as a
 27 matter of law and must be dismissed with prejudice. *See* Schedule A attached hereto,
 28 rows highlighted in green or yellow.

1 Regarding timeliness of copyright claims and recovery for copyright damages, the
2 Supreme Court observed that “Congress provided two controlling time prescriptions:
3 the copyright term, which endures for decades, and may pass from generation to another;
4 and § 507(b)’s limitations period, which allows plaintiffs during that lengthy term to
5 gain retrospective relief **running only three years back** from the date the complaint was
6 filed.” *Id.* at 672 (emphasis added). The Supreme Court held that these provisions
7 worked in tandem to “allow[] a copyright owner to defer suit until she can estimate
8 whether litigation is worth the candle,” but expressly preclude “damages for periods
9 prior to the three-year look-back.” *Id.* at 682–83.

10 Thus, in expanding the rights of copyright holders to take as long as they want to
11 bring a claim even where the infringement has been longstanding, the Supreme Court
12 also made clear that the Copyright Act is a two-way street that limits the scope of
13 recovery for such claims. In particular, the Court held that “[u]nder the Act’s three-year
14 provision, an infringement is actionable within three years, **and only three years**, of its
15 occurrence.” *Id.* at 671 (emphasis added, citing 3 M. Nimmer & D. Nimmer, Copyright
16 § 12.05[B][1][b], p. 12–150.4 (2013)). The Court observed that Section 507(b) “itself
17 takes account of delay” by prescribing “a three-year look-back limitations period,” such
18 that “a successful plaintiff can gain retrospective relief **only three years back** from the
19 time of suit.” *Id.* at 670, 677 (emphasis added). The Supreme Court held unequivocally
20 that “[n]o recovery may be had for infringement in earlier years. Profits made in those
21 years remain the defendant’s to keep.” *Id.* at 677.

22 *Petrella* thus clearly bars a copyright plaintiff from obtaining relief for any
23 infringement that occurred more than three years prior to the filing of the lawsuit,
24 regardless of the circumstances. The Supreme Court acknowledged this potentially
25 draconian aspect of what has become known as the “three-year look-back” damages bar
26 in explaining why it declined to recognize laches as an equitable defense to a copyright
27 claim. *See id.* at 685 (“Congress’ time provisions secured to authors a copyright term
28 of long duration, **and a right to sue for infringement occurring no more than three**

1 *years back from the time of suit*. That regime leaves ‘little place’ for a doctrine that
2 would further limit the timeliness of a copyright owner’s suit.” (emphasis added; citation
3 omitted)).

4 Lest Starz complain that it only discovered the alleged infringements in 2019, the
5 Second Circuit recently considered *Petrella*’s “three-year look-back” damages bar and
6 held that the “discovery rule” did not allow a copyright plaintiff to recover damages for
7 more than three years prior to filing suit. *Sohm v. Scholastic Inc.*, 959 F.3d 39, 51 (2d
8 Cir. 2020). In *Sohm*, Scholastic argued that “independent of whether the injury or
9 discovery rule applies, ‘[u]nder the [Copyright] Act’s three-year provision, an
10 infringement is actionable within three years, *and only three years*, of its occurrence,’
11 and that ‘the infringer is insulated from liability for earlier infringements of the same
12 work.’” *Id.* (quoting *Petrella*, 572 U.S. at 671 (emphasis in original)). The Second
13 Circuit agreed: “Despite not passing on the propriety of the discovery rule in *Petrella*,
14 the Supreme Court explicitly delimited damages to the three years prior to the
15 commencement of a copyright infringement action.” *Id.* at 51. Resolving a split among
16 its district courts, the Second Circuit conclusively determined that “*Petrella*’s plain
17 language explicitly dissociated the Copyright Act’s statute of limitations from its time
18 limit on damages.”⁶ *Id.* at 52. Under *Petrella*, courts must therefore apply “a three-year

19
20 ⁶ The majority of district courts considering the issue prior to *Sohm* reached the same
21 conclusion, though not uniformly. *See, e.g., Park v. Skidmore, Owings & Merrill LLP*,
22 2019 WL 9228987, at *3 (S.D.N.Y. Sept. 30, 2019) (“[T]he Copyright Act provides for
23 a three-year lookback period – a plaintiff can bring a suit for any infringing actions in
24 the three years before the filing date, but cannot recover damages for infringements
25 occurring more than three years before filing.”); *Papazian v. Sony Music Entm’t*, 2017
26 WL 4339662, at *5 (S.D.N.Y. Sept. 28, 2017) (“[B]ecause the clear and specific three-
27 year limitation on damages under section 507(b) was necessary to the result in *Petrella*,
28 it cannot be construed as dicta.”); and *Wu v. John Wiley & Sons, Inc.*, 2015 WL 5254885,
at *7 (S.D.N.Y. Sept. 10, 2015) (“Following *Petrella*, Wu can recover damages only for
any Wiley infringing acts that occurred [not more than three years prior to filing the
action].”). *But cf. Menzel v. Scholastic, Inc.*, 2019 WL 6896145, at *6–7 (N.D. Cal. Dec.
18, 2019) (finding *Petrella* did not limit plaintiff to seeking “damages that were incurred
within the three years prior to [his] filing suit”). *Sohm* is the first Court of Appeals to
consider this issue and while its opinion is not binding on this Court, the Second Circuit
declined to adopt the analysis in *Menzel* on this point. The result in *Menzel* is
inconsistent with the Supreme Court’s unequivocal language in *Petrella*, which *is*
binding precedent that this Court must follow. *Sohm*, 959 F.3d at 52.

1 lookback period from the time a suit is filed to determine the extent of the relief
2 available.” *Id.* at 51–52. Accordingly, the Second Circuit reversed the district court’s
3 decision to the contrary and held that “under the Copyright Act, a plaintiff’s recovery is
4 limited to damages incurred during the three years prior to filing suit.” *Id.* at 52.

5 Applying *Petrella* to the Starz Complaint, Starz cannot recover any copyright
6 damages for the 127 titles with exclusivity windows that indisputably expired and
7 reverted to MGM more than three years before Starz filed this lawsuit. To the extent
8 Starz was damaged at all, Starz could not have suffered any copyright damages during
9 a period when it no longer possessed a copyright. Because *Petrella* holds that a
10 copyright plaintiff is limited to recovering for infringement that occurred within the three
11 years prior to filing suit, all of the copyright claims associated with these 127 titles fail
12 as a matter of law. And as *Sohm* expressly noted, no amendment can overcome this
13 defect because the discovery rule and other equitable doctrines cannot overcome
14 *Petrella*’s three-year look-back damages bar. Accordingly, this Court should dismiss
15 the 127 counts highlighted (in yellow or green) in Schedule A with prejudice.

16 **B. The Court Should Dismiss Starz’s Time-Barred Claims.**

17 **1. Starz’s Copyright Claims Based on Infringement that Occurred**
18 **Before March 24, 2017 Are Time-Barred as a Matter of Law.**

19 Independent of the retrospective damages bar imposed by *Petrella*, virtually all of
20 Starz’s causes of action for copyright infringement (Counts 1–340), contributory
21 copyright infringement (Counts 341–680), and vicarious copyright infringement
22 (Counts 681–1020) are time-barred under the Copyright Act insofar as Starz failed to
23 commence this action within three years of the *accrual* of such claims. 17 U.S.C. §
24 507(b) (“No civil action shall be maintained under the provisions of this title unless it is
25 commenced within three years after the claim accrued.”). “A claim ordinarily accrues
26 ‘when [a] plaintiff has a complete and present cause of action.’” *Petrella*, 572 U.S. at
27 670 (quoting *Bay Area Laundry and Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of*
28 *Cal.*, 522 U.S. 192, 201 (1997)). “A copyright claim thus arises or accrues when an

1 infringing act occurs.” *Id.* (internal quotations and brackets omitted). Moreover, where
2 successive violations of a copyright are alleged, each alleged wrong “gives rise to a
3 discrete ‘claim’ that ‘accrue[s]’ at the time the wrong occurs.” *Id.* at 671.

4 Here, Starz alleges that MGM’s purported infringement of the titles at issue began
5 “by at least 2015 (and potentially earlier).” Compl. ¶ 8. But apart from *Bill & Ted’s*
6 *Excellent Adventure* (and 22 other unspecified titles), *id.* ¶¶ 44, 46, Starz has not alleged
7 any infringement occurring within the Copyright Act’s three-year statute of limitations
8 period. This pleading defect alone warrants dismissal of *all* but one of Starz’s copyright
9 claims. Starz’s failure to allege a timely infringement or breach for nearly all of the
10 purportedly infringed titles is no accident of notice pleading, as Starz knows that most
11 of its claims are time-barred—hence its allegation that MGM’s alleged conduct began
12 in 2015 or earlier. Though a complaint alleging more than a thousand counts may sound
13 impressive, neither the Court nor the parties should expend their resources to adjudicate
14 hundreds of claims that Starz knows are not viable. At a minimum, the Court should
15 require Starz to allege a timely infringement or breach for each title for which it can
16 truthfully do so and the Court should dismiss the hundreds of counts for which Starz
17 cannot.

18 ***a. Starz cannot amend its Complaint to cure the fatal defect in more***
19 ***than a third of its copyright claims.***

20 What’s more, the Library Agreements, which are incorporated into the Complaint
21 by reference, establish that Starz can never plead a timely copyright claim for a
22 substantial number of the titles at issue. Starz alleges that MGM infringed its copyrights,
23 directly and indirectly, by licensing the rights for the 340 titles at issue to third parties
24 during Starz’s exclusive license windows. *Id.* ¶¶ 4, 63, 71–72, 77–78. Naturally, Starz
25 cannot allege (nor has it alleged) any wrongdoing by MGM *after* the expiration of
26 Starz’s period of exclusivity for a particular title. Although Starz’s Complaint does not
27 detail the exclusive license period for any of the 340 titles Starz claims are at issue in
28 this lawsuit, those periods are clearly delineated in the underlying agreements

1 themselves, which the Court may consider in ruling on this motion. *See Knievel*, 393
2 F.3d at 1076; *Coto*, 593 F.3d at 1038. Schedule A attached hereto shows that the
3 exclusive license period for 127 titles identified in the Complaint expired at least three
4 years before Starz filed this case, meaning that no infringement of these titles could have
5 occurred within the past three years. Accordingly, the 381 copyright-related causes of
6 action associated with these titles (127 counts for copyright infringement, 127 counts for
7 contributory infringement, and 127 counts for vicarious infringement) are necessarily
8 time-barred and unsalvageable by amendment. *See* 17 U.S.C. § 507(b).

9 ***b. The “discovery rule” is unavailable here as a matter of law.***

10 In some circumstances, the accrual of a copyright claim may be tolled by the
11 application of the so-called “discovery rule.” Under this rule, the accrual of a copyright
12 claim may be delayed until the earlier of when the plaintiff “has knowledge of a violation
13 ***or is chargeable with such knowledge.***” *In re Napster, Inc. Copyright Litig.*, 2005 WL
14 289977, at *3 (N.D. Cal. Feb. 3, 2005) (emphasis added) (quoting *Roley v. New World*
15 *Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir. 1994)). To benefit from the discovery rule and
16 avoid dismissal on statute-of-limitations grounds, “the facts alleged in the complaint
17 must allow for the possibility that plaintiff[] [1] lacked actual knowledge of the alleged
18 acts of infringement [until at most three years prior to filing suit],” and—as is especially
19 relevant here—“[2] that lack of knowledge ***was reasonable under the circumstances.***”
20 *Id.* (emphasis added) (quoting *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700,
21 706 (9th Cir. 2004)); *accord Goldberg v. Cameron*, 482 F. Supp. 2d 1136, 1148 (N.D.
22 Cal. 2007).

23 Whether the plaintiff’s alleged lack of knowledge was “reasonable” is an
24 objective inquiry—*i.e.*, the court considers what “a reasonable copyright owner in
25 [plaintiff’s] position would have known.” *Napster*, 2005 WL 289977, at *4; *accord*
26 *Goldberg*, 482 F. Supp. 2d at 1148. Moreover, a “copyright owner has a ‘duty of
27 diligence’ to investigate whether a cause of action for copyright infringement has
28 accrued.” *Napster*, 2005 WL 289977 at *4 (quoting *Polar Bear*, 384 F.3d at 707);

1 *accord Flowers v. Interscope Records, Inc.*, 2010 WL 11639969, at *2 (N.D. Cal. Nov.
2 15, 2010) (“[The] mere ignorance of a cause of action does not toll the statute of
3 limitations . . . plaintiff has a duty of diligence.”) (quoting *Polar Bear*, 384 F.3d at 707).
4 Numerous courts have applied these precepts in finding infringement claims to be time-
5 barred *as a matter of law* and thus appropriately dismissed on the pleadings. *See, e.g.*,
6 *Napster*, 2005 WL 289977, at *4; *Goldberg*, 482 F. Supp. 2d at 1148.

7 For example, in *Minden Pictures, Inc. v. BuzzFeed, Inc.*, 390 F. Supp. 3d 461
8 (S.D.N.Y. 2019), a case involving allegations similar to those alleged here, the court
9 dismissed as time-barred copyright claims relating to alleged infringement that occurred
10 more than three years prior to the commencement of the action. *Id.* at 467. In *Minden*,
11 the plaintiff, a photo licensing agency with exclusive rights to use and license 40 photos,
12 alleged the defendant had infringed plaintiff’s copyrights by posting the photos on
13 defendant’s website without authorization. *Id.* at 465. The lawsuit was commenced in
14 2018, but 24 of the 40 photos were posted on defendant’s website between 2011 and
15 2014. *Id.* at 466. For those photos, defendant moved to dismiss the copyright claims as
16 time-barred. *Id.* Plaintiff maintained that it did not discover the infringing acts until
17 2017 and 2018 and that it “had no reason prior to that discovery to know of Defendants’
18 unauthorized uses[.]” *Id.* at 466–67. After observing that a copyright infringement
19 claim “does not accrue until the copyright holder ‘discovers, or with due diligence
20 should have discovered, the infringement[.]” *id.* at 466, the court held that plaintiff’s
21 claims nevertheless must be dismissed because a copyright holder in plaintiff’s
22 position—that is, a sophisticated licensing company that has initiated lawsuits in the past
23 to protect its copyrights—should have discovered, through the exercise of due diligence,
24 that defendant was posting the photos on its website within the three-year limitations
25 period. *Id.* at 467.

26 Likewise, the court in *Goldberg v. Cameron* dismissed copyright infringement
27 claims as time-barred upon finding plaintiff’s claimed lack of knowledge to be
28 objectively “unreasonable,” “[n]otwithstanding the [typically] factual nature of [that]

1 inquiry.” 482 F. Supp. 2d at 1148. The plaintiff filed suit in 2005, alleging that the
2 creators of the *Terminator* trilogy, which films were released in 1984, 1991, and 2003,
3 had infringed his copyrighted screenplay and musical compositions. *Id.* at 1141–
4 42. The defendant moved to dismiss on statute-of-limitations grounds, arguing the
5 plaintiff was charged with knowledge of infringement as of the release date for each
6 *Terminator* film. *Id.* at 1148. Plaintiff claimed that (1) he did not know of the
7 infringement because he had “shunned[] all forms of electronic media” for over twenty
8 years (including any “actual exposure to the Terminator movies”) and (2) his alleged
9 lack of knowledge presented an issue of fact precluding dismissal. *Id.* at 1143, 1148.
10 The court disagreed, concluding that “based on the facts alleged in the complaint, no
11 reasonable finder of fact could conclude that plaintiff’s asserted lack of knowledge of
12 the alleged infringement was reasonable.” *Id.* at 1148.

13 As the *Goldberg* court explained, the popularity of the *Terminator* movies and
14 their wide availability rendered it objectively “unreasonable to assert that plaintiff had
15 zero exposure” to them. *Id.* Moreover, even “assuming [plaintiff] truly lacked actual
16 knowledge until within the three-year limitations period,” it was objectively
17 “unreasonable for a ‘successful song writer and producer’” who “is not a novice in this
18 regard” to emerge from isolation years after the movies’ release to commence a
19 copyright infringement suit. *Id.* at 1148–49. The court thus concluded that the “lack of
20 actual knowledge was unreasonable under the circumstances” as a matter of law and
21 dismissed the claims. *Id.* at 1149.

22 Similar authorities compel dismissal of Starz’s copyright claims based on alleged
23 infringement that necessarily occurred more than three years before the commencement
24 of this action, which at a minimum includes all 381 claims associated with the 127 titles
25 whose periods of exclusivity expired before March 24, 2017. *See, e.g., Napster*, 2005
26 WL 289977, at *2–3 (finding claims time-barred on 12(b)(6) motion because plaintiff
27 could not “reasonably [be] ignorant” of infringement on web-based filesharing
28 network); *Heidari v. Dog Ear Publ’g LLC*, 2012 WL 1980352, at *3 (N.D. Cal. June 1,

1 2012) (same, where “reasonable person in [plaintiff’s] position” would have had notice
2 outside limitations period).

3 Here, the Complaint alleges that MGM infringed Starz’s copyrights in the titles at
4 issue by permitting third parties to exhibit them on widely-accessible public platforms.
5 Compl. ¶¶ 57, 62, 64, 70, 77. Starz maintains these exhibitions were known not only by
6 distributors in the industry, but ordinary consumers. *Id.* ¶¶ 3, 42, 43, 55, 56. The entire
7 premise of Starz’s theory of injury is that widespread public awareness of third-party
8 exhibitions of these titles harmed Starz’s reputation and good will. *Id.* ¶ 60. Because
9 Starz’s allegations must be taken as true for purposes of this Motion, Starz cannot argue
10 that it did not know ***or could not reasonably have known*** of the third-party exhibitions
11 when they occurred, which Starz alleges occurred as early as 2015 (or even earlier). *Id.*
12 ¶ 8.

13 Tellingly, when Starz investigated, it apparently had no difficulty identifying over
14 150 allegedly infringed titles. *Id.* ¶¶ 8, 46, 52. Starz offers no reason why such
15 diligence was not (and could not have been) conducted earlier, particularly considering
16 its assertion that content exclusivity is “vital” to its business and the infringement was
17 so readily discoverable. *Id.* ¶¶ 24, 40. Starz’s lack of diligence is all the more
18 unreasonable considering that Starz claims to be a sophisticated, “leading provider” of
19 premium subscription video programming that licenses content from multiple movie
20 studios. *Id.* ¶¶ 5, 20, 22. As Starz is well aware, issues concerning overlapping license
21 windows are not uncommon in the industry; indeed, like the plaintiff in *Minden*, Starz
22 has previously sued a licensor to enforce its exclusive rights. *See STARZ Entm’t LLC,*
23 *v. Buena Vista Television Inc.*, Case No. 2:07-cv-1895 (C.D. Cal.) (filed March 22,
24 2007).

25 Starz cannot reasonably excuse its lack of diligence and claimed ignorance of the
26 alleged infringement at the time the titles were publicly exhibited as a matter of law.
27 The Court should therefore dismiss the 381 counts related to alleged infringement that
28 necessarily occurred more than three years before Starz filed suit. *See Minden*, 390 F.

1 Supp. 3d at 467; *Goldberg*, 482 F. Supp. 2d at 1148; *Napster*, 2005 WL 289977, at *2–
2 3; *Heidari*, 2012 WL 1980352, at *3.

3 **2. Starz’s Breach of Contract and Implied-Covenant Claims Are Time-**
4 **Barred For Alleged Breaches that Occurred Before March 24, 2016.**

5 Because a four-year statute of limitations governs breach-of-contract and implied-
6 covenant claims, Starz’s claims for breach of contract (Count 1021) and breach of the
7 implied covenant of good faith and fair dealing (Count 1022) are substantially time-
8 barred—specifically, portions of these claims arising from alleged breaches that
9 occurred before March 24, 2016 are untimely. *See* Cal. Civ. Proc. Code § 337(a);
10 *Krieger v. Nick Alexander Imps., Inc.*, 234 Cal. App. 3d 205, 221 (1991).

11 California law determines the timeliness of Starz’s contract-based claims. *See*
12 *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (federal court exercising
13 supplemental jurisdiction over state law claims applies state law in same manner it
14 would if sitting in diversity) *superseded by statute on other grounds as stated in Whalen*
15 *v. Carter*, 954 F.2d 1087 (5th Cir. 1992); *Guar. Trust Co. of N.Y. v. York*, 326 U.S. 99,
16 109–10 (1945) (in diversity cases, state law on statute of limitations governs). Under
17 California law, “[a] cause of action ordinarily accrues when, under the substantive law,
18 the wrongful act is done and the obligation or liability arises.” *Brisbane Lodging, L.P.*
19 *v. Webcor Builders, Inc.*, 216 Cal. App. 4th 1249, 1257 (2013) (internal quotation marks
20 omitted). Further, where each new breach of an obligation “provides all the elements of
21 a claim—wrongdoing, harm, and causation—each may be treated as an independently
22 actionable wrong with its own time limit for recovery.” *Aryeh v. Canon Bus. Sols., Inc.*,
23 55 Cal. 4th 1185, 1199 (2013) (citation omitted); *see also Tsemetzin v. Coast Fed. Sav.*
24 *& Loan Ass’n.*, 57 Cal. App. 4th 1334, 1344 (1997) (holding separate claims arise and
25 “the statute begins to run on such severable obligations from the time performance of
26 each is due”).

27 Here, the alleged “wrongful acts” involve MGM purportedly permitting third-
28 party exhibitions of titles exclusively licensed to Starz in breach of the Library

1 Agreements. Compl. ¶¶ 85, 91. According to the Complaint, MGM allegedly began
2 licensing the titles at issue to third parties by at least 2015 (and perhaps earlier). *Id.* ¶ 8.
3 And save for *Bill & Ted’s Excellent Adventure* and 22 unidentified titles, Starz does not
4 allege that *any* breaches occurred within the last four years. *Id.* ¶ 44, 46. Moreover, as
5 set forth in Schedule A attached hereto, the window of exclusivity for at least seven of
6 the titles at issue (highlighted in green) expired more than four years before Starz filed
7 this lawsuit, meaning that no breach could have possibly occurred within the limitations
8 period for these titles. Accordingly, the Complaint and the Library Agreements facially
9 demonstrate that Starz’s contract-based claims are substantially time-barred.

10 Though California has recognized the discovery rule for contract-based claims,
11 *Aryeh*, 55 Cal. 4th at 1192, Starz cannot revive its time-barred claims on this basis.
12 Where, as here, the running of the statute of limitations is apparent from the face of the
13 complaint and the documents incorporated therein, the plaintiff bears the burden of
14 “anticipat[ing] the defense and plead[ing] facts to negative the bar.” *Union Carbide*
15 *Corp. v. Superior Court*, 36 Cal. 3d 15, 20 (1984); accord *Fox v. Ethicon Endo-Surgery,*
16 *Inc.*, 35 Cal. 4th 797, 808 (2005) (noting “[a] plaintiff whose complaint shows on its
17 face that his claim would be barred without the benefit of the discovery rule must
18 specifically plead facts to show” the discovery rule’s applicability); *Siddiqi v. JPMorgan*
19 *Chase Bank, N.A.*, 2018 WL 7501123, at *2–3 (C.D. Cal. Nov. 30, 2018) (Gee, J.)
20 (dismissing time-barred claim where complaint failed to “allege facts showing that
21 [p]laintiff could not have reasonably discovered” the harmful action in time). Starz was
22 thus required to specifically plead facts to show ““(1) the time and manner of discovery
23 and (2) the inability to have made earlier discovery despite reasonable diligence.””
24 *Plumlee v. Pfizer, Inc.*, 664 F. App’x 651, 653 (9th Cir. 2016) (quoting *Grisham v. Philip*
25 *Morris U.S.A., Inc.*, 40 Cal. 4th 623, 638 (2007)).

26 Starz fails to “allege any facts [indicating it] exercised reasonable diligence
27 [before September 2019], or that [it] was unable to discover the factual bases for [its]
28 claims [before September 2019] despite exercising reasonable diligence,” *id.*, and even

1 more, the Complaint conclusively forecloses application of the discovery rule to Starz’s
2 claims. *NBCUniversal Media, LLC v. Superior Court*, 225 Cal. App. 4th 1222 (2014),
3 is directly on point. There, the plaintiffs asserted claims for breach of implied contract
4 and breach of confidence on the basis that the defendant developed a reality show using
5 plaintiffs’ ideas and concepts without permission and without compensating plaintiffs.
6 *Id.* at 1225. Defendant sought summary judgment on the grounds that plaintiffs failed
7 to timely file suit after the claim accrued, which defendant maintained was when the
8 show premiered on a cable television channel. *Id.* at 1227. Plaintiffs opposed, arguing
9 they were entitled to a later accrual date under the discovery rule because they did not
10 see an episode of the show until a year after it premiered. *Id.* at 1227–28.

11 After the trial court denied defendant’s motion, the California Court of Appeals
12 vacated that order and issued a mandate ordering that the motion be granted. *Id.* at 1228.
13 In so holding, the appellate court noted that for contract-based claims, the discovery rule
14 was reserved “for certain, ***rather unusual breach of contract actions***,” and that the
15 discovery rule may be applied only to “breaches which can be, and are, ***committed in***
16 ***secret*** and, moreover, where the ***harm flowing from those breaches will not be***
17 ***reasonably discoverable by plaintiffs until a future time.***” *Id.* at 1233 (emphases
18 added). Thus, after a show’s initial exhibition on a publicly accessible cable channel,
19 neither the breach nor the injury could be “hidden or beyond what the ordinary person
20 could be expected to understand.” *Id.* at 1234. Whether plaintiffs had actually seen the
21 show was thus irrelevant because the “discovery rule does not operate to delay accrual
22 of a cause of action ‘beyond the point at which their factual basis became accessible to
23 plaintiff to the same degree as it was accessible to every other member of the public.’”
24 *Id.* at 1234. That the show was exhibited on a public cable channel, as opposed to a
25 theatrical release, was likewise irrelevant because “public disclosure to even a limited
26 audience is sufficient to preclude a plaintiff from arguing that the breach and injury were
27 secretive and difficult to detect.” *Id.* at 1235; accord *Hebrew Acad. of San Francisco v.*
28 *Goldman*, 42 Cal. 4th 883, 888, 894–95 (2007) (discovery rule inapplicable where fewer

1 than 10 copies of transcripts containing defamatory statements were published and
2 distributed to a limited audience).

3 Accordingly, because the discovery rule was inapplicable, plaintiffs' claim
4 accrued as of the show's initial broadcast, rendering plaintiffs' claim time-barred.
5 *NBCUniversal*, 225 Cal. App. 4th at 1234–35. Federal courts have similarly held that,
6 **as a matter of law**, the discovery rule is inapplicable where the factual basis of plaintiff's
7 claim was publicly disclosed. *See, e.g., Orkin v. Taylor*, 487 F.3d 734, 741–42 (9th Cir.
8 2007) (affirming 12(b)(6) dismissal of theft and conversion claims as time-barred
9 because discovery rule was inapplicable where stolen paintings were sold at public
10 auction); *Plumlee*, 664 F. App'x at 653 (affirming 12(b)(6) dismissal and finding
11 discovery rule inapplicable where documents publicly available during the limitations
12 period discussed facts underlying plaintiff's claims); *Valley Surgical Ctr. LLC v. Cty.*
13 *of L.A.*, 2016 WL 7017208, at *4–5 (C.D. Cal. Dec. 1, 2016) (citing *NBCUniversal* in
14 granting 12(b)(6) dismissal on limitations grounds, noting allegedly tortious speeches
15 could not “have been disseminated widely enough” outside limitations period to cause
16 “loss of reputation or other harm without, at the same time, being notorious enough to
17 put [plaintiff] on notice”); *Roth v. Am. Gen. Life Ins. Co.*, 2020 WL 2527053, at *4–5
18 (C.D. Cal. Feb. 7, 2020) (Gee, J.) (citing *NBCUniversal* and dismissing claims as time-
19 barred on pleadings).

20 Here, Starz alleges that MGM breached the Library Agreements by permitting
21 third parties to exhibit titles on various publicly available and widely accessible
22 platforms, including “‘free television’, ‘basic television’, Subscription Video on
23 Demand, or ‘Pay Television.’” Compl. ¶ 85; *see also id.* ¶ 91. Starz does not allege
24 these third party exhibitions were hidden or beyond what an ordinary person could be
25 expected to discover. Nor can it, given Starz's allegation that these third-party
26 exhibitions caused injury to its reputation and good will because they were seen by
27 industry participants and ordinary consumers alike, meaning they were also “notorious
28 enough to put [Starz] on notice.” *Valley Surgical*, 2016 WL 7017208, at *4. Indeed,

1 the exhibitions on third-party platforms “are alleged to have been harmful precisely
2 because they were made in public. Accordingly, the discovery rule does not apply.” *Id.*

3 Starz’s allegation that it quickly discovered over 150 titles that MGM purportedly
4 licensed to third parties by undertaking an internal investigation in 2019 further
5 forecloses any application of the discovery rule. *See* Compl. ¶ 8, 44, 46. That Starz was
6 so readily able to identify the claimed misconduct in 2019 precludes Starz from arguing
7 that its claims were not reasonably discoverable by prior diligence, particularly given
8 that (1) Starz is a sophisticated company; (2) it claims that exclusivity is vital to its entire
9 business model; (3) it has the resources to ensure that its contracts are being complied
10 with; and (4) it has a track record of bringing lawsuits against its licensors to enforce its
11 rights. Starz is thus precluded from alleging that the exercise of reasonable diligence
12 would have left it in the dark, especially considering its allegation that it identified
13 additional collisions when it put its mind to it.

14 Because Starz’s own allegations preclude application of the discovery rule, Starz
15 cannot benefit from any tolling or delay of accrual of its contract-based claims.
16 Accordingly, the Court should dismiss the breach-of-contract and implied-covenant
17 claims to the extent they are based on an alleged breach that occurred more than four
18 years before Starz filed suit, including, at minimum, any breach that occurred with
19 respect to the seven titles whose period of exclusivity expired before March 24, 2016.

20 **C. Any Amendment Would be Futile.**

21 “Leave to amend should not be granted where the complaint is futile.” *Burnett v.*
22 *Twentieth Century Fox Film Corp.*, 491 F. Supp. 2d 962, 966 (C.D. Cal. 2007) (citing
23 *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 991 (9th Cir. 1999)). Here, the
24 facts alleged by Starz preclude any tolling of the accrual of its claims and no additional
25 allegations may cure this untimeliness. *Fourstar v. Ness*, 276 F. App’x 661, 662 (9th
26 Cir. 2008) (affirming dismissal without leave to amend when the action was barred by
27 the statute of limitations); *Silver v. Hamrick & Evans, LLP*, 2019 WL 988686, at *4

28

1 (C.D. Cal. Jan. 4, 2019) (Gee, J.). Accordingly, MGM respectfully requests that the
2 Court grant its motion to dismiss without leave to amend.

3 **V. CONCLUSION**

4 For the foregoing reasons, MGM respectfully requests that the Court dismiss all
5 of Starz's claims except those based on *Bill & Ted's Excellent Adventure* based on
6 Starz's failure to plead infringement or breach within the applicable statute of
7 limitations period. Further, for the copyright claims related to the 127 titles whose
8 windows of exclusivity expired more than three years prior to the operative filing date
9 of the Complaint, and for the breach of contract and implied-covenant claims related to
10 the seven titles whose windows of exclusivity expired more than four years ago, the
11 Court should dismiss these claims with prejudice and deny leave to amend.

12
13 DATED: July 6, 2020

Respectfully submitted,

14 GIBSON, DUNN & CRUTCHER LLP

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16
17 By: /s/ Jay P. Srinivasan
18 JAY P. SRINIVASAN

19 Attorneys for Defendant
20 MGM DOMESTIC TELEVISION
21 DISTRIBUTION LLC
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SCHEDULE A

DEFENDANT MGM DOMESTIC TELEVISION DISTRIBUTION LLC'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS
MOTION TO DISMISS

REDACTED VERSION

***UNREDACTED VERSION
LODGED UNDER SEAL***

Schedule A

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
1	10 TO MIDNIGHT		
2	ADVENTURES OF PRISCILLA QUEEN OF THE DESERT		
3	AGENT CODY BANKS		
4	AGENT CODY BANKS 2: DESTINATION LONDON		
5	ALL DOGS GO TO HEAVEN 2		
6	ALLAN QUATERMAIN AND THE LOST CITY OF GOLD		
7	AMERICAN NINJA		
8	AMITYVILLE HORROR (1979), THE		
9	AMITYVILLE HORROR (2005), THE		
10	ANTI-TRUST		
11	AT FIRST SIGHT		
12	AUTUMN IN NEW YORK		
13	AVENGING FORCE		
14	BABY BOOM		
15	BACK TO SCHOOL		
16	BANDITS		
17	BAT MASTERSON; television motion picture. No. 1015-19B		
18	BAT MASTERSON; television motion picture. No. 1016-22B		
19	BAT MASTERSON; television motion picture. No. 1017-20B		
20	BAT MASTERSON; television motion picture. No. 1018-15B		
21	BAT MASTERSON; television motion picture. No. 1019-21B		
22	BAT MASTERSON; television motion picture. No. 1020-24B		
23	BAT MASTERSON; television motion picture. No. 1021-23B		
24	BAT MASTERSON; television motion picture. No. 1022-25B		
25	BAT MASTERSON; television motion picture. No. 1023-26B		
26	BAT MASTERSON; television motion picture. No. 1024-27B		
27	BAT MASTERSON; television motion picture. No. 1025-28B		
28	BAT MASTERSON; television motion picture. No. 1026-4B		
29	BAT MASTERSON; television motion picture. No. 1027-30B		
30	BAT MASTERSON; television motion picture. No. 1028-31B		
31	BAT MASTERSON; television motion picture. No. 1029-29B		
32	BAT MASTERSON; television motion picture. No. 1030-35B		
33	BAT MASTERSON; television motion picture. No. 1031-34B		
34	BAT MASTERSON; television motion picture. No. 1032-36B		
35	BAT MASTERSON; television motion picture. No. 1033-37B		
36	BAT MASTERSON; television motion picture. No. 1034-32B		
37	BAT MASTERSON; television motion picture. No. 1036-33B		
38	BAT MASTERSON; television motion picture. No. 1038-40B		
39	BAT MASTERSON; television motion picture. No. 1039-38B		
40	BAT MASTERSON; television motion picture. No. 1040-41B		
41	BAT MASTERSON; television motion picture. No. 1041-44B		
42	BAT MASTERSON; television motion picture. No. 1042-39B		
43	BAT MASTERSON; television motion picture. No. 1043-43B		
44	BAT MASTERSON; television motion picture. No. 1044-49B		
45	BAT MASTERSON; television motion picture. No. 1045-42B		
46	BAT MASTERSON; television motion picture. No. 1046-51B		
47	BAT MASTERSON; television motion picture. No. 1047-55B		
48	BAT MASTERSON; television motion picture. No. 1048-48B		
49	BAT MASTERSON; television motion picture. No. 1049-47B		
50	BAT MASTERSON; television motion picture. No. 1050-52B		
51	BAT MASTERSON; television motion picture. No. 1051-57B		

Schedule A

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
52	BAT MASTERSON; television motion picture. No. 1052-56B		
53	BAT MASTERSON; television motion picture. No. 1053-58B		
54	BAT MASTERSON; television motion picture. No. 1054-61B		
55	BAT MASTERSON; television motion picture. No. 1055-60B		
56	BAT MASTERSON; television motion picture. No. 1056-64B		
57	BAT MASTERSON; television motion picture. No. 1057-59B		
58	BAT MASTERSON; television motion picture. No. 1058-63B		
59	BAT MASTERSON; television motion picture. No. 1059-62B		
60	BAT MASTERSON; television motion picture. No. 1060-65B		
61	BAT MASTERSON; television motion picture. No. 1061-67B		
62	BAT MASTERSON; television motion picture. No. 1062-69B		
63	BAT MASTERSON; television motion picture. No. 1063-46B		
64	BAT MASTERSON; television motion picture. No. 1064-66B		
65	BAT MASTERSON; television motion picture. No. 1065-68B		
66	BAT MASTERSON; television motion picture. No. 1066-70B		
67	BAT MASTERSON; television motion picture. No. 1067-71B		
68	BAT MASTERSON; television motion picture. No. 1068-72B		
69	BAT MASTERSON; television motion picture. No. 1069-73B		
70	BAT MASTERSON; television motion picture. No. 1070-54B		
71	BAT MASTERSON; television motion picture. No. 1071-74B		
72	BAT MASTERSON; television motion picture. No. 1072-53B		
73	BAT MASTERSON; television motion picture. No. 1073-45B		
74	BAT MASTERSON; television motion picture. No. 1074-50B		
75	BAT MASTERSON; television motion picture. No. 1075-83B		
76	BAT MASTERSON; television motion picture. No. 1076-78B		
77	BAT MASTERSON; television motion picture. No. 1077-76B		
78	BAT MASTERSON; television motion picture. No. 1078-84B		
79	BAT MASTERSON; television motion picture. No. 1079-85B		
80	BAT MASTERSON; television motion picture. No. 1080-86B		
81	BAT MASTERSON; television motion picture. No. 1081-75B		
82	BAT MASTERSON; television motion picture. No. 1082-89B		
83	BAT MASTERSON; television motion picture. No. 1083-90B		
84	BAT MASTERSON; television motion picture. No. 1084-77B		
85	BAT MASTERSON; television motion picture. No. 1085-92B		
86	BAT MASTERSON; television motion picture. No. 1086-80B		
87	BAT MASTERSON; television motion picture. No. 1087-81B		
88	BAT MASTERSON; television motion picture. No. 1088-88B		
89	BAT MASTERSON; television motion picture. No. 1089-97B		
90	BAT MASTERSON; television motion picture. No. 1090-94B		
91	BAT MASTERSON; television motion picture. No. 1091-91B		
92	BAT MASTERSON; television motion picture. No. 1092-100B		
93	BAT MASTERSON; television motion picture. No. 1093-98B		
94	BAT MASTERSON; television motion picture. No. 1094-102B		
95	BAT MASTERSON; television motion picture. No. 1095-101B		
96	BAT MASTERSON; television motion picture. No. 1096-104B		
97	BAT MASTERSON; television motion picture. No. 1097-105B		
98	BAT MASTERSON; television motion picture. No. 1098-95B		
99	BAT MASTERSON; television motion picture. No. 1099-108B		
100	BAT MASTERSON; television motion picture. No. 1100-93B		
101	BAT MASTERSON; television motion picture. No. 1101-106B		
102	BAT MASTERSON; television motion picture. No. 1102-107B		

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
103	BAT MASTERSON; television motion picture. No. 1103-99B		
104	BAT MASTERSON; television motion picture. No. 1104-96B		
105	BAT MASTERSON; television motion picture. No. 1105-103B		
106	BAT MASTERSON; television motion picture. No. 1107-87B		
107	BAT MASTERSON; television motion picture. No. 1108-82B		
108	BAT MASTERSON; TV motion picture. No. 1001- 1B		
109	BAT MASTERSON; TV motion picture. No. 1002- 5B		
110	BAT MASTERSON; TV motion picture. No. 1003- 3B		
111	BAT MASTERSON; TV motion picture. No. 1004- 7B		
112	BAT MASTERSON; TV motion picture. No. 1005- 2B		
113	BAT MASTERSON; TV motion picture. No. 1006- 11B		
114	BAT MASTERSON; TV motion picture. No. 1007- 10B		
115	BAT MASTERSON; TV motion picture. No. 1008- 12B		
116	BAT MASTERSON; TV motion picture. No. 1009- 16B		
117	BAT MASTERSON; TV motion picture. No. 1010- 18B		
118	BAT MASTERSON; TV motion picture. No. 1011- 9B		
119	BAT MASTERSON; TV motion picture. No. 1012- 6B		
120	BAT MASTERSON; TV motion picture. No. 1013- 17B		
121	BAT MASTERSON; TV motion picture. No. 1014- 14B		
122	BAT MASTERSON; TV motion picture. No. 1035- 13B		
123	BAT MASTERSON; TV motion picture. No. 1036- 13B		
124	BAT MASTERSON; TV motion picture. No. 1037- 8B		
125	BE COOL		
126	BEAUTY SHOP		
127	BEST MEN		
128	BILL & TED'S EXCELLENT ADVENTURE		
129	BIO-DOME		
130	BIRDCAGE, THE		
131	BLACK CAESAR		
132	BLACK STALLION, THE		
133	BLACULA		
134	BLOODSPORT		
135	BLOW OUT		
136	BLOWN AWAY		
137	BLUE STEEL		
138	BLUE VELVET		
139	BOWLING FOR COLUMBINE		
140	BREAKHEART PASS		
141	BRIDGE TOO FAR, A		
142	BULL DURHAM		
143	BULLETPROOF MONK		
144	CARE BEARS MOVIE, THE		
145	CARRIE (1976)		
146	CARRIE (2002)		
147	CHILD'S PLAY (1988)		
148	CHINA MOON		
149	CHITTY CHITTY BANG BANG		
150	CLAMBAKE		
151	CLASS		
152	CODE OF SILENCE		
153	COLORS		

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
154	CROCODILE HUNTER: COLLISION COURSE, THE		
155	CUTTING EDGE, THE		
156	DANCES WITH WOLVES		
157	DARK BLUE		
158	DARK HALF, THE		
159	DEATH RIDES A HORSE		
160	DEATH WISH 3		
161	DEATH WISH 4: THE CRACKDOWN		
162	DEATH WISH II		
163	DELIRIOUS		
164	DE-LOVELY		
165	DELTA FORCE 2: THE COLUMBIAN CONNECTION		
166	DELTA FORCE, THE		
167	DESPERATELY SEEKING SUSAN		
168	DIAMONDS ARE FOREVER		
169	DIE ANOTHER DAY		
170	DIGGSTOWN		
171	DIRTY ROTTEN SCOUNDRELS		
172	DIRTY WORK		
173	DISTURBING BEHAVIOR		
174	DOUBLE IMPACT		
175	DR. NO		
176	DRESSED TO KILL		
177	DUCK, YOU SUCKER		
178	EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT SEX		
179	EXTREMITIES		
180	F/X		
181	FALCON AND THE SNOWMAN, THE		
182	FAME (2009)		
183	FARGO (1996)		
184	FATAL BEAUTY		
185	FIDDLER ON THE ROOF		
186	FISH CALLED WANDA, A		
187	FISTFUL OF DOLLARS, A		
188	FLAWLESS		
189	FLED		
190	FLESH + BLOOD		
191	FLUKE		
192	FOR A FEW DOLLARS MORE		
193	FOR US, THE LIVING		
194	FOR YOUR EYES ONLY		
195	FRENCH LIEUTENANT'S WOMAN, THE		
196	FRIDAY FOSTER		
197	FROM NOON TILL THREE		
198	GANG RELATED		
199	GET SHORTY		
200	GETTING EVEN WITH DAD		
201	GHOST WORLD		
202	GHOULIES		
203	GHOULIES II		
204	GOLDENEYE		

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
205	GOOD, THE BAD AND THE UGLY, THE		
206	GREAT TRAIN ROBBERY, THE		
207	GUNS OF THE MAGNIFICENT SEVEN		
208	HACKERS		
209	HAIR		
210	HANG 'EM HIGH		
211	HANNIBAL		
212	HARD RIDE, THE		
213	HART'S WAR		
214	HEARTBREAKERS (2001)		
215	HOME OF THE BRAVE		
216	HOODLUM		
217	HORSE SOLDIERS, THE		
218	HOUR OF THE GUN		
219	I'M GONNA GIT YOU SUCKA		
220	INTO THE BLUE		
221	INVASION OF THE BODY SNATCHERS		
222	INVASION U.S.A.		
223	JACKIE ROBINSON STORY, THE		
224	JEEPERS CREEPERS		
225	JEEPERS CREEPERS 2		
226	JOHNNY BE GOOD		
227	JOURNEY TO THE CENTER OF THE EARTH		
228	KALIFORNIA		
229	KILL ME AGAIN		
230	KILLER KLOWNS FROM OUTER SPACE		
231	LADY VANISHES, THE		
232	LARGER THAN LIFE		
233	LEGALLY BLONDE 2: RED, WHITE & BLONDE		
234	LICENCE TO KILL		
235	LIFEFORCE		
236	LITTLE MAN TATE		
237	LIVE AND LET DIE		
238	LIVING DAYLIGHTS, THE		
239	LONE WOLF MCQUADE		
240	LORD OF ILLUSIONS, CLIVE BARKER'S		
241	MAD MAX		
242	MAGNIFICENT SEVEN (1960), THE		
243	MAGNIFICENT SEVEN RIDE!, THE		
244	MAN IN THE IRON MASK, THE		
245	MAN WITH THE GOLDEN GUN, THE		
246	MANCHURIAN CANDIDATE, THE		
247	MIAMI BLUES		
248	MIDNIGHT COWBOY		
249	MISSING IN ACTION		
250	MISSING IN ACTION 2: THE BEGINNING		
251	MISSISSIPPI BURNING		
252	MISSOURI BREAKS, THE		
253	MOD SQUAD, THE		
254	MONKEY SHINES: AN EXPERIMENT IN FEAR		
255	MOONRAKER		

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
256	MOONSTRUCK		
257	MOTEL HELL		
258	MR. MOM		
259	MYSTIC PIZZA		
260	NAVAJO JOE		
261	NEVER SAY NEVER AGAIN		
262	NICHOLAS NICKLEBY		
263	NO MAN'S LAND		
264	NO WAY OUT		
265	OCTOPUSSY		
266	OKLAHOMA TERRITORY		
267	ON HER MAJESTY'S SECRET SERVICE		
268	ORGANIZATION, THE		
269	ORIGINAL GANGSTAS		
270	OUT OF TIME		
271	OVERBOARD		
272	PACKAGE, THE		
273	PEBBLE AND THE PENGUIN, THE		
274	PINK PANTHER (1964), THE		
275	PINK PANTHER, THE		
276	POLTERGEIST II: THE OTHER SIDE		
277	POLTERGEIST III		
278	POPE OF GREENWICH VILLAGE, THE		
279	POSSE		
280	PUMPKINHEAD		
281	PUMPKINHEAD II: BLOOD WINGS		
282	PURPLE ROSE OF CAIRO, THE		
283	QUIGLEY DOWN UNDER		
284	RADIO DAYS		
285	RAGE: CARRIE 2, THE		
286	RAGING BULL		
287	RAIN MAN		
288	RED DAWN (1984)		
289	RED RIDING HOOD		
290	RED RIVER		
291	REMO WILLIAMS: THE ADVENTURE BEGINS...		
292	RESCUE DAWN		
293	RETURN TO ME		
294	RIVER OF DEATH		
295	ROAD HOUSE		
296	ROBOCOP (1987)		
297	RONIN		
298	SABATA		
299	SABOTAGE		
300	SECRET OF NIMH, THE		
301	SHE-DEVIL		
302	SLEEPOVER		
303	SOME GIRLS		
304	SOMETHING WILD (1986)		
305	SOUL PLANE		
306	SPECIES		

	Title	Start of Exclusivity Window(s)	End of Exclusivity Window(s)
307	SPECIES II		
308	SPECIES III		
309	SPECIES: THE AWAKENING		
310	STARGATE		
311	STARGATE: CONTINUUM		
312	STIGMATA		
313	STREET SMART		
314	SUPERNOVA		
315	SUPPORT YOUR LOCAL GUNFIGHTER		
316	SUPPORT YOUR LOCAL SHERIFF!		
317	TALES OF TERROR		
318	TEEN WOLF (1985)		
319	TEEN WOLF TOO		
320	TERMINATOR, THE		
321	TERROR IN A TEXAS TOWN		
322	THELMA & LOUISE		
323	THIEF		
324	THOMAS CROWN AFFAIR (1999), THE		
325	THROW MOMMA FROM THE TRAIN		
326	THUNDERBOLT AND LIGHTFOOT		
327	TOMORROW NEVER DIES		
328	TRAIL OF THE PINK PANTHER		
329	UNFORGIVEN, THE		
330	VALDEZ IS COMING		
331	VALKYRIE		
332	VAMPIRE'S KISS		
333	WE'LL NEVER HAVE PARIS		
334	WHAT'S THE WORST THAT COULD HAPPEN?		
335	WICKER PARK		
336	WILD BILL		
337	WINDTALKERS		
338	WITCHBOARD		
339	WORLD IS NOT ENOUGH, THE		
340	YOU ONLY LIVE TWICE		