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STUDY GUIDE

**WORLD INTELLECTUAL
PROPERTY ORGANIZATION**

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I. LETTER FROM THE SECRETARY GENERAL

Distinguished participants,

It is a privilege for me, as the Secretary General of the conference, to introduce you to Themis Court Simulations 2023.

This year, once again we are hosting a leading moot court conference in Turkey, which have academic saturation in addition to organizational excellence. Themis Court Simulations has always advanced itself each passing year in this regard, once again, our goal is to keep this tradition going and host you a unique and exciting experience.

This year, we are continuing a tradition with additions. Our perspective is to have courts in the most exciting, competitive, and instructive areas of law, and in this scope, our conference will contain six court simulations. In the World Intellectual Property Organization Arbitration, participants will examine a phenomenal case which includes NFTs and movie industry with a unique perspective. On behalf of the academic team, who prepared this exciting court, I would like to welcome you all to Themis Court Simulation. Likewise, our organization team will welcome you with their kind hospitality to make your experience as convenient as possible.

Moreover, I would like to thank in advance all of my academic team. I can see that I have an opportunity to work with an amazing group of people, therefore I'm glad to have a team like this. With their potential, it's clear that this journey will be incredibly joyful. Moreover, I would like to thank my friends, Director General Mr. Yiğit Hazar Eren and Deputy Director General Mr. Can Deryahan, and their tireless organization team. They are the people who are making this conference possible with their endless efforts.

Concluding my letter, on behalf of the Themis Court Simulations, I, once again, would like to welcome you all to this year's edition. Looking forward to meeting you soon, let's define justice together!

Best Regards,

Arda Özkan

Secretary-General of Themis Court Simulations 2023

II. LETTER FROM THE UNDER-SECRETARY GENERAL

Most distinguished participants,

As the Under Secretary General of WIPO Arbitration moot court, it is our utmost pleasure to welcome you all to this year's edition of the Themis Court Simulations. I, Selin Özgören, will be there for you and serve you during these three special days, full of academic growth and new experiences, as the Under Secretary General.

In this year's simulation, esteemed participants will perform as counsel and arbitrators to conclude a unique case concerning the world wide phenomenon NFT and its relation with the intellectual property rights This study guide will provide you with necessary knowledge about arbitration, intellectual property rights and the factual background of the case as well as the relevant articles from several international conventions.

Before concluding my remarks, I would like to thank my lovely academic assistants, Ms Eda Yılmaz and Sena Durmuş for their devotion and enthusiasm towards the research and the case. They were not only a huge help but also great friends along the way. Further, I send my deepest gratitude to the most distinguished Secretary-General Mr Arda Özkan for giving me this opportunity and his endless support and help in every step of this journey. We would also like to deliver our sincere thanks to honourable Director-General Mr Yiğit Hazar Eren and Deputy Director-General Mr Can Deryahan on behalf of the Organisation Team for all of their efforts to make this conference the best of all.

In case of any questions you might have, do not hesitate to contact us via,

slnzgrn@gmail.com

I am looking forward to meeting you in person at our one of a kind event!

Best regards,

Selin Özgören.

III. INTRODUCTION TO THE ARBITRAL TRIBUNAL

a. Introduction to International Commercial Arbitration

i. History of Arbitration

International arbitration is one of the alternative dispute resolution methods that has been used to resolve disputes whereas being an alternative to traditional court litigation. It has been stated in Article 33 of the Charter of the United Nations (UN)¹ as an alternative peaceful settlement of disputes alongside negotiation, inquiry, good offices, mediation, conciliation and judicial settlement. Persons who are directly interested in a dispute called the ‘parties’. A party must be either a real person or a legal entity. Usually, the person who files the lawsuit is called ‘the plaintiff’ and the person on the other side of the dispute is called ‘the defendant’; this makes both of them ‘parties of the dispute’. In an arbitration procedure there are no defendants or plaintiffs since the parties of the arbitration agreement take the dispute before the tribunal together.

The unique recognition of the predominant state of the arbitration goes back to the 1899 Hague Convention for the Pacific Settlement of International Disputes; *“In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective and at the same time the most equitable means of settling disputes which diplomacy has failed to settle.”*²

In this procedure, the decision rendered by the arbitrator or the arbitral tribunal has the same effect and results as the decisions rendered in the same state court. Arbitration is briefly divided into two main types as institutional arbitration and ad-hoc arbitration.

Ad-hoc arbitration is a type of arbitration in which an institution is not involved and the arbitration process is regulated by the parties. Ad-hoc arbitration is an arbitration where the parties and the arbitrators independently determine the procedure, without the involvement of an arbitral institution.

¹ United Nations. (n.d.). *United Nations charter (full text)*. United Nations. Retrieved December 31, 2022, from <https://www.un.org/en/about-us/un-charter/full-text>

² The avalon project - laws of war : Pacific settlement of international disputes (hague I); 29 July 1899. (n.d.). Retrieved January 1, 2023, from https://avalon.law.yale.edu/19th_century/hague01.asp

Institutional arbitration is the application of the rules of the arbitration institution and the arbitrators to the relevant dispute within the framework of predetermined and announced rules. According to this arbitration; the rules determined by the relevant arbitration institution are applied to the persons who bring their disputes before the relevant arbitration board.

For this reason, the parties prefer permanent tribunals that have rules that regulate all aspects of the arbitration procedure in detail, and that have technical and administrative organisations to carry out the arbitration procedure.

Since the rules determined by the international arbitration institutions are chosen to be applied, there is no need to determine any procedures and rules by the parties, unlike the ad hoc arbitration method. The organ that carries out the judicial function in institutional arbitration is not the arbitration centre, but the arbitrators chosen by the parties.

The arbitration centre only organises the proceedings. Furthermore, arbitrators and lawyers working with the institutional court for the resolution of disputes are in full control of these rules, since the rules are predetermined by the said arbitration centres and are used for long periods of time. This issue increases the belief of the parties in the most equitable resolution of the dispute and their confidence in the arbitration proceedings.

In summary, in contrast to institutional arbitration, national ad-hoc arbitration rules and private or institutional arbitration rules such as the United Nations Commission on International Trade Law (UNCITRAL) model rules provide more flexibility to the parties. In addition to that, not involving institutions contributes to the process to go more privately.

Depending on different legal needs, some courts for arbitration were established in the past at different times, most notably, the International Chamber of Commerce (the ICC) ³International Court of Arbitration in 1923 and the London Court of Arbitration (the LCIA) in 1892, and some other specialist international arbitration organisations such as the World Intellectual Property Organisation (the WIPO) Arbitration and Mediation Center in 1994 the International Centre for Settlement of Investment Disputes (the ICSID) in 1966.

³ *ICC International Court of Arbitration® - ICC - International Chamber of Commerce*. ICC. (2021, June 11). Retrieved January 1, 2023, from <https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/>

Today in the 21st century, the scope of arbitration is wider than it has ever been before, not only the commercial arbitration but also the construction, insurance, labour, shipping, securities, intellectual property and sports arbitration takes place everyday all around the world.

ii. Advantages And Disadvantages Of Arbitration

a. Advantages of Arbitration

Arbitration is a method of resolving disputes without going to court which has its own advantages and disadvantages compared to traditional court litigation. According to specific facts of the case in hand, it is fruitful to make a considered decision before starting the process or drafting the arbitration clause. The number of applicants to arbitration is increasing day by day and therefore the caseload of the judges is decreasing accordingly.

The most important advantages of the arbitration process can be listed as enforceability, neutrality, confidentiality, technical expertise and experience and simple procedure, flexibility, choice of arbitrators and cost.

- **Enforceability**

Arbitration provides an alternative to the court system for the resolution of disputes. In an arbitration, parties voluntarily agree, either before or after a disagreement arises, to submit their dispute to a neutral arbitrator. Usually, the decision of the arbitrator is binding and final.

- **Neutrality**

Neutrality of the arbitrator is one of the fundamental features of arbitration. It is not a universal but a relative notion, inevitably not identical in all parts of the world, at any given moment. The arbitration process is neutral in the sense that the parties can choose the international rules, multinational tribunal and the mutually acceptable venue. Arbitral institutions play a fundamental role in fighting, with realism, this attitude, being aware that neutrality of arbitrators is a principle that does not tolerate any compromise.

- **Confidentiality**

Arbitration proceedings, including hearings, are not held in public. The parties and arbitrators are obliged to comply with strict confidentiality rules. With this rule, it is aimed to protect some

commercial secrets and confidential information of these people from the public, the media and competitors.

- **Technical Expertise and Experience**

Arbitrators are usually experts in their fields. Since the parties have the freedom to choose their arbitrators as they wish, they will have the opportunity to understand the conflict that constitutes the arbitration case and to choose an arbitrator whose knowledge, skills and expertise on the subject they can trust. However, in traditional court litigation, this may not be the case, as the case can be decided by a judge without any knowledge.

- **Simple Procedure and Flexibility**

Most of the time, arbitration rules are short, small and easier to understand. Also in arbitration, the result is reached in a short time. The procedural rules determined in accordance with the dispute and the absence of an appeal stage or second-degree trial enable the arbitration process to be completed in a relatively short time. In addition, parties have enormous flexibility to tailor the process according to their specific needs.

- **Choice of Arbitrators**

Parties can choose one or three arbitrators, a priori or a posteriori. This choice guarantees the process going much more technical by the experts than the traditional court litigation which can have a judge with no prior knowledge.

- **Cost**

Arbitration proceedings generally cost less than court litigations. Choosing an appropriate arbitration language and/or venue helps avoid unnecessary translation and travel costs, thus saving costs.

b. Disadvantages of Arbitration

Although it is known that arbitration is advantageous over court litigations in many ways, there are also parts of arbitration that sometimes reflect its disadvantages for individuals.

- **Questionable Fairness**

If arbitration is contractually obligatory, the parties do not have the option to arbitrate by mutual consent, in such cases coercion is in question. In these cases, one party may force the other party to arbitrate, and even a trial by jury may be more advantageous to the other party.

- **Inability to Appeal**

As a general rule, the arbitrator's decision cannot be appealed. Only in certain limited situations, such as when the arbitrator exceeded his or her authority or upon proof of corruption, fraud or undue influence, will an arbitrator's decision be reviewed by a district court. For this reason, the binding nature of the decision and the general lack of ability to seek recourse from an incorrect decision make the consequences of the arbitration more profound.

- **Cost**

Although arbitrations are typically going to be less expensive than litigation, the cost of arbitration is on the rise, making arbitration often more expensive than other proceedings. Sometimes quality arbitrators can demand substantial fees that would not apply in court. In such cases, it is observed that arbitration may be more expensive.

- **Unpredictability**

Arbitration does not necessarily follow the formal rules of procedure and evidence that are involved in a courtroom trial. Evidence rules may prevent some evidence from being evaluated by a judge, but this limitation does not apply to arbitrators. Therefore, an arbitrator's decision may be based on evidence that a judge would not consider in the trial, which could harm your case.

- **Discretion of the Arbitrator**

An arbitrator may make his or her decision without issuing any written opinion or explanatory statement. In addition, this can also be viewed negatively, as arbitrations are private and rarely reviewed by courts.

In summary, an arbitrator may make inappropriate decisions during arbitration, or press for unusual circumstances that you did not expect, or there may be a different pricing situation than you expect. This could both be a pro or con, so you must carefully evaluate how this may affect your desired ruling.

1. Introduction To World Intellectual Property Organisation (WIPO)

b. Definition

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations with 193 member countries.⁴ WIPO's mission is to develop a balanced and accessible international intellectual property (IP) system that rewards creativity, encourages innovation and contributes to economic development while protecting the public interest.

WIPO collaborates with intellectual property (IP) offices, users and other stakeholders to develop common IP tools, services, standards, databases and platforms. This technical infrastructure is designed to help IP institutions collaborate more effectively and provide more efficient services to their users, as well as to enable innovators and information seekers around the world to access the information contained in the IP system freely.

Its main policy-making body is the General Assembly, which meets every two years. WIPO also holds a biennial conference that sets the organization's budget and programs. More than 170 non-governmental organizations have observer status.

c. History

Following the 1967 "Convention Establishing the World Intellectual Property Organization" signed in Stockholm, the WIPO Convention entered into force in 1970 with the aim of promoting the protection of intellectual property worldwide through cooperation among states and cooperation with other international organizations⁵. Its headquarters is in Geneva, Switzerland. Its Director General is Francis Gurry.

Due to the lack of adequate legal protection, inventors refrained from exhibiting their inventions in Vienna in favor of the establishment of an international property office, which resulted in two developments: firstly, all foreigners participating in the exhibition were granted temporary protection under Austrian law for their inventions, trademarks and industrial designs; and secondly, the Vienna Congress convened the same year for Patent Reform.

⁴ *Inside WIPO* (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/about-wipo/en>

⁵ What is WIPO? (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/about-wipo/en/>

In 1878, the International Congress on Industrial Property was also convened, as a result of which one of the governments was obliged to organize a diplomatic conference at the international level, assuming the burden of laying the basis for a uniform legislation in the field of industrial property. Following the entry into force of this decision, a proposal for an international union for the protection of industrial property was sent to a number of countries invited to participate in the International Conference in Paris. During the Conference, a draft of the basic provisions that now form the outline of the Paris Convention was adopted and received final approval at another diplomatic conference in Paris. The Paris Convention for the Protection of Industrial Property was initially signed by 11 States, yet the number of the member States has increased significantly after World War II.

Although there were already several bilateral treaties providing copyright protections, the need for a uniform system emerged and led to the adoption of another convention, the Berne Convention for the Protection of Literary and Artistic Works.⁶

Following the adoption of the Paris and Berne Conventions respectively, an Organization based on these two conventions, namely WIPO, was established with two secretariats, one for industrial property and the other for copyrights, based in Berne and later merged in 1893.

2. WIPO Arbitration And Mediation Center

The WIPO Arbitration and Mediation Center offers time- and cost-efficient alternative dispute resolution (ADR) options such as mediation, arbitration, expedited arbitration and expert determination to enable private parties to resolve domestic or cross-border commercial disputes.⁷ The WIPO Center is international and specializes in intellectual property and technology disputes. The WIPO Center is also the global leader in the provision of domain name dispute resolution services under the UDRP designed by WIPO.

⁶ (What is WIPO? (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/about-wipo/en/>

⁷ Why consider WIPO ADR? (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/amc/en/center/index.html>

IV. INTRODUCTION TO THE IP LAW

In the simplest terms, Intellectual Property Rights mean all substantive and moral rights that can be owned on a work and may be related rights. Essentially, intellectual property rights such as copyright, patents and trademarks can be viewed like any other property right. They allow the creators or owners of IP to benefit from their work or from their investment in a creation by giving them control over how their property is used⁸. Nowadays, intellectual property rights are examined under several headings such as copyright, patents, trademarks, industrial designs, geographical indications and trade secrets.

a. Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works⁹. Copyright refers to the granting of rights to use and dissemination of a product to certain persons by law. It is also defined as the legal rights on the products created by the individual with all kinds of intellectual labor. WIPO administers many international treaties in the area of copyright and related rights. Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

Copyright comes to the fore when intellectual and artistic works defined as works bear the characteristics of the owner. In addition to fine arts or science and literature, cinematic works and music are also covered by copyright. It is clearer which works will be protected through laws concerning copyright. With the said right, a balance element is created between the owner and users of the work, and the boundaries of the rights of the users as well as the owners of the work are drawn.

b. Trademark

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises¹⁰. Trademark provided that it enables to distinguish the goods or services of one undertaking from the goods or services of another undertaking, all kinds of

⁸ W. (n.d.). What is intellectual property (IP)? Retrieved January 5, 2023, from <https://www.wipo.int/about-ip/en/>

⁹ *Inside WIPO, What is WIPO?* (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/about-wipo/en>

¹⁰ "W. (n.d.). What is a trademark? Retrieved January 5, 2023, from <https://www.wipo.int/trademarks/en/>

signs, including names of persons, which can be displayed in drawings or expressed in a similar way, in particular words, figures, letters, numbers, the form or packaging of goods, which can be published and reproduced by printing. includes. Trademarks are protected by intellectual property rights. The treaties WIPO administers, together with national and regional laws, make up the international legal framework for trademarks.

c. Patents

In order to encourage invention, to encourage innovations and creative ideas, and to ensure that technical solutions obtained through inventions are applied in the industry; It is an official document showing who owns the invention or the right to use it.¹¹ The expired patent becomes public property and becomes available to anyone who wants it. Patents can be sold like any other product or service, leased to others through licensing, and passed on to other generations by inheritance. The treaties WIPO administers, together with national and regional laws, make up the international legal framework for patents.

d. Industrial Designs

Industrial design is expressed as the appearance of all or a part of the products or the surface textures such as a line, shape, form, color, material on it. Also, an industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color¹². The treaties that WIPO administers, together with national and regional laws, make up the international legal framework for industrial designs.

e. Geographical Indications

Geographical indication is a kind of quality mark that reveals the source of the product, the characteristics of the product and the connection between these features and the geographical area, and guarantees it to third parties. Many products in various fields such as food and agricultural products, handicraft products, industrial products can be subject to geographical indication registration. There are number of international treaties deal partly or entirely with the protection of geographical indications or appellations of origin¹³.

¹¹ *Patents, What is a patent? (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/patents/en/>.*

¹² *Industrial Designs, What is an industrial design? (n.d.). Retrieved January 5, 2023, from <https://www.wipo.int/designs/en/>*

¹³ *“Geographical Indications, What is a geographical indication? What do they specify? (n.d.). Retrieved January 5, 2023, from https://www.wipo.int/geo_indications/en/*

f. Trade Secrets

Trade secret refers to the intellectual property right regarding confidential information for the enterprise. To be more specific, in order for an information to be a trade secret, it is important that it has a commercial value because it is confidential and is known only to a certain group of people. The unfair acquisition, use or disclosure of information of this nature is considered outside of honest business activities and constitutes a violation of the protection of trade secrets.

g. NFT

A non-fungible token (“NFT”) is a unique and non-interchangeable unit of data stored on a digital ledger (blockchain) and is used to certify authenticity¹⁴. NFTs are different from fungible tokens as the former can be identified while the latter are identical and anonymous. For instance, cryptocurrencies as a fungible token can be traded or exchanged due to the characteristics of being identical to each other, yet, NFT’s are unique of their own, so cannot be used as a medium for commercial transactions. Still, NFT market has expanded critically and are considered to be tradable and frequently sold on digital markets¹⁵. Currently, NFTs are mostly associated with several types of multimedia files, such as photos, videos, audio and other types of digital files as unique items.

Once an NFT is created or “minted”, it is recorded on the blockchain and provides an immutable record of ownership of the said item. NFT are mainly considered as the digital equivalent of a physical real property deed or motor vehicle title. Like deeds and titles, NFTs act as the proof of ownership of value property but are not the property itself. The original files’ copies are not restricted and can be copied and shared like any file. NFT are often subject to one area of IP law. For instance, digital artwork, a popular type of NFT identified item, is subject to copyright law. Still, it should be underlined that an NFT only indicated a proof of ownership of a blockchain record and does not imply that the owner has the intellectual property rights to the digital asset the NFT represents¹⁶.

¹⁴ Merriam-Webster. (n.d.). *NFT definition & meaning*. Merriam-Webster. Retrieved December 31, 2022, from <https://www.merriam-webster.com/dictionary/NFT>

¹⁵ Kastrenakes, J. (2021, March 11). *Beeple sold an NFT for \$69 million*. The Verge. Retrieved December 31, 2022, from <https://www.theverge.com/2021/3/11/22325054/beeple-christies-nft-sale-cost-everydays-69-million>

¹⁶ Thaddeus-johns, J. (2021, March 11). *What are nfts, anyway? One just sold for \$69 million*. The New York Times. Retrieved December 31, 2022, from <https://www.nytimes.com/2021/03/11/arts/design/what-is-an-nft.html>

Yet, it is seen that in some of the NFT projects, the intellectual property rights were transferred to the owner by explicitly mentioning it on a special NFT licence. This includes what people are able to do with their NFT and its associated art¹⁷. Those rights and restrictions depend solely on the company or developer of the collection. For instance, the well known Bored Apes project follows such an approach, as the company gives full rights to the NFT purchaser. This project involves NFT's as avatars, which is widely used as a status symbol for owners, who use their purchases as avatars on social media.



*Figure: Bored Apes NFT's*¹⁸

In contrast, CryptoPunks followed another approach, which prohibits the purchasers from using the digital artwork for commercial use. This project was the original idea that combined a few lines of code and a meaningful ownership and inspired the rest of the world to produce NFTs in the first place. From the website, anyone can save a copy of the avatars, yet, only one person will have the actual ownership of the “*elegant and beautifully written*” code accessible via Ethereum blockchain¹⁹.

¹⁷ *The Bored Ape Yacht Club apes into Hollywood - Fast Company*. (n.d.). Retrieved December 31, 2022, from <https://www.fastcompany.com/90706534/the-bored-ape-yacht-club-apes-into-hollywood>

¹⁸ Chayka, K. (2021, July 30). *Why bored ape avatars are taking over Twitter*. The New Yorker. Retrieved December 31, 2022, from <https://www.newyorker.com/culture/infinite-scroll/why-bored-ape-avatars-are-taking-over-twitter>

¹⁹ Person. (2021, April 8). *10 things to know about CryptoPunks, the original nfts: Christie's*. Christies. Retrieved December 31, 2022, from <https://www.christies.com/features/10-things-to-know-about-CryptoPunks-11569-1.aspx>



*Figure: CryptoPunks avatars*²⁰

Still, there are many problems NFTs process, and as of May 2022, NFT market was reported to be “collapsing” by The Wall Street Journal²¹.

One of the widely recognised problems is, selling stolen and counterfeit digital works as NFT’s. Even though some museums and art work houses exists for auctions, as no central authentication happens regarding the NFTs, it is inevitable that crimes will continue to be happening.

Some countries took actions against NFTs and museums collaborations. To give an example, the Ministry of Culture of Italy recently requested its institutions to temporarily refrain from signing NFT contracts after the recent sale on Michalangelo’s Doni Tondo. La Repubblica asked “Who owns Michalangelo’s Doni Tondo? Who has the legal rights linked to the work? If the buyer ever decides to exhibit it, can he do it without the permission of the Uffizi? Basically, do we not risk losing control of our heritage in a time when we are increasingly moving towards the metaverse?”²²

²⁰ibid

²¹ Dow Jones & Company. (2022, May 3). *NFT sales are flatlining*. The Wall Street Journal. Retrieved December 31, 2022, from <https://www.wsj.com/articles/nft-sales-are-flatlining-11651552616>

²² Harris, G., & Munster, B. (2022, July 8). *Italian government plans to halt digital sales of Masterpieces from its major museums*. The Art Newspaper - International art news and events. Retrieved December 31, 2022, from <https://www.theartnewspaper.com/2022/07/08/italian-government-weighs-in-on-digital-copies-fracas>

Another problem of NFTs is that they can be used for money laundering. Auction platforms of NFTs face regulatory pressure to comply with anti-money laundering standards. Still, both China and USA reported evidence regarding money laundering and regarded NFTs as high risk involved platforms in contrast to physical trade of art. Because it is simpler, there are no transportation or insurance complications and it is most of the time entirely anonymous.

Finally, NFTs pose a threat to the environment as well. As it is mostly associated with Ethereum and traded with it, verification and proof of work protocol of the whole process consumes a large amount of electricity.

V. FACTS OF THE CASE

a. Matrix Trilogy



Figure: Keanu Reeves as Neo²³

The Matrix is a 1999 science fiction action film written and directed by the Wachowskis (Lana&Lilly Wachowski). The topic of the series is set in a dystopian future where humanity is unwittingly trapped in the Matrix, a simulated reality created by intelligent machines to distract people and use their bodies as a source of energy²⁴. Computer programmer Thomas Anderson, played by Keanu Reeves, uncovers the truth under the pseudonym "Neo" and joins a rebellion against the machines with other humans rescued from the Matrix. The other stars of the movie is Laurence Fishburne, Carrie-Anne Moss, Hugo Weaving and Jada Pinkett Smith.

The Matrix was released in the United States on March 31, 1999 to critical acclaim, praising its innovative visual effects, action sequences and cinematography. Grossing over \$460 million on a \$63 million budget, it was the highest grossing Warner Bros film of 1999 and the fourth highest grossing film of that year. The film won Best Visual Effects, Best Film Editing, Best

²³Stack, L. (2016) *Second Wachowski sibling comes out as transgender woman*, *The New York Times*. The New York Times. Available at: <https://www.nytimes.com/2016/03/10/style/second-wachowski-sibling-comes-out-as-transgender-woman.html> (Accessed: January 7, 2023).

²⁴IMDb (no date) *Lana Wachowski*, *IMDb*. IMDb.com. Available at: <https://www.imdb.com/name/nm0905154/> (Accessed: January 7, 2023).

Sound and Best Sound Editing in all four categories for which it was nominated at the 72nd Academy Awards. The film also won numerous other awards, including Best Sound and Best Special Visual Effects at the 53rd British Academy Film Awards, and the Wachowskis won Best Director and Best Science Fiction Film at the 26th Saturn Awards. The film is considered one of the greatest science fiction films of all time and was selected for preservation in the United States National Film Registry by the Library of Congress in 2012 as "culturally, historically, and aesthetically significant".

The success of the film led to the release of two feature-length sequels in 2003, *The Matrix Reloaded* and *The Matrix Revolutions*, also written and directed by the Wachowskis. The Matrix franchise has been further expanded with the production of comic books, video games and animated short films in which the Wachowskis have been heavily involved. The series also inspired books and theories that expanded on some of the religious and philosophical ideas alluded to in the films. The fourth film, *The Matrix Resurrections*, was released on December 22, 2021.

The Matrix Reloaded (2003) is a sequel to *The Matrix* (1999) and the second installment in the Matrix film series. Freedom fighters Neo, Trinity and Morpheus continue to lead the revolt against the Machine Army, unleashing their arsenal of extraordinary skills and weaponry against the systematic forces of repression and exploitation.

The Matrix Revolutions (2003) is the third instalment in *The Matrix* film series, released six months following *The Matrix Reloaded*. The human city of Zion defends itself against the massive invasion of the machines as Neo fights to end the war at another front while also opposing the rogue Agent Smith.

The Matrix Resurrections (2003) is the sequel to *The Matrix Revolutions* (2003) and the fourth instalment in the Matrix film franchise and being the first in Matrix franchise to be directed solely by Lana, without her sister. Return to a world of two realities: one, everyday life; the other, what lies behind it. To find out if his reality is a construct, to truly know himself, Mr. Anderson will have to choose to follow the white rabbit once more.

b. Lana Wachowski&Lilly Wachowski



Figure: Lana and Lilly Wachowski²⁵

The Wachowskis are the duo behind groundbreaking films such as *The Matrix* (1999) and *Cloud Atlas* (2012). Born in Chicago to Lynne, a nurse mother, and Ron, a Polish businessman father. After dropping out of college, they both started a construction business and wrote screenplays. In 1995, their script *The Assassination Circle* (1995) was made into a movie and they signed a contract with Warner Bros. From then on, the Wachowskis devoted themselves to their movie career.

Together they ran a house painting and construction company in Chicago, while also writing comic books. In 1994 they wrote the screenplay for the Richard Donner movie *Assassins*, but it was largely rewritten by Brian Helgeland. This prompted them to consider directing as well as screenwriting. Their first screenplay was selected and became the basis for the movie *Circle of Assassination* (1995).

The Wachowskis made their directorial debut with their self-written and critically acclaimed *Strange Bedfellows* (1996).

²⁵Stack, L. (2016) *Second Wachowski sibling comes out as transgender woman*, *The New York Times*. The New York Times. Available at: <https://www.nytimes.com/2016/03/10/style/second-wachowski-sibling-comes-out-as-transgender-woman.html> (Accessed: January 7, 2023).

Their real fame came with The Matrix Trilogy, the first movie of which they made in 1999. The Matrix, The Matrix Reloaded and The Matrix Revolutions were written and directed by the duo, who at a young age created one of the best sci-fi series in cinema history. In 2005, they wrote the screenplay for another popular movie, V for Vendetta. In 2008, they again sat in the director's chair for the movie Speed Racer. They wrote and directed Cloud Atlas with Tom Tykwer in 2012 and Jupiter Ascending in 2015.

1. Lilly Wachowski

Director, writer and producer Lilly Wachowski was born in Chicago in 1967. The daughter of Lynne, a nurse and painter, and Ron, a businessman.

Lilly was educated at Kellogg Elementary School in Chicago before attending Whitney M. Young High School. After graduating from high school, she attended Emerson College in Boston but dropped out. She started her career in 1995 with her brother after their script Assassins was made into a movie, which led to a Warner Bros contract, they devoted themselves to their movie career.

Lana came out as trans in 2010 and she shared in her acceptance speech in 2012 during an interviews for Cloud Atlas for the Human Right Campaign's Visibility Award.

2. Lana Wachowski

Lana Wachowski is an American transgender woman film director, screenwriter, and producer²⁶. Growing up in Chicago, Lana Wachowski went to Kellogg Elementary School. She then enrolled at the Whitney Young Magnet High School. Lana started experimenting with her artistic talents in the school theater group. She graduated in 1985. Then she went to Bard College based in New York.

Lana, completed her gender transition in 2007, leaving behind the name Larry and coming out as a trans woman. After this surgery, LGBT people and queer themes became increasingly visible in her films.

²⁶ IIMD (no date) *Lilly Wachowski*, *IMDb*. IMDb.com. Available at: <https://www.imdb.com/name/nm0905152/> (Accessed: January 7, 2023).

c. Warner Bros

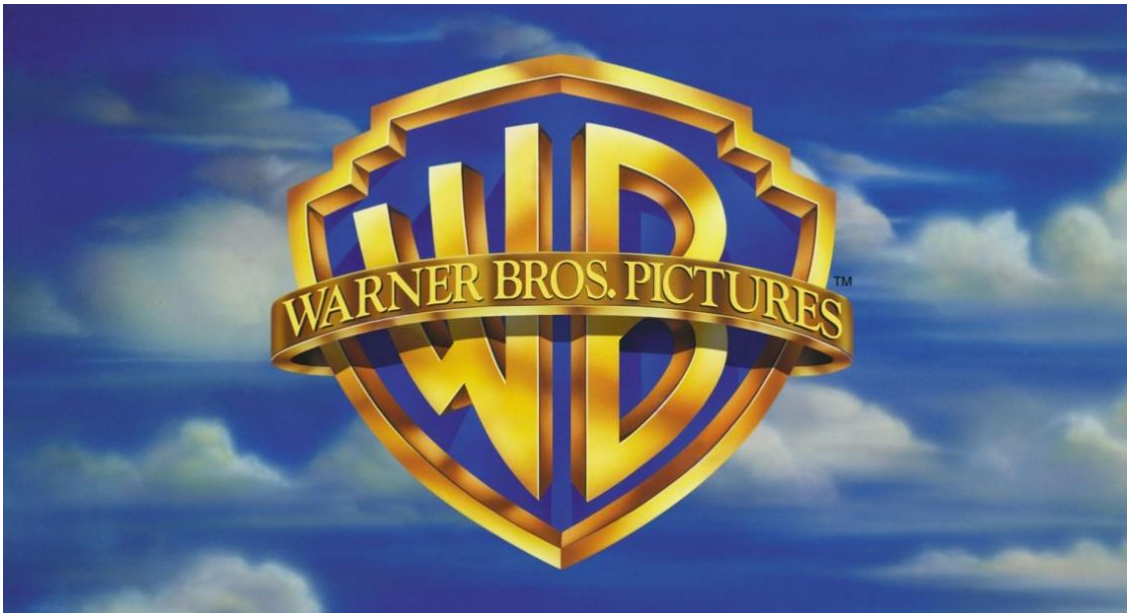


Figure : Warner Bros Pictures Logo²⁷

Warner Bros is one of the world's largest film production and television broadcasting companies. It is a global leader in the creation, production, distribution, licensing and marketing of all forms of entertainment and related businesses. The Studio, a WarnerMedia company, is home to one of the world's most successful collections of brands and is at the forefront of every aspect of the entertainment industry, from feature film, television and home entertainment production and worldwide distribution to DVD and Blu-ray, digital distribution, animation, comics, video games, product and brand licensing and publishing.

It is a subsidiary of AT&T's WarnerMedia group and is headquartered in Burbank, California, USA. Founded in 1923 by Harry, Albert, Sam and Jack Warner, the company was renamed Warner Brothers or simply Warner Bros.

The company's extensive library, one of the most prestigious and valuable in the world, consists of more than 114,000 hours of programming, including 10,000 feature films and 2,400 television programs with more than 120,000 individual episodes. Warner Bros. has between 5,000 and 10,000 employees in North America on any given day (depending on the level of television and film production) and approximately 2,000 employees overseas.

²⁷Stack, L. (2016) *Second Wachowski sibling comes out as transgender woman*, *The New York Times*. The New York

d. Relevant Individuals

1. Keanu Reeves

Keanu Reeves was born in Beirut, Lebanon on September 2, 1964, and had his greatest success in comedy, science fiction, and action films. He made his debut as a professional actor in an episode of the comedy series *Hangin' In* in 1984. With his role of Neo in the sci-fi cult film *The Matrix* in 1999, Reeves attained a new level of fame (1999). The hit, which also received high praise from critics, started a wildly popular franchise that featured two sequels (both 2003). He made a comeback to his first film franchise in 2020, appearing in the well-liked *Bill & Ted Face the Music*. Reeves turned to another iconic series when he reprised the role of Neo in *The Matrix Resurrections* (2021).

2. V for Vendetta

“V”, who lives in England, is a folk hero who helps the awakening of the British people that find salvation in an oppressive administration after suffering great losses in terrorist incidents in the country. “Remember, remember the fifth of november!” one of its slogans and it led to mobilise the administration and people. In the end, all these efforts of V came true. Year after this event, V’s inspiring story was brought to the screen through the Wachovski Sisters. In this film, all of V’s experiences are conveyed exactly. V’s face is never seen in the movie, just like in real life. After this successful film, the connection between V and the Wachowski sisters does not break. In addition, he was on the set during the filming of the movie, and at this stage he made many friends from Warner Bros.

e. Twins’ NFT’s

The Wachowskis, the world-famous directing siblings, have announced that they will release three never-before-seen scenes from the classic *Matrix* series as NFTs. Following this announcement, Warner Bros, the company that holds the rights of “*The Matrix*”, took into action its lawyers.

Warner Bros, the production company and distributor of *The Matrix*, has sued famed sibling directors Lilly and Lana Wachowski over the movie's NFTs. Warner Bros, which holds the rights to the legendary film series, the first of which was released in 1999, claimed that the famous director siblings did not consult them and committed copyright infringement.

Twin's NFT's are based on different multimedia forms of both existing and non-existing scenes from the movies in total being 3.

The first one of the NFT "*Handwritten*" is a photograph based on the original copy of the screenplay of the sister's and had several notes from them. The scene is about the choice of Neo between the red and blue pills.

The second one of the NFT "*Dodge the Bullet*" is based on the undoubtedly most popular scene of the series, in which the main character Neo stops the bullets from hitting him and just casually takes one. With the special link one receives from the NFT, it is possible to listen to the voices of the sister's and their creative process while watching an animated version of the scene. It is unsure if this scene is in the public sphere.

The third one of the NFT "*Trinity*" is based on several comic book drawings of Trinity, showing the character's evaluation from the first drawing to the casting of the actor. It is unsure if the last drawing with the actor being present is still a reserved right of the twins.

VI. BACKGROUND OF THE DISPUTE

a. History

NFTs production has started in obscure corners of the Internet then moved to sports and art, and finally reached Hollywood with full force and Wachowskis were one of the first ones to follow the latest technology with their creative vision.

Lana and Lilly Wachowski ("The Wachowskis") are the writer and directors of the worldwide phenomenon cult series, the Matrix. Even though they had creative differences before, and did not work together for the last couple of projects, they were back together before the official announcement of Matrix 4. Since the possibility of Matrix 4 increased the popularity of the series and the trilogy was re-released all around the world, The Wachowskis followed the trend and announced their interest for a series of NFT token sales. According to their press release, the tokens would be based on different multimedia forms of both existing and non-existing scenes from the movies.

The sisters also created a website for the sales called, "Wachowski NFT's" and the advertising was made under their own name, rather than the Matrix series. First, the website included

silhouettes of both the main character Neo and the supporting character Trinity. After a while, it was announced from Wachowshki's Twitter accounts that the website was renewed and the silhouettes were removed from the website. The reason for this change was not released to the public.

In 2020 May, just before the filming of Matrix 4, the Wachowskis announced more details on their lineup of NFT's and the website was updated once again. The announcement included the details on NFT's such as *"Through the auction on the website, prospective buyers would receive secret information with each NFT they acquire and have the discretion to decide what to do with that information. The secret information will include secrets behind the scenes, related to the screenplay."*

"Each NFT consists of personalised audio commentary from the Wachowski's. The prospective buyer will get a glimpse into the mind and the creative process of the Sisters. The owner may choose between:

- 1. Keeping the secret informations to themselves*
- 2. Sharing it with a few trusted ones*
- 3. Sharing it with the rest of the world."*

7 days after the announcement, the first NFT from the collection was sold for over 1 million dollars at an auction made through the website.

After the announcement and the sale, in 2021 January, Warner Bros sued the Wachoswkis on the ground that NFT's were "emerging technology" and Wachowskis limited rights on screenplay does not permit creation of unique NFT's associated with Warner Bros' intellectual property." It was also known by that time that Warner Bros was already pursuing its own strategy to capitalise their own lineup of NFT's and the separate sale made by Wachowski's would interfere with this sale. According to Warner Bros, creating NFTs would fall under the redistribution rights, which was %100 owned by Warner Bros.

Warner Bros's lineup for the avatar centred NFT's includes 100,000 unique avatars based on the series, which was aimed for the late 2021. The mentioned NFT's were minted on Palm Blockchain, which is energy-efficient and has a minimum environmental impact. The avatars would be sold at a fixed price, 50 dollars per avatar. The launch would be in two stages. First,

the buyers will buy randomly generated “base” avatars resembling ordinary people trapped in the Matrix. Then, on the Second stage, the buyer will have a choice to take a Blue or Red Pill. The ones who choose the Blue Pill will have their avatar remain locked in the Matrix and the ones who chose the Red Pill will transform their avatar into a resistance fighter unplugged from the Matrix. These users avatar’s will get updates on their features inspired by the heroes of the movie. At the same time, Warner Bros is including several challenges to the system, which will make the purchase a multi-year experience where the owner of the NFT’s can complete the challenges on the system and earn rewards to update their avatars. It is known that Warner Bros have been experimenting on NFT’s since 2020.

In contrast, Wachowski’s claim was, auctions made with the form of NFTs about existing and non-existing scenes from the series were falling under their own reserved rights and NFTs as an entire concept is just a new and modern way of performing their republishing rights.

On 10 February 2023, the dispute will be heard at the World Intellectual Property Organization’s Arbitration Center.

b. Timeline

April 1998	Contract between the parties
May 1998	The signing of the Contract and the correspondence between the parties about the transfer of rights.
January 2020	Warner Bros started to experiment on NFTs for a possible lineup.
January 2020	Warner Bros shared the news via social media accounts.
January 2020*	The Sisters announced their interest in a possible NFT lineup.
May 2020	The first NFT by Wachowski's is sold for 1 million.
May 2021	Warner Bros' discrimination scandal was released on the Journal Star.
December 2021	Release of the Matrix 4
February 2023	The dispute will be heard at WIPO

*The events listed on January 2020 are not listed in a specific order.

VII. CLAIMS OF THE PARTIES

CLAIMANT, **Warner Bros Entertainment Inc.**, is a subsidiary company to Warner Bros. Discovery and is an American film and entertainment studio headquartered at the Warner Bros Studios complex in California.

RESPONDENT, **the Wachowskis, are Lana (formerly known as Larry Wachowski) and Lilly (previously known as Andy Wachowski) Wachowski are American film and television directors, writers and producers.**

CLAIMANT sued RESPONDENT on the grounds of breach of contract (1) and copyright (2) and trademark infringements (3).

CLAIMANT's breach of contract claim (1) is based on the original 1998 contract with the RESPONDENT. According to CLAIMANT, it gives CLAIMANT the right to mint NFTs related to Matrix, as redistribution rights are reserved exclusively to CLAIMANT.

RESPONDENT argues that a contract made in 1998 cannot foresee an emerging technology such as NFTs and using NFTs is just a new and modern way of republishing.

CLAIMANT's copyright claim (2) is based on the imagery used on the NFT auction website, especially the silhouettes of Neo and Trinity, characters played by Keanu Reeves and Carrie-Anne Moss. As the characters are copyrightable, the illustrations of the silhouettes are potentially infringing.

In contrast, RESPONDENT argues that the website no longer has the silhouettes of these characters and now rather has the image of red and blue pills.

CLAIMANT's trademark infringement claim (3) is based on the fact that the time frame of the parties will certainly interfere with each other and Wachowski's website will cause potential buyers to get confused as they will be directed to Wachowski's website instead of Warner Bros.

CLAIMANT argues that RESPONDENT acted in bad faith, as the parties were in contact for producing Matrix 4 for more than a year, but kept the NFT plan a secret. Other than these,

CLAIMANT additionally argues that RESPONDENT acted in bad faith by producing NFT's even though they knew about CLAIMANT's strategy to launch Matrix 4 alongside with the avatar-based NFT's.

RESPONDENT argues that, CLAIMANT only released their strategy on NFT's on Twitter, and the sisters do not have an obligation to follow the social media accounts of the RESPONDENT, and the timing is merely a coincidence. Additionally, the announcement made on Twitter does not have any information that Warner Bros is planning their NFT based on Matrix, rather it slightly mentioned that it is *"a strategy for the upcoming movies"*

CLAIMANT further claims that sisters are interfering with the auction because of previous creative differences on Matrix 4, and they are using the NFT situation just to harm the income of Warner Bros.

Further, according to RESPONDENT, CLAIMANT has been acting discriminatory towards them, and that is not the first time. Warner Bros was involved in scandalous events in 2016 and 2018, where they fired two trans set workers who were proven to be innocent in 2021. That is one of the reasons that CLAIMANT issued this arbitration request, without negotiating with the RESPONDENT in the first place.

In contrast, CLAIMANT explains that those incidents are not related to the dispute and the people who were responsible for such an act were already let go from their jobs and Warner Bros will not tolerate such an act. Further, after learning about the sister's sale of the first NFT, CLAIMANT sent a cease and desist letter setting forth, in great detail, Sister's disregard of Warner Bros' broad rights to the Matrix. Wrongly claiming that their narrow Reserved Rights are sufficient, Wathowski's remained undeterred and has refused to comply with Warner Bros' demands to cancel the sale of Matrix NFTs. These reserved rights included: *Twin's Reserved Rights were limited to the "soundtrack album, music publishing, live performance, print publication (including without limitation screenplay publication, 'making of' books, comic books and novelization, in audio and electronic formats as well, as applicable), interactive media, theatrical and television sequel and remake rights, and television series and spin off rights."*

According to RESPONDENT, it is not possible to determine the NFT's on their own to be falling into the rights of Warner Bros, as it is an entirely new form of media and every NFT should be evaluated on its own. They further argued that sharing by NFT is just a new way of republishing his script or animation in a new format, which both are falling to this domain of rights.

VIII. REQUEST FOR RELIEF

a. CLAIMANT

In light of the above, CLAIMANT asks the Arbitral Tribunal for the following order:

1. To declare that the RESPONDENT party has breached the contract by producing NFT's on the rights reserved to CLAIMANT.
2. To declare that RESPONDENT acted in bad faith and harmed CLAIMANT's long lasting NFT project.
3. To declare that RESPONDENT infringed CLAIMANT's copyright by using imagery of Neo and Trinity on their website.
4. To declare that RESPONDENT infringed CLAIMANT's trademark by using a website which gives an impression to the potential customer's that the sales are governed by Warner Bros.
5. Order RESPONDENT to pay monetary damages incurred by contractual breach
6. To order RESPONDENT to bear the costs of these arbitration proceedings, including the cost incurred by CLAIMANT for legal representation.

b. RESPONDENT

In light of the above, RESPONDENT asks the Arbitral Tribunal for the following order:

- 1) To declare that the RESPONDENT has validly exercised its rights by publishing his work in a modern way as they did it by NFTs.
- 2) To declare that the CLAIMANT is biased with working trans people as evident from their previous conduct.
- 3) To order CLAIMANT to bear the costs of these arbitration proceedings, including the cost incurred by RESPONDENT for legal representation.

IX. APPLICABLE LAW

a. WIPO Arbitration Rules²⁸

Scope of Application of Rules

Article 2

Where an Arbitration Agreement provides for arbitration under the WIPO Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

General Powers of the Tribunal

Article 37

(a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.

(b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

Evidence

Article 50

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Witnesses

Article 56

²⁸ Wipo arbitration rules. (n.d.). Retrieved January 8, 2023, from <https://www.wipo.int/amc/en/arbitration/rules/index.html>

(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, whether witness of fact or expert witness, as well as of the subject matter of their testimony and its relevance to the issues.

(b) The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness.

(c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

(d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Effect of Award

Article 66

(a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 64(f), second sentence.

b. Contract Between the Parties

Contract of Production

1. **The Film:** The motion picture MATRIX to be produced by Producer in color, 35mm, in the English language, in the 2.35:1 aspect ratio conforming to the specifications set forth herein and containing the elements required hereunder.
2. **Grant of Rights:** The rights granted to Warner Bros herein are hereinafter referred to as the "Rights". Producer hereby grants to Warner Bros for the "Territory" and "Term" (both defined below) all rights (including all copyrights and trademark) in and to the Film (and all elements thereof in all stages of development and production) now or hereafter known including without limitation the right to distribute the Film in all media now or hereafter known (theatrical, non-theatrical, all forms of television, home video etc.) but excluding only the following rights ("**Reserved Rights**") which are reserved to Wachowski's: soundtrack album, music publishing, live performance, print publication (including without limitation screenplay publication, "making of" books, comic books and novelization, in audio and electronic formats as well, as applicable) interactive media, theatrical and television sequel and remake rights, and television series and spinoff rights. Exercise of certain of the Reserved Rights is subject to restrictions set forth elsewhere in this agreement. Wachowski's shall have the right to use the title of the Film in connection with the exploitation of the Reserved Rights. For the purpose of this agreement, "interactive media" means any interactive device or mechanism, such as a computer game based on the Film but shall not be substantial replication or viewing of the Film. Interactive media rights, if not hereafter acquired by Wachowski's shall be subject to holdback to be negotiated in good faith, with particular view to avoiding competition with home video. Warner Bros may publish for promotional purposes excepts up to 7500 words from the screenplay on a not-for-sale basis.
3. **Territory:** Universe.
4. **Term:** Perpetuity.

....

29. Dispute Resolution: All disputes arising from the contractual relationship shall be submitted exclusively to WIPO Arbitration and Mediation Center before arbitrators chosen directly from the center's listing under the rules of WIPO Arbitration

c. Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979)²⁹

The Berne Convention for the Protection of Literary and Artistic Works, hereby referred to as the Berne Convention, aims to protect the original literary and artistic works and rights of authors of the Contracting States. The Convention was first drafted in 1886 but has been modified over the years. The Convention has 176 signatory States which includes United Kingdom and United States of America.

Article 1

(1) The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

Article 3

(1) The protection of this Convention shall apply to:

²⁹ Wipo Lex. (n.d.). Retrieved January 8, 2023, from <https://www.wipo.int/wipolex/en/text/283698>

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression “published works” means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 6

(1) Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

d. Paris Convention for the Protection of Industrial Property (As Amended on September 28, 1979)³⁰

Article 1

Establishment of the Union; Scope of Industrial Property²

(1) The countries to which this Convention applies constitute a Union for the protection of industrial property.

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

Article 6bis

Marks: *Well-Known Marks*

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create

³⁰ Wipo Lex. (n.d.). Retrieved January 8, 2023, from <https://www.wipo.int/wipolex/en/text/288514>

confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 8

Trade Names

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9

Marks, Trade Names: Seizure, on Importation, etc., of Goods Unlawfully Bearing a Mark or Trade Name

(1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.

(2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.

(3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.

(4) The authorities shall not be bound to effect seizure of goods in transit.

(5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.

(6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

e. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)³¹

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Arbitration Convention or (and hereby referred as) the New York Convention, is one of the key instruments in international arbitration. The New York Convention applies to the recognition and enforcement of arbitral awards the referral by a court to arbitration. United Kingdom and United States are both signatories of the New York Convention therefore the Parties will be bound with the award given by the Tribunal and there will be no possibility for the appeal of the given award neither in an arbitral tribunal nor a civil court system.

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

...

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise

³¹ Convention, N. Y. (n.d.). *United Nations Convention on the recognition and enforcement of Foreign Arbitral Awards (New York, 10 June 1958)*. New York Arbitration Convention. Retrieved January 8, 2023, from <https://www.newyorkconvention.org/english>

between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

f. Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS")³²

The TRIPS Agreement establishes a minimum level of protection that WTO Members were required to provide the intellectual property of other Members. It covers such areas as copyrights, trademarks, patents, geographical indications (GI), industrial and layout designs, and undisclosed information (trade secrets).

Article 1

Nature and Scope of Obligations

³² *Annex 1C agreement on trade-related aspects of intellectual property rights*. (n.d.). Retrieved December 31, 2022, from https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

...

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

g. United States Patent and Trademark Office

a. Copyright Policy

The USPTO's copyright-related work is far reaching and includes:

- Treaty negotiation and monitoring the implementation of copyright-related international treaty provisions, including reviewing U.S. implementation of and adherence to international treaty obligations relating to copyright and related rights;
- Technical assistance and training on copyright-related matters, to both U.S. and foreign officials; and
- Monitoring domestic copyright policy developments within the Executive Branch, the U.S. Congress, and the courts.

The USPTO has helped develop, negotiate, and monitor key copyright-related international agreements, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the World Intellectual Property Organization (WIPO) "Internet Treaties" (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), and the Marrakesh Treaty. The USPTO monitors third countries' adherence to and implementation of these and other copyright treaties, and advises the Executive Branch on corollary domestic issues and questions.

Copyright is among the many topics covered in the training and capacity building programs that the USPTO offers to foreign officials and to U.S. stakeholders³³.

³³ USPTO. (2022, June 3). *Copyright policy*. United States Patent and Trademark Office - An Agency of the Department of Commerce. Retrieved January 5, 2023, from <https://www.uspto.gov/ip-policy/copyright-policy>

X. RELEVANT CASE LAW

a. Hermès v. Rothschild

As of December 2021, one of the first and remarkable conflicts regarding the conflict of NFTs with registered trademark rights is experienced between the world-famous fashion giant "Hermès" and the NFT creator "Mason Rothschild". The sales platform "OpenSea", which mediates NFT trading on the Internet, is also one of the parties to the dispute. One of Hermès' most famous products is the "Birkin" model women's handbags. Named after the British actress/singer Jane Birkin, the bags have become status symbols, are quite expensive (starting at around \$10,000), and have years-long waiting lists for some of their models. Of course, Birkin bags are also highly imitated and Hermès is making great efforts to prevent these imitations.

Mason Rothschild is the creator of the NFT series MetaBirkins and describes himself as an artist. MetaBirkins is a collection of 100 Birkin bag look NFTs available for sale on OpenSea, an NFT marketplace. Issues such as Rothschild's entry into the market under the name MetaBirkins, offering NFTs of Birkin model bags for sale, giving an interview to Yahoo Finance and complaining about counterfeits. This interview led Hermès to make a statement on this issue and to take further precautions. A Hermès official told the Financial Times on December 10 that Hermès did not authorise or approve Mason Rothschild to commercialise Birkin bags in the metaverse. For this reason, they stated that Rothschild's NFTs violated Hermès' intellectual property and brand rights and set an example for Hermès products to be imitated in the metaverse.³⁴

³⁴ *Hermès challenge of "metabirkin" nfts to continue*. Global law firm | Norton Rose Fulbright. (n.d.). Retrieved January 5, 2023, from <https://www.nortonrosefulbright.com/en/knowledge/publications/844123f5/hermes-challenge-of-metabirkins-nfts-to-continue>

XI. ESTABLISHED AGENDA

The court should decide:

- Which one of the parties has the right to publish the screenplay as the core IP right of the first NFT “*Handwritten*”.
- Which one of the parties has the right to the animated scenes as the core IP right of the second NFT “*Dodge the Bullet*”, is this scene in the public sphere?
- Which one of the parties has the right to produce a comic book, and to which extent it is possible to draw a character as the core IP right of the third NFT “*Trinity*”.
- What is the legal scope of NFTs? Is it considered to be a right to distribute or republish?
- Is there a breach of contract by the RESPONDENT? Did the RESPONDENT act in bad faith? Was CLAIMANT acted in a discriminatory way and harmed RESPONDENT’s personal integrity during the contractual relationship?
- Is there a trademark infringement because of RESPONDENT’s website?

XII. CONCLUSION

Warner Bros' case can settle whether these sale rights are guaranteed by existing trademark and copyright contracts that don’t explicitly mention NFTs.

Whether Wachowski’s reserved right to screenplay publication covers the planned NFT sale is the core question in this dispute. Evaluations regarding the intellectual property rights should be done in two steps. First, the base IP rights should be examined of each NFTs, and secondly, the legal sphere of NFTs should be decided either as a redistribution as claimed by the CLAIMANT or a republishing right as claimed by the RESPONDENT.

With solving this dispute focusing only on the Intellectual Property rights is advised and by doing so, this arbitral tribunal’s decision will be pioneering and will shine a light for the upcoming disputes related to NFTs.

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