IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

| | | |
|---|---|---|
| PARAMOUNT COMMUNICATIONS INC. and KDS ACQUISITION CORP., | : | |
| Plaintiffs, | : | |
| - against - | : | |
| TIME INCORPORATED, TW SUB INC., JAMES F. BERE, HENRY C. GOODRICH, CLIFFORD J. GRUM, MATINA S. HORNER, DAVID T. KEARNS, GERALD M. LEVIN, J. RICHARD MUNRO, N.J. NICHOLAS, JR., DONALD S. PERKINS, CLIFTON R. WHARTON, MICHAEL D. DINGMAN, EDWARD S. FINKELSTEIN, HENRY LUCE III, JASON D. McMANUS, JOHN R. OPEL, and WARNER COMMUNICATIONS INC., | : | C.A. No. 10860 |
| Defendants. | : | |

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Paramount Communications Inc. ("Paramount") and KDS Acquisition Corp. ("KDS"), by their undersigned attorneys, for their Verified Complaint against Defendants allege, upon knowledge as to themselves and otherwise upon information and belief, as follows:

## INTRODUCTION

1. Plaintiffs have made a $175 per share premium all cash tender offer (the "Offer") for Time Incorporated ("Time" or the "Company").

2. Subject to stockholder approval, Time has entered into an Agreement and Plan of Merger (the "Warner Merger Agreement") to combine with Warner Communications Inc. ("Warner") to form a new entity, Time Warner (the "Warner Merger" or the "Time/Warner transaction").

3. As a side agreement to the Warner Merger, Time and Warner have also executed a Share Exchange Agreement (the "Lock-Up Stock Swap"). The Lock-Up Stock Swap, as amended, permits the issuance and exchange of over a billion dollars worth of Time stock upon the mere announcement by a third party of a competing proposal to acquire Time. The effect of this illegal transaction will be to deny Time stockholders the substantial premium for their shares now offered by Plaintiffs. The Lock-Up Stock Swap was executed without stockholder approval.

4. Plaintiffs bring this action for, inter alia, declaratory and injunctive relief against the Lock-Up Stock Swap and against a series of other unlawful measures by which Defendants can deter or preclude stockholder consideration of Plaintiffs' Offer.

## NATURE OF THE ACTION

5. Specifically, this Complaint seeks an Order:

(a) Declaring that the Lock-Up Stock Swap is null and void and temporarily, preliminarily and permanently enjoining Defendants from taking any steps to implement it.

(b) Declaring that the restrictions of the Delaware Business Combination Statute, 8 Del. C. § 203, have no application to Plaintiffs' Offer or, in the alternative, requiring Time and the Director Defendants to take all actions necessary to exempt the Offer from the statute;

(c) Requiring Time and the Director Defendants to take all necessary steps to exempt the Offer from the discriminatory voting requirements in Time's certificate of incorporation;

(d) Directing Time and the Director Defendants to redeem the Rights issued pursuant to Time's amended Preferred Stock Purchase Rights Plan;

(e) Declaring that Plaintiffs' Offer does not tortiously interfere with the Warner Merger Agreement; and

(f) Enjoining Defendants from taking any action with respect to the sale of any Time stock or assets or from engaging in any other extraordinary corporate transaction during the pendency of the Offer and thereafter until Plaintiffs have had a reasonable opportunity to complete an acquisition of Time.

## THE PARTIES

6. Plaintiff Paramount is a Delaware corporation which operates in three business areas: entertainment, publishing and consumer and commercial finance. Paramount owns, inter alia, Paramount Pictures, Simon & Schuster, Prentice Hall, Pocket Books, Silver Burdett & Ginn, Madison Square Garden, the New York Knickerbockers and the New York Rangers. Paramount has announced its intention to dispose of its finance operations so as better to concentrate on its core publishing and entertainment businesses. Paramount's principal executive offices are located at 15 Columbus Circle, New York, New York.

7. Plaintiff KDS is a Delaware corporation, an indirect wholly-owned subsidiary of Paramount, and the owner of one hundred shares of Time common stock.

8. Defendant Time is a Delaware corporation with its principal executive offices located at the Time & Life Building, Rockefeller Center, New York, New York. Time is a leading publisher of magazines and books. Time also owns Home Box Office, the country's largest pay cable television programming company, and possesses an 82% equity interest in American Television and Communications Corp. ("ATC"), the second largest cable television system in the United States. Time has approximately 57 million shares of common stock outstanding, held by approximately 14,655 shareholders of record. Time stock trades on the New York Stock Exchange.

9. Defendant TW Sub Inc. ("Merger Sub") is a Delaware corporation and a wholly-owned subsidiary of Time. Merger Sub was organized for purposes of effectuating a merger between Time and Warner.

10. Defendant J. Richard Munro ("Munro") is Chairman of the Board, Chief Executive Officer and a Director of the Company. Munro has served as Chairman and CEO since September 1986. From October 1980 to September 1986, he was President and CEO. Munro first became a Director of the Company in 1978.

11. Defendant N.J. Nicholas, Jr. ("Nicholas") is President, Chief Operating Officer and a Director of the Company. Nicholas has served as President and Chief Operating Officer since September 1986. Previously, he served as Executive Vice President from April 1984 to September 1986, and as Chief Financial Officer from December 1982 until April 1984. Nicholas first became a Director of the Company in 1983.

12. Defendant Gerald M. Levin ("Levin") is the Vice Chairman of the Board and a Director of the Company.

13. Defendants James F. Bere, Henry C. Goodrich, Clifford J. Grum, Matina S. Horner, David T. Kearns, Donald S. Perkins, Clifton R. Wharton, Michael D. Dingman, Edward S. Finkelstein, Henry Luce III, Jason D. McManus, and John R. Opel are Directors of the Company (collectively with Munro, Nicholas and Levin, the "Director Defendants").

14. Defendant Warner is a Delaware corporation with its principal executive offices located at 75 Rockefeller Plaza, New York, New York. Warner is a major record, television and motion picture production company. Warner has approximately 166.5 million shares of common stock outstanding. Warner stock trades on the New York Stock Exchange.

THE WARNER MERGER

15. After two years of discussion, Munro and Steven Ross ("Ross"), Warner's Chief Executive Officer, announced on March 4, 1989, that the two companies had reached an agreement to merge. Far from a "merger of equals," however, the Time/Warner transaction, although structured as an exchange of stock, is actually a sale of Time to Warner at a loss to Time stockholders.

A. The Warner Merger Transfers Control to Warner

16. The transaction is a sale of Time because, when completed, Warner stockholders will own a significant majority of the stock of Time Warner. If the Time/Warner transaction is consummated, Time stockholders will hold a minority interest in the new company, and the current Warner stockholders will control approximately 62% of the voting power.

B. The Warner Merger Represents a Loss for Time Stockholders

17. The Warner Merger represents a loss for Time stockholders because their Company will receive less than the market value equivalent in Warner shares for the newly issued

Time stock. For the year preceding the Time/Warner transaction, the exchange ratio for an equal exchange of shares based upon the respective market prices of Time and Warner ranged from 0.30 of a Time share for each Warner share to 0.42 of a Time share for each Warner share. However, in order to induce Warner to enter the Warner Merger, Time management agreed to an exchange ratio of 0.465, a severe penalty to Time even when compared to the 0.420 high.

18. Based upon the March 3, 1989 price of the respective stocks and the exchange ratio fixed in the Warner Merger Agreement, Warner stockholders received a bonus of $4.87 per share or $810,527,327 in the aggregate. Since there are 56,977,150 outstanding shares of Time stock, this amount translates into a per share loss for Time stockholders on the sale of control to Warner of $14.23 per Time share or 13%.

C. The Warner Merger Entrenches Time Management

19. Even though Time stockholders will be relegated to a minority interest in the new entity, the Warner Merger Agreement guarantees that Time's current officers and Directors will keep their positions. Following the Warner Merger, Munro and Ross will serve as Co-CEO's, Co-Chairmen of the Board and Co-Chairmen of the Executive Committee; Nicholas will be the President of the new company; and Levin will retain his post as Vice Chairman.

20. Employment agreements bestowed upon Munro, Nicholas and Ross contain detailed provisions governing

succession in the senior management ranks of Time Warner for the next ten years. Five years following the Warner Merger, Munro will retire from his posts as Co-CEO and Co-Chairman of the Board. He will at that point serve as sole Chairman of the Executive Committee for another five years. If Munro relinquishes his post as Co-CEO before his five year term expires, Nicholas will automatically succeed him. In any event, after Munro's five-year term as Co-CEO and Co-Chairman of the Board, Nicholas will become sole CEO and Ross will become sole Chairman of the Board. The employment agreements with Munro, Ross and Nicholas terminate ten years after the Warner Merger, but Ross and Nicholas will be compensated for providing advisory services for an additional five years after their respective terms of full-time employment.

21. Time Warner will have a twenty-four member board of directors, an increase of nine seats over Time's current fifteen member board. Pursuant to the Warner Merger Agreement, Time and Warner will each appoint twelve directors. According to the Joint Proxy Statement, Defendants Bere, Dingman, Finkelstein, Horner, Kearns, Levin, Luce, McManus, Munro, Nicholas, Opel and Perkins, the great majority of Time's current Directors, will keep their positions on the new board.

## THE OFFER

22. On June 7, 1989, Plaintiffs commenced their all cash tender offer for all the outstanding shares of Time at $175 per share, a premium of $49 (or 38.9%) over the closing price of $126 per share on June 6, and a premium of nearly $66 (or 60.4%) over the March 3, 1989 market price. Plaintiffs' Offer is far superior for Time stockholders to the Time/Warner transaction.

23. Under these circumstances, the Director Defendants cannot, consistent with Delaware law, deprive Time stockholders of the opportunity to consider the Offer. The defenses that the Defendants have erected to deny Time stockholders full value for their shares are set forth below.

## DEFENSIVE MEASURES

24. The Time Directors recognized that they placed the Company up for auction by entering into the Time/Warner transaction. Accordingly, they adopted a number of defensive measures to discourage other bidders who may seek to purchase the Company before consummation of the favored Time/Warner transaction.

(a) Time secured from a group of banks a line of credit totalling $5 billion to fund defensive measures and then publicized this war chest to intimidate potential bidders. In addition, Time has paid a "dry-up" fee to certain of these banks so that the banks will not provide financing in connection with any acquisition of Time for periods of up to one year. In other words, to ensure that

Time stockholders would not be presented with a better offer than the sale to Warner, Time has used its stockholders' money to pay banks not to fund an offer to those stockholders.

(b) Shortly before executing the Warner Merger Agreement, the Time Directors amended the Rights Plan to make any acquisition of Time, no matter how beneficial to stockholders, subject to management approval.

(c) In connection with the Warner Merger Agreement, Time executed the Lock-Up Stock Swap, a transaction designed solely to deter competing offers.

(d) As part of the Warner Merger Agreement, Time agreed to a "Black-Out Provision" (the "Black-Out Provision") which places severe limitations upon Time's ability to furnish information to, or negotiate with, any party -- such as Paramount -- who is willing to offer Time stockholders a superior financial alternative to the proposed Warner Merger.

25. Time adopted these defensive measures to deter any offers that might compete with the Warner Merger -- no matter how beneficial to Time stockholders. Now that Plaintiffs have commenced their clearly superior cash tender offer, there is no justification for implementing defensive maneuvers that will deprive Time stockholders of the opportunity to consider the Offer.

THE LOCK-UP STOCK SWAP

26. On the same day that Time and Warner entered into the Warner Merger Agreement, March 3, 1989, they also entered into the Lock-Up Stock Swap. Unlike the Warner Merger Agreement, the Lock-Up Stock Swap was not made subject to stockholder approval. Time and Warner note in the Joint Proxy Statement that the Lock-Up Stock Swap "was entered into with a view towards and in furtherance of the parties' commitment to the consummation of the Merger." However, the right to "commit" Time to the Time/Warner transaction or to a superior alternative belongs exclusively to the Company's stockholders. By entering into the Lock-Up Stock Swap without stockholder approval, the Time Board of Directors has effectively denied stockholders this right.

27. The Lock-Up Stock Swap seeks to prevent any competing offer for Time or Warner by exchanging 7,080,016 shares of Time's outstanding common stock initially, and an additional 961,111 shares thereafter, for 17,292,747 shares of Warner's outstanding common stock. The Lock-Up Stock Swap is part of a side agreement between the companies and was originally designed to take place as soon as possible after the Warner Merger was announced.

28. The Lock-Up Stock Swap did not take place as planned because the Securities and Exchange Commission informed Time and Warner that the Warner Merger could not receive "pooling of interests" accounting treatment if they proceeded with the exchange of shares. Without the benefit

of "pooling of interests" treatment, Time Warner will be forced to charge substantial amounts of non-deductible goodwill against the income of the combined company. These annual charges -- and corresponding reductions in current earnings -- are likely to significantly impair the value of Time Warner shares.

29. Rather than abandon the Lock-Up Stock Swap in light of this adverse ruling, however, Time and Warner amended its terms to provide that either company could trigger the exchange (and, presumably, the substantial accounting charges flowing from the loss of "pooling" treatment) upon the mere announcement of a competing offer for either Time or Warner.

30. By making the Lock-Up Stock Swap effective only upon the announcement of another offer, Defendants have highlighted its sole purpose -- to present the proposed Time/Warner transaction as a "done deal," rather than allowing stockholders to compare the terms offered by Warner with those available in alternative transactions.

31. The restrictions placed on the Lock-Up shares confirm that the transaction has no legitimate business purpose. For example: (i) the shares have no independent voting rights, except in the event of third-party proxy solicitations concerning matters unrelated to the proposed Warner Merger; (ii) neither Time nor Warner may sell, assign, pledge or otherwise dispose of or transfer the shares it has acquired pursuant to the Lock-Up Stock Swap prior to the

the Offer price and the value of the proposed Warner Merger will accordingly grow even wider.

34. The Lock-Up Stock Swap is unreasonable, serves no valid corporate purpose, is a breach of the Director Defendants' fiduciary duties in which Warner participated, and is meant to entrench management and to block any competing bid.

THE BLACK-OUT PROVISION

35. The Warner Merger Agreement prohibits the Time Directors from considering ways to give greater value to their stockholders. The Black-Out Provision guarantees that no one at Time or Warner or anyone acting on their behalf will "solicit or encourage (including by way of furnishing information), or take any other action to facilitate, any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to" any tender offer, exchange offer, any other business combination, or a purchase of substantial equity or assets. Time is thus expressly forbidden even to provide information to an interested third party.

36. The Black-Out Provision contains an exception in the event of a public tender or exchange offer that the Time Directors cannot ignore. In this event, if a third party makes an offer for Time's shares, Time might be able to hold limited conversations with the bidder, but not before "reasonable consultation" with Warner. Notwithstanding the exception to the Black-Out Provision, in light of all the

termination of the Warner Merger Agreement and thereafter significant restrictions limit alienation; and (iii) the Lock-Up Stock Swap prohibits each party from acquiring additional shares or joining a group owning additional shares in, proposing a business combination with, soliciting proxies with respect to the shares of, or acquiring material assets of the other party.

32. The Lock-Up Stock Swap effectively deters competing bids in the following ways:

(a) In their Joint Proxy Statement Time and Warner concede that the Lock-Up Stock Swap "could have the effect of making an acquisition of either Time or WCI by a third party more costly." This is an understatement. By increasing the number of outstanding Time shares by the 7,080,016 exchange shares issued to Warner, the Lock-Up Stock Swap would increase the price of an acquisition of Time by more than $1½ billion, based on the per share price of the Offer.

(b) By placing a block of 7,080,016 shares in friendly hands, together with the 3,432,954 shares owned or controlled by management, the Lock-Up Stock Swap will give Warner an instant and commanding advantage over any other bidder.

(c) The Lock-Up Stock Swap increases the total number of outstanding shares of Time by over 11%. It thus dilutes the holdings of any other bidder and all other stockholders.

33. If the Lock-Up Stock Swap occurs and has its intended effect -- deterring competitive bids -- Time stockholders will sustain a double loss. First, Time stockholders will be deprived of the above-market tender offer price. Second, the loss of "pooling of interests" accounting treatment means that all Time stockholders will suffer the market impact flowing from reduced reported earnings of the combined company. The discrepancy between

defensive measures available to Time, the message is clear. Moreover, even if these limited talks produce an offer which the Time Board of Directors finds itself compelled to endorse, the Black-Out Provision does not permit the Board to terminate the agreement with Warner.

## THE DELAWARE BUSINESS COMBINATION STATUTE

37. The Delaware Business Combination Statute by its terms does not apply to a company that is a party to a merger agreement approved by the Board. 8 Del. C. § 203(b)(6). This exception was designed to ensure that the statute is applied even-handedly and is not used by a Board of Directors to discriminate among bidders. The management of Time has announced its intention to merge Time with Warner; the Time Board has approved the Warner Merger Agreement and has submitted that Agreement to Time's stockholders for their approval.

38. Although the transaction has been structured as a merger of Warner with a subsidiary of Time, the senior executives of both Time and Warner have ignored this nicety. For example, the Chairmen and Chief Executive Officers of Time and Warner have both publicly proclaimed that the Time/Warner transaction is a merger of the two companies. Munro and Ross opened their joint testimony before the House Subcommittee on Economic and Commercial Law, Committee on the Judiciary, on March 14, 1989, by stating:

> Mr. Chairman and Members of the Subcommittee, it is a great pleasure to appear before you today to discuss the merger of Time Inc. and Warner Inc. and our plans for the future. [emphasis supplied]

That sworn testimony states the reality of the situation -- that Time is a merging corporation. Additionally, in their letter, dated May 22, 1989, to Time stockholders announcing the 1989 Annual Meeting at which Time stockholders will vote upon the Time/Warner transaction, Munro and Nicholas state:

> The merger of Time and WCI will form a company of great strategic strength to address the challenges of the tough global competition that lies ahead. [emphasis supplied]

Accordingly, the exception contained in 8 Del. C. § 203(b)(6) applies to Time. Unless the Delaware Legislature intended to allow Directors to avoid the prohibition against discriminatory application by simply inserting a "shell" subsidiary into a favored merger, the policy and purpose of the Delaware Business Combination Statute place the Time/Warner transaction squarely within the exception.

## THE DISCRIMINATORY VOTING PROVISION

39. The 1983 addition of Article V to the Company's certificate of incorporation added a supermajority vote. Unless certain conditions are met, a business combination with any owner of 20% or more of the voting power of Time's stock requires the affirmative vote of at least 80% of all shares entitled to vote in the election of Directors and the affirmative vote of a majority of the combined voting power of all shares held by "disinterested stockholders."

40. This provision discriminates against a purchaser that acquires sufficient stock to effect a business combination under Delaware law and permits a minority block of stockholders to thwart any merger. In conjunction with the Lock-Up Stock Swap, the Discriminatory Voting Provision becomes even more onerous. For example, even if the holders of 80% of Time stock decide to tender their shares to Paramount in response to the Offer, Warner will still have more than enough Lock-Up shares in its possession to block any business combination of Paramount and Time.

41. Article V of the Time certificate of incorporation purports to create a "fair market value" exception to the 80% supermajority vote and "disinterested stockholder" approval requirement. This exception is an illusion, hiding yet another entrenchment device. An acquiror can never calculate the purchase price of the Company even if he is prepared to offer a substantial premium because, no matter what price is offered, the price ultimately required to purchase all the shares is dependent upon market fluctuations for a 30-day period which will begin sometime in the future, well after the announcement of any offer.

42. The requirements of Article V may only be avoided if a majority of the current Board of Directors, including inside Directors, approves the combination before an interested party acquires 20% or more of the Company's Voting Stock.

## THE RIGHTS PLAN

43. On April 29, 1986, without consulting its stockholders, Time's Board of Directors adopted a Preferred Stock Purchase Rights Plan (the "Rights Plan").

44. On January 19, 1989, at a point when Time was negotiating in earnest with Warner, Time's Board voted to amend the original Rights Plan, again without seeking or obtaining stockholder approval. As amended, the Rights Plan: (1) lowered from 20% to 15% the percentage of stock ownership that causes a distribution of the Rights certificates; (2) lowered from 30% to 20% the percentage of stock sought in a tender or exchange offer that will result in a distribution of the Rights certificates; (3) eliminated the "all cash, all shares, fair price tender offer" exception to the "flip-in"; (4) reduced from 40% to 20% the percentage of ownership that triggers a "flip-in"; and (5) increased from $200 to $300 the Purchase Price of the Rights. At the time the amendment was disclosed, no mention was made of the impending Time/Warner transaction.

45. The amended Rights Plan cannot be lawfully applied to thwart Plaintiffs' $175 cash offer for all shares of Time. Originally, the stated purpose for the Board's adoption of the Rights Plan was "to protect stockholders from abusive takeover tactics that may be used by an acquiror which the Board believes are not in the best interests of stockholders," such as two-tiered or partial offers or street-sweeps. Indeed, the first version of the Rights Plan

recognized that "all cash, all shares, fair price" offers, such as Plaintiffs' Offer, benefit all stockholders, and thus management should not be the arbiter of whether or not the stockholders are to receive the premium price. The elimination of the fair price tender offer exception places an even greater duty on the Board of Time to redeem the Rights in the face of Plaintiffs' Offer which is so clearly financially superior. Failure of the Director Defendants to redeem any Rights issued pursuant to the amended Rights Plan would constitute a breach of their fiduciary duty to Time stockholders.

COUNT I

(Declaratory And Injunctive Relief: The Lock-Up Stock Swap)

46. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

47. The Director Defendants owe a fiduciary duty to their stockholders to maximize stockholder value.

48. The Lock-Up Stock Swap was not meant to obtain higher value for the stockholders; it was and is meant to entrench management and chill any other offer for the Company. It is an unreasonable response to any perceived threat to Time stockholders. By agreeing to this illegal lock-up, the Director Defendants breached their fiduciary duties of care and loyalty to the Company's stockholders.

Warner has aided and abetted and knowingly participated in this breach.

49. Time and the Director Defendants have made no effort either before or after entering the Lock-Up Stock Swap to seek alternative transactions to the Warner Merger or otherwise maximize stockholder value.

50. The Lock-Up Stock Swap also impermissibly interferes with stockholder choice in connection with the proposed Time/Warner transaction. Stockholders will be aware of the deterrent effect on other offers of the issuance of shares pursuant to the Lock-Up Stock Swap and will therefore be coerced to vote for the Warner Merger as the only available transaction.

51. Unless the Lock-Up Stock Swap is declared unlawful and enjoined, Plaintiffs and Time stockholders will suffer irreparable harm.

52. Plaintiffs have no adequate remedy at law.

## COUNT II

(Declaratory Relief: The Delaware Business Combination Statute Has No Application To The Offer)

53. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

54. The Warner Merger constitutes a proposed transaction sufficient to trigger the exemption contained in 8 Del. C. § 203(b)(6)(ii) because it is a merger of the Company that has been approved by Time's Board of Directors,

was publicly announced on March 4, 1989, and has yet to be consummated.

55. Warner is not and has never been an interested stockholder of Time.

56. Warner has not owned 15% or more of Time's outstanding common stock within the past three years.

57. Plaintiffs are entitled to a declaration that the Warner Merger Agreement renders 8 Del. C. § 203(a) inapplicable to the Offer.

58. Plaintiffs have no adequate remedy at law.

COUNT III

(Injunctive Relief:
The Delaware Business Combination Statute)

59. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

60. Even if 8 Del. C. § 203(a) is deemed applicable to the Offer, Time's Board of Directors may exempt the Offer from the statute by approving, prior to its consummation, either the transaction in which Plaintiffs become a 15% stockholder (the Offer) or Plaintiffs' contemplated merger.

61. The Director Defendants owe a fiduciary duty of care and loyalty to the Time stockholders. If the Board of Directors fails to take all actions necessary to exempt the Offer from the requirements of 8 Del. C. § 203(a), the Director Defendants will be in breach of their fiduciary

duties by failing to permit Time stockholders to receive the benefit of Plaintiffs' Offer and by favoring management's inferior transaction over the Offer.

62. If 8 Del. C. § 203(a) is deemed applicable to the Offer and the Director Defendants fail to exempt the Offer from these requirements, Plaintiffs and other Time stockholders will suffer irreparable harm.

63. Plaintiffs have no adequate remedy at law.

COUNT IV

(Injunctive Relief:
The Discriminatory Voting Provision)

64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

65. The Discriminatory Voting Provision was added to Time's certificate of incorporation for entrenchment purposes in 1983. However, that Provision permits the Director Defendants to exempt the Offer from the supermajority vote and "disinterested stockholder" approval requirements.

66. The Director Defendants owe a fiduciary duty of care and loyalty to all Time stockholders. Unless the Director Defendants exempt the Offer from the Discriminatory Voting Provision, they will be in breach of their fiduciary duties by failing to permit Time stockholders to receive the benefit of Plaintiffs' proposal.

67. Unless the Director Defendants exempt the Offer from these requirements, Plaintiffs and Time stockholders will suffer irreparable harm.

68. Plaintiffs have no adequate remedy at law.

COUNT V

(Injunctive Relief:
The Rights Plan)

69. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

70. The Director Defendants owe a fiduciary duty of care and loyalty to all stockholders of Time. If the Director Defendants do not redeem the Rights, they will be in breach of their fiduciary duties by preventing Time stockholders from receiving the benefit of Plaintiffs' vastly superior Offer and by favoring the inferior Warner Merger proposal.

71. Unless the Court orders the Director Defendants to redeem the Rights with respect to the Offer, Plaintiffs and other Time stockholders will be irreparably harmed.

72. Plaintiffs have no adequate remedy at law.

COUNT VI

(Declaratory Relief: The Offer
Does Not Constitute Tortious Interference)

73. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-45 as if fully set forth at length herein.

74. Plaintiffs have comported with all relevant legal principles and acted properly by placing a superior offer before Time's stockholders for their consideration.

75. Plaintiffs made the Offer relying upon public statements that the Warner Merger was subject to stockholder approval.

76. Defendants have contemplated the potential for competing offers by amending the illegal Lock-Up Stock Swap, by deleting the "all cash, all shares, fair price" exception from the Rights Plan at an advanced stage of the Warner negotiations and by making limited provision in the Warner Merger Agreement for either Time or Warner to negotiate with third parties in accordance with the fiduciary duties of their respective Boards of Directors.

77. Nevertheless, Plaintiffs anticipate that Defendants will seek to assert a meritless claim for tortious interference with contract as an additional means to delay or frustrate the Offer and to entrench management.

78. For the foregoing reasons Plaintiffs are entitled to a declaration that the Offer does not constitute tortious interference with an existing contract or with a prospective economic advantage.

79. Plaintiffs have no adequate remedy at law.

## IRREPARABLE INJURY

80. Actual, threatened or potential enforcement or use by the Defendants of the Lock-Up Stock Swap, the Business Combination Statute, the Discriminatory Voting Provision, or the Rights Plan will, unless enjoined, cause immediate, serious, and irreparable injury to Plaintiffs and to the other stockholders of Time in the following respects, among others:

(a) Plaintiffs will be deprived of the opportunity to acquire control of and to enter into a business combination with Time, a unique business opportunity that may never recur;

(b) Time stockholders will lose their opportunity to tender their shares at a significant premium pursuant to the Offer.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

(a) Declaring that the Lock-Up Stock Swap is null and void and temporarily, preliminarily and permanently enjoining the Defendants from taking any steps to implement it.

(b) Declaring that the Delaware Business Combination Statute, 8 Del. C. § 203(a), has no application to the Offer or, in the alternative, requiring the Director Defendants to take all actions necessary to exempt the Offer from the Statute;

(c) Requiring Time and the Director Defendants to take all actions necessary to exempt the Offer from the Discriminatory Voting Provisions in Time's certificate of incorporation;

(d) Directing Time and the Director Defendants to redeem the Rights issued pursuant to Time's Rights Plan;

(e) Declaring that Plaintiff's offer to acquire Time does not constitute tortious interference with any existing contract or with any prospective economic advantage;

(f) Preliminarily and permanently enjoining the Defendants, their employees, agents and all persons acting on their behalf or in concert with them from taking any actions with respect to the sale, transfer or disposition of Time stock or assets or entering into any other extraordinary corporate transaction, including purchases of assets until the Offer has been concluded and Plaintiffs have been given a reasonable opportunity to negotiate a purchase of Time;

(g) Awarding Plaintiffs the costs and disbursements of this action, including attorneys' fees; and

(h) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Dated: June 7, 1989

YOUNG, CONAWAY, STARGATT & TAYLOR

/s/
Bruce M. Stargatt

Eleventh Floor, Rodney Square North
P.O. Box 391
Wilmington, Delaware 19899-0391
(302) 571-6600

Attorneys for Plaintiffs

Of Counsel:

SIMPSON THACHER & BARTLETT
(a partnership which includes
professional corporations)
425 Lexington Avenue
New York, New York 10017
(212) 455-2000

VERIFICATION

Donald Oresman hereby certifies that he is Executive Vice President, Chief Administrative Officer and General Counsel and Secretary of Paramount Communications Inc. ("Paramount") and Vice President of KDS Acquisition Corp. ("KDS"), that he is authorized to make this verification affidavit on behalf of Paramount and KDS, that he has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations contained in the Verified Complaint are, of his own personal knowledge, true and correct, except that as to those allegations alleged upon information and belief, he believes them to be true.

Donald Oresman

Sworn to before me
this 6th day of June 1989

Notary Public
My Commission Expires

EARL H. DOPPELT
NOTARY PUBLIC, State of New York
No. 31-4682824
Qualified in Westchester County
Commission Expires March 30, 19[illegible]