

**STATEMENT OF A. ROBERT PISANO
INTERIM CHIEF EXECUTIVE OFFICER
MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

BEFORE THE COMMODITY FUTURES TRADING COMMISSION

**THREE LAFAYETTE CENTRE, 1155 21ST STREET, NW
WASHINGTON, D.C., LOBBY LEVEL HEARING ROOM (ROOM 1000)
MAY 19, 2010, 9:30 A.M.**

A. Background and Introduction

We want to thank the Commission for the opportunity to provide this Statement regarding proposals for the trading of futures and options contracts in motion picture box office numbers. My name is Robert Pisano. I am appearing today and providing oral testimony on behalf of the Motion Picture Association of America, Inc. ("MPAA"). However, these prepared remarks are submitted as the collective views of The Directors Guild of America, Inc. ("DGA"), the Independent Film & Television Alliance ("IFTA"), the International Alliance of Theatrical Stage Employees ("IATSE"), and the National Association of Theatre Owners ("NATO"), as well as the MPAA and its member companies, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc., which represent perspectives from all segments of the motion picture industry.

I have spent virtually my entire career in the film business, first as a partner of a major law firm working on entertainment matters before joining Paramount Pictures as executive vice president and general counsel in 1985. At Paramount, I was responsible for all legal and legislative affairs, as well as labor relations and business development. I was a member of the Office of the Chairman and the Operating Committees of the studios' international theatrical, video, and pay television distribution and exhibition joint ventures. I left Paramount and joined Metro-Goldwyn-Mayer in 1993 as Executive Vice President and then became Vice Chairman, when I had the responsibilities of chief operating officer. Immediately before joining MPAA, I was National Executive Director and CEO of the Screen Actors Guild. My views, my opposition to futures trading in box office receipts, reflect not only the views of the MPAA and its members, and the film industry coalition allied with MPAA on this matter, but also my long experience engaged in the financial and business aspect of the film industry.

The Commission should disapprove the proposed collared futures and binary option contracts of Media Derivatives Exchange, Inc. ("MDEX") on estimated opening weekend motion picture revenues for the motion picture *Takers*, and the futures contract of the Cantor Exchange ("Cantor") on the estimated domestic box office receipts for the motion picture *The Expendables*. In the interest of brevity, we also refer the Commission to our more detailed comment letters to the Commission on these contracts, dated May 11 and 18, 2010, as well as our April 8 and 16, 2010 letters on MDEX's and Cantor's respective applications to be designated as contract markets and registered entities.

In brief, as we explain in greater detail below, the Commission should disapprove the Contracts because: (1) the Contracts are event contracts that are not within the Commission’s jurisdiction and do not satisfy the public interest prerequisites for legitimate futures -- they do not provide price discovery and will not be used for hedging; (2) the Contracts would inappropriately circumvent anti-gambling laws; (3) the box office receipts numbers provided by Rentrak Theatrical, Inc. (“Rentrak”) and the studios that will be used to settle the Contracts are only estimates that, if wagering is permitted based on those estimates, will be subject to manipulation by third parties; and (4) the Contracts will harm the motion picture industry. Significantly, Rentrak’s terms of use on its website expressly cautions that its tabulations should not be used as primary research for “investment decisions”: “*The Rentrak.com Data and the Rentrak.com Website are not intended to be used (a) in connection with research where the primary use of such data or site is for making investment decisions, or (b) for reporting or calculating royalties or other fees based on usage . . .*” (see page 11, *infra*).

B. The Commission Should Disapprove the Contracts Until at Least It Has Established Clear Legal and Regulatory Requirements for Event Contracts

The MDEX and Cantor contracts implicate the Commission’s authority to permit exchange trading of “event” contracts because they are designed to predict, in the words of CEA Section 1a(13), the “extent of an occurrence” – that being the level of estimated box office receipts for a particular motion picture for a particular period of time. In this respect, they are analogous to a contract based on a specific farmer’s crop yield, an example the Commission recognized in its *Concept Release on the Appropriate Regulatory Treatment of Event Contracts*, 73 *Fed. Reg.* 25669 (May 7, 2008) (“Concept Release”) would be an event contract.

The Concept Release acknowledged that event contracts raise many difficult issues under the CEA. These include, among others, the boundaries of the Commission’s jurisdiction over event contracts and the factors that distinguish contracts that could be appropriately regulated by the Commission from those that function as the equivalent of gambling. The answers to those issues have never been resolved because the Commission never published proposed rules or other guidance following its Concept Release.

Given the highly problematic aspects of the proposed contracts outlined below, we respectfully submit that the Commission should disapprove them in the absence of a clear regulatory framework for event contracts. The public, the applicants and our industry are entitled to know clear rules for the approval and trading of event contracts. Creating a precedent with these contracts absent a clear regulatory framework is not in the public interest because it invites every designated contract market (“DCM”) to begin self-certifying and listing for trading any manner of event contracts even though they otherwise are subject to considerable legal uncertainty and provide a means to circumvent federal and state anti-gambling laws for gaming contracts.

Underscoring a need for a clear legal framework is the fact that trading in these contracts could affect the market value of a distributor’s publicly traded securities, but the issues implicated under the federal securities laws do not appear to have been vetted with the Securities and Exchange Commission (“SEC”). The comment letter of the SEC on the Concept Release explained that event contracts that relate to corporate events could create a potential for insider trading. The SEC’s letter advocated that, in keeping with the agencies’ Memorandum of Under-

standing, they should work together in resolving regulatory issues pertaining to event contracts. Cantor specifically identifies its motion picture box office receipt contracts now traded on its Hollywood Stock Exchange (“HSX”) online website for fantasy betting as “virtual entertainment securities.” Such contracts are essentially identical to the contracts for which Cantor seeks Commission approval. Yet, the public record relating to the MDEX and Cantor contracts does not reveal that that has occurred, as it should before contracts are approved.

C. The Commission Should Disapprove the Contracts Because They Are Outside the Commission’s Jurisdiction

The MDEX and Cantor contracts are event contracts that are outside the scope of the CEA. The estimated motion picture box office receipts numbers that would be the subject of the contracts are not within the CEA’s definition of “excluded commodity,” which is the only potential statutory basis for Commission jurisdiction over them. CEA Section 1a(13) defines “excluded commodity,” as relevant here, to mean:

- (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—
 - (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and
 - (II) associated with a financial, commercial, or economic consequence.

The MDEX and Cantor contracts do not satisfy the terms of subsection 1a(13)(iv) because such contracts and the estimated receipts would be within the substantial influence or control of a number of different participants in the motion picture industry. A relatively small number of entities (the studio, the exhibitors, and marketers) have inordinate impact on the potential for box office numbers in the opening weekend and beyond for any particular motion picture. Their private decisions as to release dates, opening locations, number of theaters, number of screens, size of screens, and marketing budgets can significantly impact box office numbers in the early weeks of showings. Those decisions can be in flux up to the opening release and beyond, and much of the information regarding those decisions is closely held and protected from public dissemination. These decisions also can fluctuate based on the nature of the releasing and distribution company.

Further, estimates of box office receipts are not “associated with a financial, commercial, or economic consequence” within the meaning of subsection 1a(13)(iv)(II). Those statutory terms, when coupled with the requirement that a contract be beyond the control of the parties, contemplate financial, commercial, and economic consequences that are broad in scope, such as those affecting an entire population or industry. Estimates of the revenue of a particular, unique product, such as a motion picture, would not qualify any more than a contract on a specific farmer’s crop yield.

Nor is an estimated box office receipts number a “commodity” under CEA Section 1a(4). A motion picture, unlike commodities governed by the CEA, is a unique artistic work that de-

rives its value not from any intrinsic utilitarian use, but from public reaction to a motion picture's artistic or entertainment merit, which are subjective judgments and unpredictable rather than verifiable facts. Further, a motion picture's box office receipts are not bought and sold; there is no market in them. Nor are estimated box office receipts numbers used to price any commercial transaction or to value any cash commodity.

D. The MDEX and Cantor Contracts Cannot and Will Not Be Used for Risk Management Purposes

The Concept Release explained that Section 3(a) of the CEA, 7 U.S.C. § 5(a), provides that legitimate futures contracts serve the public interest "by providing a means for managing and assuming price risks, discovering prices, or disseminating price information." CEA Section 3(b), 7 U.S.C. § 5(b), declares that it is the "purpose of this Act is to serve the public interests described in subsection (a)." It is service of these public interests – which effectively require that futures contracts have legitimate economic uses beyond pure speculation – that distinguishes legitimate, lawful futures contracts from gaming contracts that are either proscribed as crimes by the federal Wire Act, 18 U.S.C. § 1084(a), or regulated by state gaming authorities. Indeed, CEA Section 4(a), 7 U.S.C. § 6(a), expressly condemns excessive speculation and authorizes the Commission to prohibit it.

I. The MDEX and Cantor Contracts Are Gaming Contracts

The MDEX contracts are simply freestanding bets up to \$5000 on a particular level of estimated box office receipts on the opening weekend. Cantor's contract seeks to convert its motion picture box office receipt contracts now traded on its HSX online website for fantasy betting into "real money" betting instruments by having the Commission approve them as futures contracts. The structure of Cantor's HSX contracts and proposed futures contracts are virtually identical. Its HSX contracts, however, are already recognized as gaming contracts because they currently are limited to *fantasy betting only* because money bets would violate the Wire Act, which makes it a crime to exchange money as a result of online betting.

Cantor's marketing materials declare:

You've been waiting to make some **real money** trading movies.

Well, here's your chance!

Cantor Exchange anticipates receiving final regulatory approval by April 20, 2010, and will commence trading of DBOR Movie Futures shortly thereafter. Your trading experience on HSX.com will give you a jump-start on learning how to trade in this real-money futures market. Register now to get your account ready for the launch!

* * *

You must sign up to participate in this promotion. If you are not currently registered, please register now. Invite your friends to join, too!

Practice trading is also a great way to sharpen your skills and get ready for the launch of real-money futures trading in April.

See <http://www.cantorexchange.com/Landing/Welcome-HSX-Traders.aspx> (last viewed 5/16/10) (emphasis in original). See “Hollywood Stock Exchange Is Becoming A Real Money Exchange in April. Seriously,” *TechCrunch* (Feb. 23, 2010) @ <http://techcrunch.com/2010/2/23/hollywood-stock-exchange-real-money/>.

2. *The Contracts Cannot and Will Not Be Used for Bona Fide Hedging*

Insider Trading Proscriptions Prevent Hedging. The MDEX and Cantor contracts are not hedging vehicles. Their anti-insider trading rules and requirements prevent a distributor and other insiders for a motion picture from trading in the contract.¹ Their proffered informational barriers do not ameliorate that problem because they prevent the persons who would be permitted to make trading decisions from accessing the proprietary information needed to make an informed hedging decision. Such a barrier requires futures traders for a studio to be cordoned off from any information within the studio that would provide the basis for determining hedging needs and strategy.

Further, as a practical matter, any decisions by a studio to hedge any risk would need to be cleared with senior management, who necessarily have intimate knowledge of all financial and contractual information relating to a motion picture and under the sponsors’ rules would not be permitted to interact with traders. Box office numbers data are very important and sensitive information that is shared within a studio with, among others, key mid-level marketing personnel, the General Counsel’s Office, and senior management. No studio is arranged or intends to reorganize itself so as to separate the management and reporting lines of persons with access to the box office numbers data and the persons who compile or compute those figures. It makes no sense to do so and would prevent a studio from utilizing the box office numbers data in the most efficient manner.

The Contracts’ Economics and Structure Preclude Hedging. Any trading in them by an industry participant involved in a motion picture would at best be described, not as a “hedge” but as a “side bet” that in fact can *increase rather than hedge risk*. While the contracts would provide an alternative venue in which an industry participant could make *or lose* money on the motion picture apart from the motion picture’s actual box office revenue, the trading in the contracts will always be a *speculative* activity because, in contrast to legitimate futures contracts, there is no correlation between the profit or loss one would make in one of the contracts and the profit or

¹ Cantor’s April 14, 2010 filing with the Commission of a proposed contract based upon *The Expendables* expressly prohibits any person in possession of material, non-public information from trading in the contract until the information has become public. Examples of such information cited in Cantor’s rules include, but are not limited to, changes in release date or the promotion or advertising budgets, number of theaters showing the film, and actual box office receipts statistics following release. Cantor’s rules purport to require studios and other entities to adopt policies to ensure that their officers, directors, employees, and agents, including authorized traders, do not trade on the basis of material, non-public information.

loss the trader would make on the motion picture from the receipt of actual box office receipts. Consequently, it is possible that the contracts, even when going short, could create trading losses *that will exceed* profits earned from the actual box office receipts. The values of MDEX contracts similarly will not increase or decrease in value commensurately with the commercial risk to be hedged (here, cost to produce the motion picture).

The Cantor contracts, like the current HSX fantasy wagering contracts, clearly are structured for the retail bettor to make small bets – even under \$100. Their high margin requirements and 300,000 contract position limit for hedging render them prohibitively expensive and ineffective for hedging. For example, the total margin requirement for a 300,000 contract position when a trader’s short contract price is \$50 and the contract is trading at \$50 would be *\$7.5 million*. Even if the market price dropped 40% to settle at \$30, the trader would at best earn a profit of only *\$6 million* – an inconsequential gain for (1) the capital required to make the bet, (2) a less than even dollar-for-dollar return, (3) the risk of loss and (4) the inconsequential potential profit for major motion pictures that can cost over \$100 million to produce. Similarly, if the trader shorted at a market price of \$100 on 300,000 contracts, its margin requirements would be *\$15 million* and, if the contract settled 20% lower at \$80, its profit would still be only *\$6 million*.

Trading Short Contracts Can Imperil a Motion Picture’s Success. The contracts provide no opportunity to hedge investment risks at the pre-production and production stages, when the real financial decisions are made and risks taken in funding a motion picture. Worse still, the contracts would *imperil* the massive investments that studios and independent producers have made in a motion picture by starting to trade at the very time when they could have the maximum potential harm to the reputation and public acceptance of a motion picture. Commercial interests involved in a motion picture will not run the risk of negative publicity by creating even the potential for accusations or rumors that it was “betting against” the success of its own picture by “shorting” it in a futures market. Moreover, there is a legal concern that such shorting transactions could generate claims of violating standard mutual covenants in industry contracts with exhibitors, directors, actors and others that prohibit disparagement of the work.

The Motion Picture Industry Has Other Means to Limit Risks. Studios already mitigate their financial risk at the pre-production stage or early in the production stage by a host of techniques, including partnering with other companies to share the risk, diversifying projects across different segments of the viewing audience, selling downstream rights early to cover costs, and raising capital in private and public markets to effectively syndicate the risks. Studios further mitigate their financial risk by balancing their slate of motion pictures with a variety of types of pictures (new films and remakes; low budget and high budget; teen and adult; comedy and drama and horror, etc.). In fact, any attempts to hedge using the proposed contracts will interfere with the existing risk mitigation strategies that are prevalent in the industry.

3. The Contracts Will Not and Cannot Provide Price Discovery

Because there is no cash market in a motion picture or its box office receipts, there is no cash market price to be discovered. Nor are any commercial transactions based on estimates of box office receipts. Moreover, any “pricing” of estimated motion picture box office receipts numbers by transactions in the futures contracts will be arbitrary and could never “reflect the le-

itimate forces of supply and demand” because bettors generally will be trading before the public will have viewed the motion picture and the public will not have access to the material non-public information of studios and other industry insiders that can bear on box office receipts. Unlike all industries that use futures contracts, the motion picture industry has no constituents that would be natural long hedgers – no one has a risk of loss if a motion picture is wildly successful. Accordingly, there is no natural price competition in any purported “market” for box office numbers.

E. The Proposed Box Office Receipts Contracts Are Readily Susceptible to Manipulation

The unprecedented anti-insider trading rules for the contracts prove that they are inherently subject to manipulation. Many different persons involved in the production, distribution and exhibition of a motion picture will be privy to material non-public information affecting box office receipts and non-public actions and decisions can affect box office numbers. Exhibitors that contribute to the numbers announced by Rentrak could, either intentionally or accidentally, misreport their data. A distributor could determine within the period preceding a motion picture’s release, or the period following a motion picture’s release, to reduce or increase the number of theaters that would show the motion picture. A distributor for a variety of reasons could determine to substantially reduce or expand its marketing budget, which can materially affect box office numbers. A major exhibitor could decide to show the motion picture on smaller or larger screens, which can materially affect audience interest and capacity. We respectfully submit that the sponsors of the contracts have no effective means to detect or prevent such conduct or to determine whether it was undertaken for valid business reasons, rather than to manipulate futures prices.

Nothing in the public record suggests that MDEX, Cantor or the National Futures Association, whom Cantor will engage to police its markets, has any capacity to discern such activity or gather any information to determine whether it constitutes manipulation. Neither MDEX nor Cantor has any legal authority to obtain information from the studios or other private parties to investigate and resolve any apparently untoward price distortion. Nor is there any reliable means to determine the economic validity of futures prices prior to a motion picture’s release because there is no verifiable information to measure futures pricing against. Further, futures prices for individual motion pictures will be susceptible to manipulation by false market rumors. In the circumstances of the motion picture industry, where rumor mills already abound, it would be virtually impossible to identify the sources of such rumors. Any prosecution of alleged manipulation by false rumors would be frustrated by the fact that they typically will be based on opinions relating to a motion picture’s artistic or entertainment merit rather than verifiable facts.

F. Rentrak’s Reports of Box Office Numbers Are Not Free From Error or Appropriate Bases for the Public’s Trading of Futures Contracts

Rentrak recognizes the inherent limitations of its reports by warning that its data are not intended to be used in connection with “making investment decisions” or for reporting or calcu-

lating royalties or other fees based on usage. The second paragraph of Rentrak's Terms of Use Agreement states as follows (emphasis added):

Use of the Rentrak.com Website and Data. Rentrak hereby grants User, on the terms of these TOU and the Service Agreement (if applicable), the non-exclusive right to access the Rentrak.com Website and view and use the Rentrak.com Data solely for User's internal business purposes. *The Rentrak.com Data and the Rentrak.com Website are not intended to be used (a) in connection with research where the primary use of such data or site is for making investment decisions, or (b) for reporting or calculating royalties or other fees based on usage, and any use of the Rentrak.com Data or the Rentrak.com Website for such purposes shall be at User's sole risk.* User shall not have the right to display, publish, distribute, disseminate or otherwise make public any Rentrak.com Data without Rentrak's prior written consent. User acknowledges that all Rentrak.com Data is "Confidential Information" subject to Section 6 below and that in all events User may not rely on the accuracy of the Rentrak.com Data in making representations to advertisers or similar parties concerning the usage of content.

Where, as here, the purveyor of data warns that it should not be used in connection with investment decisions, the Commission should disapprove a contract based on such data.

The practice in the motion picture industry is to report *estimates* of weekend gross box office numbers on Sunday, based on projections informed by numbers received for Friday and Saturday showings. *Variety* publishes those estimates on Monday, as do many major newspapers and media sources. Those estimates, which are generated by the studios, are based in part on non-public and undisclosed projections and assumptions that can vary from motion picture to motion picture and from studio to studio. *Variety* provides this disclaimer about the information it publishes:

"Variety publishes data compiled by Rentrak Theatrical, which collects *studio reported data* as well as box-office figures from North American theatre locations. Any information provided by Rentrak has been obtained from sources believed to be reliable.

However, Rentrak does not make any warranties as to the accuracy, completeness or adequacy of this information and data. The user of this data agrees Rentrak, its officers and employees will have no liability arising from the use or disclosure of this information and data. To submit any questions to Rentrak, please email: boxofficeinfo@renttrak.com."

See http://www.variety.com/index.asp?layout=b_o_layout&dept=Film (emphasis added). Those estimates, as with estimates of all types, can be flawed, although traders might rely on them – see the articles from *Variety* about errors in estimates of weekend box office numbers for the past two consecutive weekends in April 2010, which are attached hereto as Attachments A and B.

The box office receipts information that Rentrak compiles from the exhibitors that have agreed to provide that information to Rentrak is itself incomplete, and we understand that the percentage of the total box office numbers that is reported by exhibitors can vary materially from motion picture to motion picture depending upon how many exhibitors within its universe of reporting exhibitors are showing a particular motion picture. Such a disparity – which would be unknown to traders when placing their bets – can be material, and without that information predictions of box office receipts are no better than arbitrary guesses. We understand that many exhibitors record box office numbers electronically and then provide the aggregate information to Rentrak through an electronic feed, but also that many exhibitors tabulate their numbers manually. However, *some exhibitors never report to Rentrak, either automatically or manually.*

Typically, studios, upon receiving Rentrak exhibitor-based figures, in turn conduct their own information gathering and analysis to develop their estimates that may be publicly announced in the press. As *Variety's* disclaimer indicates, the studios' Sunday announcements of weekend motion picture box office numbers information in *Variety* include the studios' estimates. The studios' information gathering and analysis may vary from one company to another and is closely held proprietary information, but it can include, for example, communicating with some of the exhibitors that are not included in the Rentrak figures, and even those exhibitors that are included in the Rentrak figures, if their information appears to be potentially inaccurate or incomplete.

Even the studios' box office estimates announced subsequent to the Sunday estimates are unaudited and never capture 100 percent of box office numbers. Because of that, none of the data reported to *Variety*, the Rentrak compilations, or the studio estimates are used to settle transactions between exhibitors and distributors. Those transactions are settled between the contract parties using actual gross box office receipts, and the process is subject to the parties' contractual accounting and audit rights and obligations.

G. The Proposed Contracts Will Harm the Motion Picture Industry

Currently, studio estimates of box office numbers do not impact anyone; they are of no consequence to the public's interests. However, the Commission's approval of the proposed contracts will *create*: (a) burdens for motion picture financing by creating new, but unreliable and non-economic, prognostications of a motion picture's success; (b) conflicts of interest for studio employees and independent contractors by creating a means to bet against the success of motion pictures; (c) a potential for studio employees and independent contractors to use inside information or manipulate box office numbers to profit from betting on the performance of a motion picture; and (d) new legal risks for studios in, among other things, announcing estimates of box office numbers and potentially new compliance obligations to police the use of inside, non-public information affecting box office numbers that could be material to bettors' trading decisions.

The pricing on the proposed contracts creates a greater risk of depressed box office numbers because such pricing, although lacking any reliable economic basis, could harm a motion picture's prospects by negatively affecting financiers' and audiences' perception of it. Because the ultimate breadth of distribution can be revised up to the time of release and afterward, the proposed market could affect distributors' ability to secure screens if the pricing of contracts signals negative box office results. The harmful effect of negative publicity is not limited to theater showings. Many prices for downstream licenses and other sources of revenue are driven in part by actual box office receipts. Motion pictures slated to open in limited theaters (which can easily meet the threshold requirements of the proposed contracts of 600 theaters for MDEX and 650 for Cantor) and then broaden based on word of mouth could be ruined by futures pricing that casts them in the false light of a "failed" opening.

The impact of piracy could be amplified by these contracts because trading in the proposed contracts also creates a new means to try to profit from theft of studios' confidential motion picture materials, thereby increasing the likelihood of such theft and exacerbating our industry's existing widespread motion picture piracy problems. For example, a person who steals a motion picture or motion picture creative materials, in finished or unfinished form, before its release could short the contract and then post it on the Internet to hurt box office numbers. Similarly, a person armed with critical inside information might use it to profitably trade in the proposed contracts. Nothing in the sponsors' publicly available materials about their contracts begins to suggest how either will be able to detect and prevent such manipulative conduct. Given the rise of the Internet and other technologies, piracy and leaks of confidential information are growing threats to the motion picture industry. The Commission should not provide any additional incentives for motion picture piracy and stealing intellectual property by approving the proposed contract applications.

The Coalition, again, thanks the Commission for the opportunity to provide this Statement.



April 13, 2010

'Titans' victorious at weekend box office

Final figures put 3D epic on top of 'Date Night'

By ANDREW STEWART

When the dust settled on Monday, Warner Bros.' 3D epic "Clash of the Titans" had edged out 20th Century Fox's "Date Night" domestic B.O. debut.

Preliminary estimates had "Date Night" winning the weekend, with \$27.1 million; Fox revised the figure downward to \$25.2 million.

Meanwhile, "Clash" earned a revised \$26.7 million, down slightly from Warner's \$26.9 million estimate. The 3D epic dropped 56% in its sophomore week and has cumulated \$110.2 million.

Paramount and DreamWorks Animation's "How to Train Your Dragon" followed closely, with \$24.9 million. The toon slipped only 14% in its third frame, for a total haul of \$92.1 million.

"Dragon" scored 65% of its weekend take from 2,165 total 3D locations, while "Clash" saw approximately 50% from 1,632 3D runs. "Clash," which isn't playing on Imax 3D screens, was able to top the box office even with a substantial number of filmgoers opting for the 2D version.

Fox originally had predicted a 34% drop for "Date Night" from Saturday to Sunday, but said the comedy ended the weekend with a steep 49% decline. Studio attributed the drop to the final day of the Masters on Sunday, saying the golf tourney siphoned audiences from the comedy's targeted older demo.

Most of the frame's other adult-oriented films, including Lionsgate's "Why Did I Get Married Too?" and "The Bounty Hunter" also took steep hits on Sunday.

The Masters played heavily to older audiences, skewing toward male viewers, but also with a surprisingly strong female audience. The "Date Night" demo was similar, with 52% females to 48% males, and about 60% of the audience over 25.

Despite its second place finish, "Date Night" is off to a solid start, with the popularity of stars Tina Fey and Steve Carell helping it exceed "The Bounty Hunter's" \$20.7 opening weekend on March 19.

Family pics like "Dragon" fared best on Sunday, with the toon slipping 38% that day. "Dragon" may lose auds as kids head back to school after spring break, but Par said it expects the toon to hold steady until the studio launches 3D "Shrek Forever After" on May 21.

ATTACHMENT B

'Kick-Ass' slays 'Dragon' Another swap at B.O. top By ANDREW STEWART



Despite early estimates, 'Kick-Ass' took the top spot at the B.O.

For the second consecutive week, the top two spots at the domestic box office have swapped places, with this week's No. 1 position going to Lionsgate's superhero comedy "Kick-Ass." Pic's revised weekend figures held steady on Monday at \$19.8 million, while Paramount and DreamWorks Animation's 3D toon "How to Train Your Dragon" dropped from its estimated \$20 million to a revised \$19.6 million.

The B.O. shuffle comes a week after Warner Bros.' "Clash of the Titans" was renamed the B.O. champ with its weekend actuals, ousting 20th Century Fox laffer "Date Night." In its soph sesh, "Date Night" saw a solid hold of 34%, claiming the No. 3 spot with \$16.7 million, while actuals for "Clash" totaled \$15.5 million. Cumulative for "Date Night" stands at \$48.7 million; "Clash" has reached \$132.6 million in its third frame.

Without any major tentpole releases entering the market in the past two weeks, solid holdovers have been pitted against aud-specific debuts like "Date Night" and "Kick-Ass." "Kick-Ass," about an average teenager who dons a superhero persona, played best among young males, with a 60%-40% male-female split. The pic's healthy launch could bode well for "Kick-Ass" in repeat frames, as Lionsgate hopes fanboy enthusiasm will help fuel strong word of mouth among wider demos.

"Kick-Ass' is fantastic, highly original entertainment, and our marketing and distribution teams have brilliantly positioned it for a long and successful run," Lionsgate prexy Joe Drake said in a statement. "That kind of run is precisely what we are seeing on the international front, where 'Kick-Ass' has demonstrated a very strong hold at the box office."

The film has grossed some \$13.8 million internationally, since its early bow overseas April 2. Meanwhile, "Dragon" saw a strong hold in its fourth frame, slipping just 21%. The toon's 3D component helped boost holdover potential, which accounted for 65% of the weekend take on 56% of the total location count.

"Dragon," whose cumulative reached \$158.3 million as of Monday, should have a clear playing field until Par/DWA's "Shrek Forever After" is released May 21.