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January 5, 2024

VIA ONLINE SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: *Warner Bros. Discovery, Inc.
Shareholder Proposal Submitted by the National Center for Public Policy
Research*

Ladies and Gentlemen:

This letter is submitted on behalf of Warner Bros. Discovery, Inc. (the "Company") to confirm to the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intends to exclude from its proxy statement and form of proxy for its 2024 annual meeting of shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from the National Center for Public Policy Research (the "Proponent").

For the reasons outlined below, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2024 Proxy Materials.

In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent. On behalf of the Company, we confirm that the Company will promptly forward to the Proponent any Staff response to this no-action request that the Staff transmits only to the Company.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

SUMMARY OF THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at its 2024 annual meeting of shareholders:

RESOLVED: Shareholders request that the Board of Directors create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2024.

A full copy of the Proposal and statements in support thereof is attached to this letter as Exhibit A hereto.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite, and subject to multiple interpretations, such that the Company and its shareholders voting on the Proposal would not know with any reasonable certainty exactly what actions or measures the Proposal requires.

ANALYSIS

I. The Proposal May Be Excluded under Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

More recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it will look to whether the policy issue raised in a shareholder proposal may have broad societal impact such that it transcends the ordinary business of the company, regardless of nexus between the issue and the company's business. The Staff also provided guidance on its position on micromanagement when evaluating requests to exclude a proposal on that basis under the ordinary business exception. The Staff stated that it will no longer view proposals that seek detail or seek to promote timeframes or methods as per se micromanagement. Instead, the Staff will focus on the level of detail and granularity sought in the proposal and may look to well-established frameworks or references in considering what level of detail may be too complex for shareholder input. The Staff also noted that it will look to the sophistication of investors generally, the availability of data and the robustness of public discussion in considering whether a proposal's matter is too complex for shareholders, as a group, to make an informed judgment.

The Proposal, if interpreted to concern the content and programming of the Company's various media businesses as suggested by the Proposal's supporting statement, relates to a fundamental element of the day-to-day management of the Company's business and probes into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. The decisions relating to the selection of content to license and produce, as well as the selection of presenters for the Company's various programs is the responsibility of numerous individuals within the Company, who consider a wide range of factors while employing specialized business judgment in making such decisions. Such decisions have ordinarily been delegated by shareholders to members of management who have been specifically tasked with addressing these questions as part of their day-to-day responsibilities. In addition, given the global viewer base of the Company's programs, these decisions are made against the backdrop of wide-ranging and diverse consumer tastes, sensitivities and preferences, and shareholders, would not be able to, as a practical matter, be in a position to make an informed judgment with respect to such complex and varied matters.

The Staff has consistently permitted companies to exclude shareholder proposals relating to the nature, presentation and content of media programming as relating to companies' ordinary business operations within the meaning of Rule 14a-8(i)(7). *See, e.g., CBS Corporation* (Mar. 22, 2013) (permitting exclusion of a proposal requesting that the board ensure the company's news

programming adheres to the company's policy concerning accurate reporting and requesting a report to shareholders on the issue). *See also, General Electric Company* (Dec. 10, 2009) (permitting exclusion of a proposal requesting the GE-NBC news department "cease all of its liberal editorializing" on the basis that the proposal dealt with news programming and therefore related to the company's ordinary business operations).

In addition, the Commission has stated that when a proposal requests the preparation of a report, the relevant inquiry is whether the subject matter of the report relates to the Company's ordinary business. *See Exchange Act Release No. 34-20091* (Aug. 16, 1983) ("[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)."). In this regard, the Staff has also permitted the exclusion of proposals that relate to a Company's programming and content decisions. *See, e.g., Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production"). *See also The Walt Disney Company* (Dec. 12, 2017) (permitting the exclusion of a proposal requesting that the board adopt a policy requiring the company's news operations to tell the truth and to prepare an annual report to shareholders explaining instances where the company has failed to do so).

The fact a proposal may touch upon a significant policy issue, however, does not preclude exclusion under Rule 14a-8(i)(7). The Staff has consistently permitted exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. *See Apple Inc.* (Jan. 3, 2023) (permitting exclusion of a proposal that requested a report on the effects of the company's return-to-office policy on employee retention and company's competitiveness); *Kraft Foods Inc.* (Feb. 23, 2012) (permitting exclusion of a proposal requesting a report detailing the ways the company would assess risk to its supply chain, notwithstanding the proponent's claim that water scarcity risk in the supply chain is a significant policy issue); *PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion when, although the proposal addressed the significant policy matter of the humane treatment of animals, it also requested that the company's board require suppliers to provide certain certifications, an ordinary business matter); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); and *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

In this instance, the Proposal is specifically focused on the content and programming of the Company's media operations, an ordinary business matter and does not raise issues with a broad societal impact, such that they transcend the ordinary business of the Company. The Staff has recently considered this issue in the context of two other recent shareholder proposals: in *Walmart Inc.* (Apr. 10, 2023), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested the company prepare and annually update a report to shareholders listing and

analyzing social and political statements made by or on behalf of the company in recent years. The fact that the proposal touched on social and political matters did not transform an otherwise ordinary business proposal into a proposal that transcends ordinary business. *See also McDonald's Corporation* (Apr. 3, 2023) (same). Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(7) as relating to its ordinary business operations.

II. The Proposal May Be Excluded under Rule 14a-8(i)(3) Because It Is Contrary to the Proxy Rules.

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). The courts have also ruled that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" and that a proposal should be excluded when "it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

Consequently, the Staff has routinely permitted the exclusion of proposals that fail to define key terms, contain only general or uninformative references as to steps to be taken, or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, the Staff has noted that a proposal may be excludable when the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion of a proposal to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three Board seats from compromising the ownership of the other stockholders," where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations). *See also Apple Inc.* (Dec. 22, 2021) (permitting exclusion of a proposal requesting that the company convert to a "public benefit corporation" without clarifying how the company should implement such proposal); *The Boeing Company* (Feb. 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *eBay Inc.* (Apr. 10, 2019) (permitting exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders nor the Company would be able to determine with any reasonable

certainty the nature of the ‘reform’ the [p]roposal is requesting,” and that, therefore, “the proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading”); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion of a proposal requesting that the board “not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action,” where it was unclear what board actions would “prevent the effectiveness of [a] shareholder vote” and how the essential terms “primary purpose” and “compelling justification” would apply to board actions); and *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined).

The Proposal requests that the Company “create a board corporate sustainability committee” to oversee and review “the impact of the Company’s policy positions and advocacy” on “matters relating to the Company’s financial sustainability.” The Proposal is inherently vague and misleading as it fails to define several key terms, rendering it likely impossible for shareholders and the Company to reach a consensus on what the Proposal seeks to accomplish. For example, the Proposal focuses on “matters relating to the Company’s financial sustainability”—a term which could be interpreted by shareholders and the Company in any number of ways, including to cover matters ranging from the Company’s environmental sustainability and energy transition pathway and outlook to the Company’s financial performance and strategy over the near-, medium-, or long-term. The Proposal also asks the Company to form a “board corporate sustainability committee” which, too, can be interpreted by shareholders and the Company in a number of ways to encompass Board oversight of a wide range of distinct and unrelated matters. The Proposal adds a further layer of confusion by asking the Board to “oversee and review the impact of the Company’s policy positions and advocacy” on the matters referenced in the Proposal, a task that first requires clarity as to exactly the kinds of matters or issues the Proposal relates to. And adding further to the confusion is the supporting statement accompanying the Proposal which chastises the Company for having “embraced a partisan lineup of hosts that parroted liberal talking points” and call on the Company to “reign[sic] in the network’s liberal bias.” Such statements only further add to the myriad ways the Proposal could be interpreted by shareholders and the Company.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite, in violation of Rule 14a-9.

CONCLUSION

Based on the foregoing analyses, the Company respectfully requests the Staff’s concurrence with the Company’s view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2024 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 403-1138. If the Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter.

In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please kindly send your response to this letter by email to CXWLu@wlrk.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Carmen X. W. Lu', written in a cursive style.

Carmen X. W. Lu

Enclosures

cc: Tara Smith, Warner Bros. Discovery, Inc.
Scott Shepard, National Center for Public Policy Research

EXHIBIT A

Proponent's Proposal and Supporting Statement



November 29, 2023

Via FedEx and email to

Corporate Secretary
Warner Bros. Discovery, Inc.
230 Park Avenue South
New York, NY 10003
CorporateSecretary@discovery.com

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Warner Bros. Discovery (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2024 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 13, 2023 or December 15, 2023 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to shepard@nationalcenter.org

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard
FEP Director

Enclosures: Shareholder Proposal

Corporate Financial Sustainability Proposal

Supporting Statement: In August 2022, CNN's profits fell below \$1 billion for the first time since 2016.¹

CNN's ratings have likewise tanked:

- Its average audience in February 2022 was just 534,000, a 68% annual decline.²
- In June 2022, CNN averaged just 480,000 viewers, 13% down from May, its lowest daytime audience since November 2015.³
- In September 2023, CNN recorded its worst weekend ratings since 1991 among the critical 25- to 54-year-old demographic.⁴ It totaled just 55,000 viewers for its weekend lineup, including its Sunday morning political programming.⁵

The Company had to abandon its \$300 million CNN+ streaming service a month after launch due to abysmal ratings. Fewer than 10,000 people used CNN+ daily in its first two weeks.⁶

The Board must now ask itself: "How did the network lose so many viewers and so much money?"

The answer is simple. Rather than sticking to unbiased reporting, CNN embraced a partisan lineup of hosts that parroted liberal talking points.⁷ It thereby alienated viewers and damaged its brand. In 2014, Pew found that one-third of people who identify or lean Republican said they distrusted CNN as a political news source.⁸ By 2019, that number had increased to 58% -- higher distrust than *The New York Times*, *The Washington Post* or MSNBC.⁹

¹ <https://www.nytimes.com/2022/08/02/business/media/cnn-profit-chris-licht.html#:~:text=The%20network%20is%20on%20a,steep%20declines%20in%20TV%20viewership;https://nypost.com/2022/08/04/cnns-ratings-in-freefall-profits-slump-report/;https://www.foxnews.com/media/cnn-experienced-ratings-plummet-profits-slump-report>

² <https://www.forbes.com/sites/markjoyella/2022/02/21/cnns-ratings-collapse-prime-time-down-nearly-70-in-key-demo/?sh=706f79166dda>

³ <https://nypost.com/2022/07/01/cnn-ratings-tank-in-first-weeks-under-new-boss-chris-licht/>

⁴ https://nypost.com/2023/09/19/cnn-records-lowest-ratings-in-demo-in-its-recorded-history/?utm_source=twitter&utm_campaign=nypost&utm_medium=social

⁵ https://nypost.com/2023/09/19/cnn-records-lowest-ratings-in-demo-in-its-recorded-history/?utm_source=twitter&utm_campaign=nypost&utm_medium=social

⁶ <https://www.cnn.com/2022/04/12/cnn-plus-low-viewership-numbers-warner-bros-discovery.html>

⁷ <https://www.foxnews.com/media/cnn-politico-indicate-go-woke-go-broke-applies-news-organizations;https://apnews.com/article/new-york-brian-stelter-4ad9041d8f31028f13e107cb8e32a19d>

⁸ <https://apnews.com/article/new-york-brian-stelter-4ad9041d8f31028f13e107cb8e32a19d>

⁹ <https://apnews.com/article/new-york-brian-stelter-4ad9041d8f31028f13e107cb8e32a19d>

Reigning in the network's liberal bias by removing polarizing hosts like Brian Stelter, John Harwood, and Don Lemon is an important step,¹⁰ but it will do nothing to regain trust in the network if it continues with the same biased reporting.¹¹

The Company's movie business has also suffered. It cancelled its \$70+ million "Batgirl" film because its "woke" version was "irredeemable," ranking as one of the most expensive movie cancellations ever.¹² Its recent movie "The Flash" made history for DC after the film suffered the biggest second-weekend box office drop domestically after the movie plummeted 72.5% from its opening weekend.¹³ The movie featuring the erratic Ezra Miller earned just \$15.3 million in the U.S. in its second weekend out after a \$55 million opening weekend at the box office.¹⁴ Ezra Miller, who goes by the pronoun they/them, has been accused of grooming, preying on minors, choking fans and engaging in violence, yet nonetheless starred in a film that the Company brought to market, rather than cutting its losses and shelving the film, thereby also avoiding further reputational destruction.¹⁵

The Company's privileging of executive political/social preferences over sound business judgment in its television and film productions has cost shareholders billions already.

Resolved: Shareholders request that the Board of Directors create a board corporate sustainability committee to oversee and review the impact of the Company's policy positions and advocacy on matters relating to the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2024.

¹⁰ <https://nypost.com/2022/08/23/cnn-blowing-up-its-morning-show-next-after-brian-stelter-firing-report/>;
<https://www.axios.com/2022/02/26/cnn-chris-licht-liberal-partisanship>;
<https://www.washingtonexaminer.com/news/washington-secrets/liberal-media-scream-lefty-bias-finally-catches-up-with-cnns-harwood>; <https://apnews.com/article/don-lemon-cnn-departure-204c35dea8e4bb1151c6cce0bf833182>

¹¹ See e.g., <https://www.mediaite.com/sports/cnns-john-avlon-acknowledges-widespread-media-failure-on-byu-racist-heckling-allegations-there-was-a-rush-to-judgment/>; <https://www.zerohedge.com/political/watch-cnn-caught-color-shifting-bidens-hell-red-rant-mid-speech>

¹² <https://nypost.com/2022/08/02/batgirl-movie-gets-shelved-by-warner-bros-source/>;
<https://thepostmillennial.com/batgirl-movie-cancelled-for-being-so-woke-that-it-was-irredeemable>

¹³ <https://www.dailywire.com/news/the-flash-suffers-largest-second-weekend-box-office-drop-in-dc-films-history>

¹⁴ <https://www.dailywire.com/news/the-flash-suffers-largest-second-weekend-box-office-drop-in-dc-films-history>

¹⁵ <https://www.latimes.com/entertainment-arts/story/2022-06-14/who-is-ezra-miller-tokata-iron-eyes>;
<https://www.indiewire.com/2022/06/ezra-miller-choking-victim-speaks-out-1234738093/>;
<https://www.vanityfair.com/hollywood/2022/08/ezra-miller-has-now-been-accused-of-grooming-minors-and-leading-a-cult>; <https://www.tmz.com/2022/06/08/ezra-miller-protection-court-groom-daughter-tokata-iron-eyes/>;
<https://observer.com/2022/08/ezra-miller-is-seeking-treatment-but-will-it-be-enough-to-save-warner-discovery-s-flash-movie/>