

Directors Guild of America, Inc.



NATIONAL OFFICE
NEW YORK OFFICE

• 7920 SUNSET BLVD.
• 110 WEST 57TH STREET

• LOS ANGELES, CA 90046
• NEW YORK, NY 10019

• 310-289-2000
• 212-258-0800

OFFICERS

PRESIDENT

LESLI LINKA GLATTER

NATIONAL VICE PRESIDENT

LAURA BELSEY

SECRETARY-TREASURER

PARIS BARCLAY

ASSISTANT SECRETARY-TREASURER

JOYCE THOMAS

VICE PRESIDENTS

TODD HOLLAND

RON HOWARD

GINA PRINCE-BYTHEWOOD

SEITH MANN

MILLCENT SHELTON

LILY OLSZEWSKI

NATIONAL EXECUTIVE DIRECTOR

RUSSELL HOLLANDER

BOARD MEMBERS

KABIR AKHTAR

JON AVNET

NORBERTO BARBA

VALDEZ FLAGG

COURTNEY FRANKLIN

NICOLE KASSELL

CHRISTOPHER NOLAN

JOSEPH P. REIDY

DONALD L. SPARKS

STEVEN SPIELBERG

GLENN WEISS

ASSOCIATES

JULIE GELFAND

LOUIS J. GUERRA

KEVIN KOSTER

GLENNA MEEKS

SHAWN PIPKIN-WEST

ALTERNATES

TESSA BLAKE

BENNY BOOM

ALANNA G.A. CAMPBELL

PATRICIA CARDOSO

HANELLE CULPEPPER

MIMI DEATON

AVA DUVERNAY

KAREN GAVIOLA

MAGGIE GREENWALD

PHIL LORD

ANNETTA MARION

LILY MARIYE

JOE MJ MOORE

CHEMEN A. OCHOA

EDWARD ORNELAS

KIMBERLY PEIRCE

LYN PINEZICH

JASON ROBERT REITMAN

BETHANY ROONEY

MARCOS SIEGA

ALEX STAPLETON

J. RUPERT THOMPSON

CANELLA WILLIAMS-LARRABEE

PAST PRESIDENTS

PARIS BARCLAY

MARTHA COOLIDGE

TAYLOR HACKFORD

THOMAS SCHLAMME

ASSOC. NATIONAL EXECUTIVE DIRECTOR/
EASTERN EXECUTIVE DIRECTOR

NEIL DUDICH

ASSOC. NATIONAL EXECUTIVE DIRECTOR/
WESTERN EXECUTIVE DIRECTOR

REBECCA RHINE

ASSOC. NATIONAL EXECUTIVE DIRECTOR
SAHAR MORIDANI

GENERAL COUNSEL

DAVID B. DREYFUS

Submitter: Alec French

Organization: Directors Guild of America, Inc.

October 27, 2023

Register Shira Perlmutter

U.S. Copyright Office

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

Dear Register Perlmutter:

On behalf of the Directors Guild of America (DGA), I am submitting this comment in response to the Copyright Office's Notice of Inquiry. The DGA represents more than 19,000 directors and members of the directorial team who create feature films, television programs, commercials, documentaries, news, and other motion picture productions. The DGA's mission is to protect the creative and economic rights of its members.¹

It is important for the U.S. Copyright Office to understand that we come to this dialogue from the perspective of the director. We hold a nuanced view on artificial intelligence: we are both concerned about the misuse of this technology and at the same time fully expect our directors and members of the directorial team to integrate it into the filmmaking process. We champion the rights to free expression and fair use, and advocate for strong intellectual property rights and enforcement.

We welcome this opportunity to share the Director Guild's perspective, and feel this Notice of Inquiry provides a space for us to reaffirm to the Copyright Office our firm belief that the United States should establish long overdue authorship rights for directors. As this body is aware, under American copyright law, directors are not entitled to creative or economic rights that exist in other countries, particularly Europe, that are also signatories to the international Berne Convention for the Protection of Literary and Artistic Works. Many countries, including the United Kingdom, France, Germany, Italy, Canada, and others provide directors authorship rights. We also refer you to our previous response to the Study on the Moral Rights of Attribution and Integrity Notice of Inquiry (2017) (see attachment) to learn more about these rights and the DGA's views.

¹ The DGA is an affiliate of the AFL-CIO, Department of Professional Employees and shares the beliefs and positions found in their corresponding response to this notice.

In the United States, directors' economic and creative rights are negotiated with employers in collective bargaining. As a result of the U.S. not being in compliance with international treaties, American directors' rights are determined in collective bargaining with the film and television studios. While the DGA collective bargaining agreement enshrines meaningful and enforceable economic and creative benefits with signatory companies, these contractual terms in many circumstances do not apply to third parties.

This past May, in negotiations with the major studios, the DGA successfully achieve historic and first-of-its-kind protections against the misuse of AI. These protections require that the work of directors and their teams be done by a person, and generative AI (GAI) will not be considered a person under the contract. Our agreements further reinforce that directors must be meaningfully involved in the decisions about the use of GAI in their work. The major studios have also agreed to meet with us regularly to discuss the uses of GAI, and other modern technologies, to determine if additional protections are needed going forward.

Unfortunately, GAI can also empower new market entrants who are not bound by these provisions. Some of whom steal intellectual property or modify our members' film and television programs, potentially altering the director's intended artistic expression and potentially harming our members reputation and economic well-being. These third parties, who are not bound to our collective bargaining agreements, may ingest and regurgitate copyrighted films and televisions shows into AI systems without the participation of the copyright owner or the need to agree to the terms of our new agreement. These systems rely on a trove of creative works to operate. The benefits gained through collective bargaining remain dependent on the existence of a contractual relationship; if no privity exists between the entity modifying, mutilating, or distributing the motion picture, the DGA and its membership have no legal recourse to enforce their bargained-for rights.

As we have stated in previous filings, we believe that U.S. law should recognize that the copyright holder is not the only entity with a financial or creative stake in the work. Should the Copyright Office recommend changes to U.S. law to address the growing artificial intelligence concerns, the DGA requests that directors be afforded tailored rights of integrity and attribution to address third parties that intentionally abuse GAI technology for commercial gain. We are looking to elected officials to develop legislative policy that allows for the ethical development of this technology in a way that respects our values as a society.

Technology companies and new market entrants are already starting to use this technology to manipulate motion pictures, television shows, and other entertainment to regenerate new works. GAI models and tools that include Perplexity, Jenni, Runway, Consensus, Humata, SciSpace, QxBot, ChatGBT, Google's Bard, DALL.E 2, Stable AI, Stable Diffusion, Midjourney, and Adobe's creative products. We need to ensure that AI is used in ways that preserve and enhance, not undermine, the creative vision of directors.

These systems allow third parties to modify and manipulate films, television episodes, video games, and virtual reality experiences, and create propaganda materials for oppressive regimes and radical movements based upon or utilizing copyrighted motion pictures. To illustrate, one emerging application of GAI is individualized story generation in the video game industry. Directors will find themselves competing with manipulated versions of their own work.

We also recognize that GAI may help make the filmmaking process more efficient and can enhance the cinematic experience for audiences. Some filmmakers may wish to utilize AI as a tool to correct mistakes or create captivating visual effects, whether bringing fantastical worlds to life or achieving more authentic and hyper-realistic depictions.

It is essential for policymakers and the courts to strike a balance of these competing interests by developing meaningful and enforceable guardrails to prevent technological advancements from undermining intellectual properties, job opportunities, and artistic integrity.

We urge Congress to pass long-overdue legislation that fulfills its promise to provide directors with the authorship rights they deserve. Congress has the authority to comply with its international treaty obligations. The technological boundaries of GAI are virtually limitless, emphasizing the need to safeguard the integrity and the singular creative vision of a director.

We thank the Copyright Office for seeking public comment on this critical issue and request that the Office produce a GAI report and release policy recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Russ M.", with a stylized flourish at the end.

Russell Hollander
National Executive Director
Directors Guild of America



I. INTRODUCTION

On behalf of the Directors Guild of America, Inc. (DGA) and the Writers Guild of America, West (WGAW), we are pleased to submit these comments in response to the Copyright Office's Notice of Inquiry.¹ DGA represents more than 16,500 directors and members of the directorial team who create the feature films, television programs, commercials, documentaries, news and other motion picture productions. WGAW is a labor organization that represents more than 8,000 professional writers working in film, television, news, documentaries and digital media. WGAW members and members of their affiliate, Writers Guild of America, East (jointly, "WGA") write nearly all of the entertainment programming viewed on television and in theaters today. Both the DGA's and WGA's mission is to protect the creative and economic rights of their members.

We welcome the opportunity to respond to this Notice of Inquiry regarding the state of moral rights in the U.S. Under American copyright law, there are no established moral or remunerative rights for audiovisual artists as exists in other, particularly European, countries that are also signatory to the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention"). Under U.S. copyright law, the contributions of writers and directors of motion pictures are typically considered "work-for-hire," meaning the writer and director are deemed to be employees and the financier/production entity as the "author" and owner of the copyright.² This statutory provision gives producers a significant power that is taken away from American audiovisual creators (writers and directors).

However, the reality, acknowledged by producers in the entertainment industry, is that writers and directors are integral and irreplaceable in the film-making process—quite simply motion pictures could not exist without them. Thus, in the U.S, the Guilds have used the process of collective bargaining to enshrine creative and economic benefits for their members, including provisions that partially address the moral rights of writers and directors. These benefits are largely economic-based. While the Guilds' collective bargaining agreements seek to protect our members' rights of attribution and integrity, unfortunately, the benefits gained through collective bargaining remain dependent on the existence of a contractual relationship; if no privity exists between the entity distributing, altering, or manipulating a motion picture and the DGA and/or

¹ Notice of Inquiry, Study on the Moral Rights of Attribution and Integrity, 82 Fed. Reg. 7870 (2017).

² See 17 U.S.C. § 101.

WGA, then the director and writer (s) of the original work have no recourse in law to enforce their rights of integrity and attribution.

As we have stated in previous filings, we believe that the U.S. Copyright Office (“USCO”) should recognize that the copyright holder is not the only entity with a financial and/or creative stake in the work.³ In those filings, we laid out the longstanding economic, creative, and human rights that accrue to writers and directors – rights in the works they create that give them equal standing with the producers. Should USCO consider any changes in the current state of U.S. law regarding moral rights, we ask that the writer and director should be recognized as the original authors of the work, empowering them to protect their rights of attribution and integrity, just as U.S. copyright law protects copyright and the economic interests of the producers. At a minimum, should the U.S. Copyright Office determine that they will recommend no changes in the U.S. position vis a vis moral rights, we believe the Office should recognize that the contract protections in both Guilds’ collective bargaining agreements pertaining to the rights of integrity and attribution are essential to ensuring that the U.S. regimes comply with our Berne Convention obligations.

II. LACK OF MORAL RIGHTS IN THE U.S. LEGAL SYSTEM

This section, in response to Question # 1, will discuss how both U.S. law and collective bargaining agreements do not provide directors and writers with moral rights, specifically rights of attribution and rights of integrity.

The “moral” rights of motion picture “authors” (a term that includes both writers and directors) have long been part of international law. In countries that recognize and respect strong moral rights, writers and directors are recognized as having a continuing interest in protecting their motion pictures from distortion or manipulation in any way that undermines their creative reputation. In these jurisdictions, the actual human author of the work is the only possible owner of the copyright. In the U.S., however, there is a critical exception, which is particularly applicable in the motion picture industry. Under the “work-for-hire” doctrine, the *employer* of the actual human creator can be treated as an author for copyright purposes. Current U.S. law recognizes corporate entities as copyright “authors” in the motion picture industry, and does not acknowledge or provide directors and writers with moral rights in these works.

Moral rights fall into two broad categories: rights of attribution and rights of integrity. Attribution rights can include a right to demand recognition of authorship. Integrity rights include rights to prohibit distortion or mutilation of the artist’s work that would be prejudicial to the artist’s lawful, intellectual, or personal interest in the work. Because moral rights protect

³ See, e.g., DGA and WGAW Comments on Orphan Works submitted on Feb. 4, 2013 in response to Notice of Inquiry on Orphan Works and Mass Digitization, 77 Fed. Reg. 64555 (2012); DGA and WGAW Statement submitted on Mar. 14, 2014 in connection with April 2, 2014 Subcommittee on Courts, Intellectual Property and the Internet hearing regarding the preservation and reuse of copyrighted works.

critical personal interests of a creator or author in his or her work, they provide specific protections to individual audiovisual creators.

In the U.S., however, where the work-for-hire system transfers all rights to the corporate author, usually the producer, the goal of protecting individual audiovisual creators generally does not apply. Where the U.S. has enacted limited moral rights protections, such as in the Visual Artists Rights Act of 1990 (“VARA”), U.S. law specifically excludes works made-for-hire. Through VARA, Congress enacted legislation expressly recognizing moral rights of integrity and attribution for visual artists. With respect to protected paintings, drawings, prints, or sculptures, the artist has the right to claim authorship, and can control the use of their name in conjunction with a covered work. The artist also has the right to prevent any intentional distortion, mutilation, or other modification of the work that is prejudicial to the artist’s honor or reputation. Importantly, however, this Act does not cover motion pictures, and none of the benefits accrue to American audiovisual authors.

Moreover, an American copyright is a property item that is completely transferable.⁴ A producer can seek assignment of all rights in order to consolidate control over an artist’s work. Thus, in the U.S., the initial author of a work can be Universal Pictures, which can transfer authorship to Paramount Pictures, which will then take credit as the author. The director and/or writer (s) of the work have no right to authorize any such copyright transfers. The copyright can ultimately be transferred to an entity that is not signatory to the Guilds’ respective collective bargaining agreements, thereby leaving the director and/or writer (s) of the work no mechanism under both the respective CBA or under law to protect their rights of integrity and attribution.

As we will describe below, while the DGA and WGA’s collective bargaining agreements establish certain minimum economic benefits in recognition of their artistic contributions to the work, the legally recognized author of these works is still the copyright holder. As a result, directors and writers are not recognized as authors of their own artistic works and have no recognized mechanism to enforce their rights of integrity and attribution under U.S. law. While the DGA and WGA Basic Agreements provide multiple economic and creative protections/benefits that recognize directors and writers for their indispensable artistic contributions to these works, the benefits discussed in Section III do not give rise to moral rights of attribution and/or integrity that are equivalent to those provided under foreign moral rights regimes. Thus, as is well known and recognized, the current U.S. legal system does not fully protect its audiovisual creators.

III. MORAL RIGHTS-LIKE PROTECTIONS SECURED THROUGH ENTERTAINMENT GUILDS’ COLLECTIVE BARGAINING AGREEMENTS

This section, in response to Question # 7, will discuss the economic and creative protections directors and writers have established primarily through collective bargaining with producers.

⁴ I.e., by “any means of conveyance or by operation of law.” 17 U.S.C. § 201(d)(1).

In the U.S., writers and directors are typically employed by film and television studios on a “work-for-hire” basis; accordingly, as noted above, under U.S. law they generally do not hold the copyright to the motion pictures they write or direct. However, thanks to the Guilds’ fundamental mission and the work of decades, writers and directors do retain a number of well- established economic and creative rights established by collective bargaining agreements. Additionally, some writers and directors will have rights laid out in individual contractual arrangements they enter into with the producers/copyright holders.

The DGA and WGA Basic Collective Bargaining Agreements (CBA) with the film and television industry establish a range of creative rights that attach to individual writers and directors. These creative rights, first and foremost, lay out the creative protections writers and directors have before production commences, during production, and in post-production. Incorporated into the very foundations of our collective bargaining agreements is an acknowledgement by producers that the contributions of the writers and directors are so significant to the final work that their interest in that work continues long after it leaves their hands.

Attribution

The Basic CBAs establish attribution-like protections by creating minimum standards with respect to the credit accorded to directors and writers in the titles of a motion picture, and in advertising and promotion materials. Specifically, the WGA, through its Minimum Basic Agreement (MBA), has the unique authority to determine attribution for writing on motion pictures within its jurisdiction. This hard-fought right was negotiated with the studios in the 1940s as a result of writers’ frustration with producers’ prior control of the credits system. Previous to WGA jurisdiction over credits, producers were known to give unearned credit on films to themselves, family, or more marketable writers.⁵ Under the WGA’s MBA, credit can only be given to those who have actually written material for the film or TV show. The collective bargaining agreement establishes the form of credit that may be given to writers of film and television projects as well as the obligations of the producer to display the credit on screen and in advertising. Writers ultimately decide who receives the writing credit on a given project. When certain conditions are met, the writers of a feature film or television episode can decide amongst themselves how credit will be given. When the writing credit must be arbitrated, WGA members determine the credit after reviewing anonymous copies of draft scripts. Furthermore, the rules governing arbitration and credits in general are written by writers for writers, and it is WGA members who have the ability to change or preserve the credits determination system.

Similarly, the DGA Basic Agreement addresses the issue of attribution that attaches to the director through a range of provisions establishing minimum requirements to the credit accorded to directors in their work. For example, the DGA Basic Agreement establishes the cornerstone rule that a motion picture can only have one single director, and that only the director assigned to a motion picture may direct it. That director must be credited in the form of

⁵ Catherine L. Fisk, The Role of Private Intellectual Property Rights in Markets for Labor and Ideas: Screen Credit and the Writers Guild of America, 1938-2000, 32 Berkeley J. Emp. & Lab. L. (2011).

“directed by.” This exists to preserve the continuity of a director’s vision from pre-production through post production. The Basic Agreement also specifies placement, position, duration and size requirements of the “directed by” directorial screen credit. For feature films, the director’s screen credit must be accorded on a separate card and must be the last title card appearing prior to principal photography. The credit must also be no less than 50% of the size of the displayed title of the motion picture, or of the largest size in which credit is accorded to any other person.

Although the WGA and DGA agreements include extensive provisions establishing minimum credit requirements, these provisions are only applicable to entities that have a contractual relationship to the respective Guilds. For example, directors and writers have no recourse under their respective collective bargaining agreements to protect credit on their work if an entity that has no contractual relationship with the Guilds strips the credit from the film. Therefore, the reach of these collectively bargained provisions is limited.

Integrity

The DGA’s Basic Agreement gives the directors the absolute right to prepare his or her director’s cut of a theatrical or television motion picture without interruption, and establishes minimum rights with respect to consultation for future alterations made to a director’s film. This right was negotiated with the studios in the 1960s as a result of directors’ frustration with having no input on the final version of a movie or television show. The producer would handpick a film editor who made the final cut, and the director was frequently locked out of the editing process. Now, the director has the right to instruct the editor of the film to make whatever changes to the film the director deems necessary in preparing the director’s cut. No one may be allowed to interfere with the director during the director’s cut period. Moreover, after the director’s cut is completed, the director has the right to be present and to consult throughout the rest of the post-production process; the director must have a reasonable opportunity to discuss the last version of the film before negative cutting or dubbing. Even after post-production, the DGA Basic Agreement provides the director with additional consultation rights in connection with, among other things, DVD releases, television releases of a theatrical film, and in-flight exhibitions of theatrical film. However, despite the existence of these hard-fought consultation rights, ultimately, the producer has control over the final outcome of the project; the director has no veto or approval rights over the final versions of his or her own work.

While the WGA MBA does not include provisions that explicitly address the right of integrity, the contract does recognize the importance of the writers’ contribution to the final motion picture. For example, writers must be allowed to view a cut of theatrical films in order to give editing suggestions, although these are incorporated at the producer’s discretion. Similarly, TV movies of the week, pilots, and limited series must allow for writers to view a cut of the motion pictures in time for editing suggestions when possible. Writers are also expected to be invited to any previews of their series or TV movie, when such previews are held in Los Angeles County. Showrunners, or the writer with overall creative authority in series television, must be consulted with when a commercial product is integrated into the storyline of their series even though the production company has final say on how that integration is achieved.

Significantly, however, these provisions in the DGA and WGA agreements do not provide the director or the writer (s) with final approval over their own work. For example, the director and/or writer (s) of a theatrical motion picture have no right to approve of a producer's edits to a project after the director's cut has been completed. The producer could cut a two-hour film down to sixty minutes, and the director and/or writer (s) have no authority to approve these cuts. Although the Guilds negotiated consultation rights, production companies—including those entities that have a contractual relationship with the Guilds—have ultimate authority over the final product of the project. As such, without any legal recognition of their moral rights, the collective bargaining agreements do not provide the director and/or writer (s) of a theatrical motion picture with moral rights of integrity. Any new moral rights legislation should protect and strengthen the role of writers and directors in the creative integrity of their work.

Additional Rights that Reflect Authorship

Despite the central role of the work-for-hire doctrine in the American entertainment industry, the WGA has negotiated for writers of original theatrical and television motion pictures certain rights, referred to in the WGA agreement as “separated rights,” that would normally belong to the legal copyright holder of an audiovisual work. A theatrical writer's separated rights include the right to publish the script itself or write one or more books based on the literary material, as well as the right to make a stage play based on the material. In addition, the WGA agreement provides for compensation and credit for sequels and gives the writer certain rights prior to production of the film, including the right to perform the first rewrite and the right to reacquire the literary material if the film has not been produced. In television, writers with separated rights retain a broad spectrum of rights in their original material including, among other things, merchandising and publication rights, stage rights, theatrical motion picture rights, and interactive rights. These rights exceed the requirements under the Berne Convention and any new legislation must protect these hard-won claims.

Collective Bargaining Rights vs. Moral Rights

Despite the U.S. work-for-hire doctrine and absence of direct legal protection, the existence of the Guilds has made possible the codification of very specific, collectively bargained rights that establish the primacy of the director and writer and makes clear their economic and creative stake in the works they create. The Guild agreements have enabled directors and writers to negotiate substantial rights and benefits. Indeed some of the rights obtained in the U.S. are not available to writers and directors who live in moral rights regimes where there is not collective bargaining. However, that said, the benefits enumerated in the Guilds' collective bargaining agreements do not amount to full recognition of directors' and writers' moral rights of integrity and attribution in the works they create. Additionally, the reality remains that because collectively bargained rights are dependent on a contractual relationship to the respective Guilds, our members' creative and personal interests cannot be fulfilled in the absence of moral rights and statutory protections.

There are several problems that can arise when artists' rights accrue only to collective bargaining and are not statutory, as in the current U.S. system. For instance, when production

falls outside the jurisdiction of these collective bargaining agreements, audiovisual artists performing in such productions will not benefit from the rights accorded to those under the CBA—both economic and creative. This compares unfavorably with a statutory scheme ensuring that audiovisual artists in *all* productions enjoy minimum remunerative and personality rights. Additionally, the U.S. system's reliance on market conditions to provide economic benefits leaves audiovisual creators completely at the mercy of the market and market forces.

Most importantly, while through collective bargaining writers and directors have successfully negotiated economic and creative benefits that provide them with moral rights-like protections, the existence of our Basic Agreements does not supersede the legal reality that in the U.S., the director and writer are not recognized as “authors” of the work they create. For example, even though the DGA Basic Agreement establishes minimum standards with respect to the credit accorded to directors, which establishes a mechanism to recognize director's attribution rights, this mechanism does not provide directors with a cognizable right to sue to over a violation. Additionally, as a consequence of this current system, any of the benefits gained through collective bargaining remain dependent on the existence of a contractual relationship between the corporate entity/copyright holder and the Guilds; the collective bargaining agreements are only enforceable against so-called signatory entities. This contract-based relationship, as opposed to statutory-based, significantly limits the Guilds' reach and jurisdiction to enforce these hard-fought rights.

This leads to the ultimate question of whether the rights of directors and writers should solely be a function of the bargaining power that their collective bargaining representatives bring to the marketplace. We believe U.S. law should also recognize and protect those rights.

IV. **TECHNOLOGY UPGRADES WITH RESPECT TO ORPHAN WORKS/RIGHTS OF ATTRIBUTION**

The DGA previously submitted comments on January 31, 2017 to the House Judiciary Committee in response to a policy proposal addressing reform of the U.S. Copyright Office. Those comments are worth repeating again here, in response to Question #9.

The DGA, joined by the WGAW, has more than a decade long history of filings before the US. Copyright office on the issue of orphan works. In those filings we have advocated for a searchable, digital database of historical and current copyright ownership information that includes additional information to identify the director and writer of the audiovisual work. In the DGA's January 31, 2017 submission to the House Judiciary Committee as part of the Committee's copyright reform review, the DGA argued as follows:

Directors are recognized as authors and their presence in the database would ensure that users have access to the fullest range of information. Congress has already recognized the directors' standing in the copyright “chain” in language contained in the *Digital Millennium Copyright Act of 1998*. That legislation contains a provision (Section 406) adding new protections upon the transfer of copyright ownership in a motion picture, subjective to the transferees to

continuing obligations to make residuals payments that were negotiated with producers under the collective bargaining agreements. The law imposes such obligations if the transferee knows or has reason to know at the time of transfer that a collective agreement was or will be applicable to the motion picture, and looks to databases maintained by each Guild as a basis of constructive knowledge of such coverage.

Including basic information on a director and writer (s) of a motion picture in a Copyright Office database would be a logical extension of the DMCA language. Moreover, while copyright owners may come and go, the director and writer (s) are forever attached to their work and that reality will inevitably be helpful to users and to the Copyright Office providing a full comprehensive database.

Additionally, the WGAW and DGA believe that the inclusion of information on the director and writers in the database will help resolve the orphan works issue. The addition of director and writer information in the new digital databases would enable more effective searches for copyright holders, and would assist directors and writers in protecting their continuing interests in their works.

V. CONCLUSION

Writers and directors in the U.S. audiovisual industry have used collective bargaining to secure rights equivalent to and, in some cases, beyond those moral rights required by the Berne Convention. Any proposed legislation addressing the United States' obligation under the Berne Convention should protect and reinforce the creative rights won by artists and embodied in our collective bargaining agreements.

Respectfully submitted,

Kathy Garmez
Associate Executive Director
Government & International Affairs
Directors Guild of America

Corri Freedman
Political Director
Writers Guild of America, West