SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Secretary of Labor is renewing the charter for the Maritime Advisory Committee for Occupational Safety and Health. The Committee will better enable OSHA to perform its duties under the Occupational Safety and Health Act (the OSH Act) of 1970. The Committee is diverse and balanced, both in terms of segments of the maritimeindustry represented (e.g., shipyard employment, longshoring, and marine terminal industries), and in the views and interests represented by the members.

FOR FURTHER INFORMATION CONTACT: Amy Wangdahl, Director, Office of Maritime and Agriculture, Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2066.

SUPPLEMENTARY INFORMATION: The Committee will advise OSHA on matters relevant to the safety and health of employees in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts. The maritime industry includes shipyard employment, longshoring, marine terminal, and other related industries, e.g., commercial fishing and shipbreaking. The Committee will function solely as an advisory body in compliance with the provisions of FACA and OSHA’s regulations covering advisory committees (29 CFR part 1912).

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice pursuant to Sections 6(b)(1), and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2, Section 41 of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 941), Secretary of Labor’s Order 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1912.


Jordan Barab,
Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–01407 Filed 1–19–17; 8:45 am]  
BILLING CODE 4510–26–P

LIBRARY OF CONGRESS
U.S. Copyright Office  
[Docket No. 2017–2]  
Study on the Moral Rights of Attribution and Integrity  
AGENCY: U.S. Copyright Office, Library of Congress.  
ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is undertaking a public study to assess the current state of U.S. law recognizing and protecting moral rights for authors, specifically the rights of attribution and integrity. As part of this study, the Office will review existing law on the moral rights of attribution and integrity, including provisions found in title 17 of the U.S. Code as well as other federal and state laws, and whether any additional protection is advisable in this area. To support this effort and provide thorough assistance to Congress, the Office is seeking public input on a number of questions.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on March 9, 2017. Written reply comments must be received no later than 11:59 p.m. Eastern Time on April 24, 2017. The Office may announce one or more public meetings, to take place after written comments are received, by separate notice in the future.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments must be submitted electronically. Specific instructions for submitting comments will be posted on the Copyright Office Web site at https://www.copyright.gov/policy/moralrights/comment-submission/. To meet accessibility standards, all comments must be provided in a single file not to exceed six megabytes (MB) in one of the following formats: Portable Document File (PDF) format containing searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). All comments must include the name of the submitter and any organization the submitter represents. The Office will post all comments publicly in the form that they are received. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office, using the contact information below, for special instructions.

FOR FURTHER INFORMATION CONTACT: Kimberley Isbell, Senior Counsel for Policy and International Affairs, by email at kib@loc.gov or by telephone at 202–707–8350; or Maria Strong, Deputy Director for Policy and International Affairs, by email at mstrong@loc.gov or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The term “moral rights” is taken from the French phrase droit moral, and generally refers to certain non-economic rights that are considered personal to an author. Chief among these are the right of an author to be credited as the author of his or her work (the right of attribution), and the right of an author to prevent prejudicial distortions of the work (the right of integrity). These rights have a long history in international copyright law, dating back to the turn of the 20th century when several European countries included provisions on moral rights in their copyright laws. A provision on moral rights was first adopted at the international level through the Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”) during its Rome revision in 1928. The current text of article 6bis(1) of the Berne Convention states: “Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”

In contrast to the early adoption of strong moral rights protections in

1 In this Notice, we use the general term “author” to include all creators, including visual artists and performers.
Europe, the United States’ experience with the concept of moral rights is more recent. The United States did not adopt the Berne Convention right away, only joining the Convention in 1989.5 At that time, the United States elected not to adopt broad moral rights provisions in its copyright law, but instead relied on a combination of various state and federal statutes to comply with its Berne obligations.6

In July 2014, the Subcommittee on Courts, Intellectual Property, and the Internet of the House Judiciary Committee held a hearing that focused in part on moral rights for authors in the United States as part of its broader review of the nation’s copyright laws.7 At that hearing, the Chairman of the House Judiciary Committee, Representative Bob Goodlatte, noted that "we should consider whether current law is sufficient to satisfy the moral rights of our creators or, whether something more explicit is required."8 The Ranking Member of the Subcommittee, Representative Jerrold Nadler, also indicated his interest in a further evaluation of the status of moral rights in the United States, asking "how our current laws are working and what, if any, changes might be necessary and appropriate."9 Register of Copyrights Maria Pallante recommended further study of moral rights in her testimony before Congress at the end of the two-year copyright review hearings process,10 at which time the Ranking Member of the House Judiciary Committee requested that the Office undertake this study.11 As part of the preparation for this study, the Copyright Office co-hosted a day-long symposium on moral rights in April 2016 in order to hear views about current issues in this area. The Office is now continuing a formal study on moral rights and soliciting public input.

A. Moral Rights in the United States
Prior to Implementation of the Berne Convention in 1989

In the late 1950s, the Copyright Office and Congress reviewed the issue of moral rights as part of the larger, comprehensive review of the copyright laws leading to a general revision of the 1909 Copyright Act.12 In support of the review, William Strauss completed a study for the Office entitled “The Moral Right of the Author” in 1959.13 The report found that U.S. common law principles, such as those governing tort and contract actions, “afford an adequate basis for protection of [moral] rights” and can provide the same protection given abroad under the doctrine of moral rights.14

Later, Congress considered the specific question of “whether the current law of the United States is sufficient, or whether additional laws are needed, to satisfy [Berne article 6bis’s] requirements.”15 The majority of those who testified before Congress argued against any change to U.S. law concerning an artist’s right to control attribution or any alteration to his creation, stating that current U.S. law was sufficient.16 Indeed, WIPO Director General Dr. Árpád Bogsch explained to Congress that the United States did not need to make any changes to U.S. law to meet the obligations of article 6bis.17

Both the House and Senate Judiciary Committees accepted this conclusion,18 finding that U.S. law met the requirements outlined in the Berne Convention’s article 6bis based on the existing patchwork of laws in the United States, including:

- Section 43(a) of the Lanham Act relating to false designations of origin and false descriptions, which could be applied in some instances to attribution of copyright-protected work.19
- The Copyright Act’s provisions regarding protection of an author’s exclusive rights in derivatives of his or her works;20 limits on a mechanical licensee’s rights to arrange an author’s musical composition;21 and termination of transfers and licenses.22
- State and local laws relating to publicity, contractual violations, fraud and misrepresentation, unfair competition, defamation, and invasion of privacy.23

B. Subsequent Developments After the U.S. Implementation of the Berne Convention

Since the United States’ implementation of the Berne Convention over 25 years ago, there have been a number of legal and technological developments affecting the scope and protection of moral rights. In 1990, Congress passed the Visual Artists Rights Act (VARA), codified at section 106A of the Copyright Act,24

6 See discussion on the BCIA infra notes 15–23 and accompanying text.
8 Moral Rights Hearing at 4.
9 Id.
11 Register’s Perspective Hearing at 49 (statement of Rep. John Conyers, Ranking Member, H. Comm. on the Judiciary).
12 As part of the consideration for possible accession to the Berne Convention, the general review of the 1909 Act took more than 20 years and resulted in the 1976 Copyright Act.
14 Strauss at 142. ‘The report rejected the idea of an ‘irreconcilable breach between European and American concepts of protection of authors’ personal rights,’ instead concluding that U.S. and European courts generally arrived at the same results in upholding the same rights or limitations on those rights, just in different ways. Id. at 141–42.
19 See H.R. Rep. No. 100–609, at 37–38 (1988); see also S. Exec. Rep. No. 100–17, at 55 (1998) [to accompany S. Treaty Doc. No. 99–27 (1986)] (statement of John K. Uilkema on behalf of Am. Bar Ass’n before the S. Comm. on Foreign Relations) (“Whether greater or lesser moral rights per se should be the subject of legislative consideration in the United States is a question that is separate and apart from the Berne adherence compatibility question.”).
25 Contract law is particularly important for authors to control aspects of their economic and moral rights. For example, the collective bargaining agreements that govern the creation of major motion pictures often contain explicit requirements with regards to attribution for actors, writers, directors, and other guilds. Many copyright sectors that involve numerous authors and participants in the creative process, such as filmed entertainment, business and entertainment software, music production, and book publishing, also rely on both employment agreements and the work-for-hire doctrine to determine ownership issues, which in turn may include elements related to attribution and integrity.
which guarantees to authors of works of “visual arts” the right to claim or disclaim authorship in a work and limited rights to prevent distortion, mutilation, or modification of a work. In contrast to how moral rights were often adopted elsewhere, with VARA, Congress identified specific instances in which the limited rights could be waived. As part of the legislation, Congress also directed the Copyright Office to conduct studies on the VARA waiver provision and also on resale royalties.

In its 1996 report on the waiver provision, the Office concluded it could not make an accurate assessment of the impact of VARA’s waiver provisions because artists and art consumers were generally unaware of moral rights and recommended that in order for artists to take advantage of their legal rights under VARA, further education about moral rights in the United States would be necessary. The Office also made observations about the implementation of moral rights obligations in other countries, finding that, of the laws reviewed by the Office, only the moral rights laws of the United Kingdom and Canada contained express waiver provisions.

The Supreme Court’s 2003 Decision in Dastar

In 2003, some scholars began to question the strength of the U.S. patchwork of protection as a result of the U.S. Supreme Court’s ruling in Dastar Corp. v. Twentieth Century Fox Film Corp. (“Dastar”), which forescored some attribution claims under section 43(a) of the Lanham Act. The Court unanimously rejected an interpretation of section 43(a) that would “require attribution of uncopyleft materials.” Citing VARA, the Court said that when Congress has wanted to provide an attribution right under copyright law, “it has done so with much more specificity than the Lanham Act’s ambiguous use of ‘origin’.” The Court found that “origin of goods” is most naturally understood as referring to the source of a physical product, not the person or entity that originated the underlying creative content. In a well-known sentence, Justice Scalia, writing for the Court, stated that permitting a section 43(a) claim for such misattribution “would create a species of mutant copyright law that limits the public’s ‘federal right to copy and to use’ expired copyrights.”

Some lower courts have read Dastar as a broad prohibition on applying federal trademark and unfair competition laws in the realm of copyright, regardless of whether the copyrighted work remains under the term of protection or has fallen into the public domain. In contrast, some scholars have argued that the Court did not write federal trademark and unfair competition law out of the patchwork entirely.

Rights Management Information and Moral Rights for Performers

Since implementation of the Berne Convention, the United States has joined two additional international treaties that address moral rights—the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The WCT incorporates the substantive provisions of Berne, including those of article 6bis. Article 5 of the WPPT expands the obligations of Contracting Parties to recognize the moral rights of attribution and integrity for performers with respect to their live performances and performances fixed in phonograms. Furthermore, both the WCT and the WPPT encourage new obligations concerning rights management information (RMI). These provisions protect new means of identifying and protecting works while also helping protect the rights of attribution and integrity.

The United States implemented its WCT and WPPT obligations via enactment of the 1998 Digital Millennium Copyright Act (“DMCA”), and signed as a contracting party to both treaties in 1999, three years before the


39 See WIPO Performances and Phonograms Treaty art. 5(2), 5(3).

40 See WCT art. 12; WPPT art. 19. WCT article 12 and WPPT article 19 define rights management information to include identification of the author and owner and terms of use of the work or sound recording.

courts recognize section 1202 as protecting against any removal of attribution from works, a minority of courts have limited section 1202 to protect only against removal of attribution that is digital or part of an "automated copyright protection or management system." \(^{48}\)

Recent International Developments

There have also been changes to the landscape of moral rights protection internationally since the U.S. acceded to the Berne Convention in 1989. The Copyright Office noted in its 1996 report Waiver of Moral Rights in Visual Artworks that, while statutory recognition of the commonly recognized moral rights—i.e., attribution and integrity—is the norm internationally, the strength of the moral rights laws varied among Berne members, even among those with the same basic legal systems. \(^{49}\) For example, at the time of the Report the United Kingdom required an author or her heirs, in some cases, to assert the right of paternity and was generally considered to have adopted one of the more restrictive approaches to implementing moral rights. \(^{50}\) However, ten years later, in 2006, the United Kingdom amended its moral rights provision by extending to qualifying performances the right to attribution and the right to object to derogatory treatment of a work. \(^{51}\)

The most recent international development on CMI and moral rights occurred four years ago at a Diplomatic Conference in Beijing where WIPO and its member states concluded a new treaty on audiovisual performances. \(^{52}\) Similar to the approach of the WPPT, the Beijing Treaty on Audiovisual Performances also contains provisions on CMI and moral rights for audiovisual performers. \(^{53}\)

Availability and Use of Licenses, Contracts, and State Laws

Another part of the patchwork upon which moral rights protection in the United States relies is state contract law, which allows authors to negotiate for protection of their rights of attribution and integrity through private ordering. Since the United States' accession to the Berne Convention, a major change to this area has been the emergence of Creative Commons and similar licenses that have simplified licensing for all kinds of authors and users, large and small. The CC license suites have served to facilitate private ordering, including for individual authors that would not previously have been able to afford the services of a lawyer to create licenses to govern use of their works. \(^{54}\)


\(^{43}\) The other sections of chapter 12 include sections 1203 and 1204, which set forth available civil remedies and criminal sanctions for violation of sections 1201 and 1202, and section 1205, which implements the treaties—section 1201, including for individual authors that would not previously have been able to afford the services of a lawyer to create licenses to govern use of their works. \(^{54}\)


\(^{50}\) Another part of the patchwork upon which moral rights protection in the United States relies is state contract law, which allows authors to negotiate for protection of their rights of attribution and integrity through private ordering. Since the United States' accession to the Berne Convention, a major change to this area has been the emergence of Creative Commons and similar licenses that have simplified licensing for all kinds of authors and users, large and small. The CC license suites have served to facilitate private ordering, including for individual authors that would not previously have been able to afford the services of a lawyer to create licenses to govern use of their works. \(^{54}\)
Currently there are over one billion works licensed under Creative Commons licenses, most of which require attribution of the author.\(^{55}\)

Changes in Technology to Deliver Content and Identify Content

The evolution of technology in the past few decades has also impacted the availability of moral rights protections for modern authors. Technology can facilitate improved identification and licensing of works with persistent identifiers, but at the same time, it can also make it easier to remove attribution elements and distribute the unattributed works widely.\(^{57}\)

II. Congressional Copyright Review and This Study

As part of its effort to begin a dialogue about moral rights protections in the United States, the Copyright Office organized a symposium entitled “Authors, Attribution, and Integrity: Examining Moral Rights in the United States,” which was held on April 18, 2016.\(^{58}\) The symposium served as a launching point for the issuance of this Notice of Inquiry.

Seven sessions covered the historical development of moral rights, the value authors place on moral rights, the various ways current law provides for these rights, and new considerations for the digital age. Participants, including professional authors, artists, musicians, and performers, discussed the importance that copyright law generally, and attribution specifically, plays in supporting their creative process and their livelihood.\(^{59}\) Leading academics provided an overview of the scope of moral rights and how countries, including the United States, approach these concepts.\(^{60}\)

Many participants identified the right of attribution as particularly important to authors, both from a personal and from an economic perspective. For example, participants cited the role of copyright management information for purposes of attribution, and discussed the perceived strengths and limitations of section 1202.\(^{61}\) Keynote speaker Professor Jane Ginsburg posited ways to strengthen the right of attribution.\(^{62}\) Others discussed the possibilities of using non-copyright laws post-Dastar,\(^{63}\) as well as expressing concerns about how potential moral rights-like causes of action might interact with First Amendment protections.\(^{64}\)

Some participants asserted that the current patchwork of laws, particularly the availability of contract law, the work for hire doctrine, and collective bargaining agreements (available in some industry sectors), provides sufficient protection for moral rights concerns.\(^{65}\) In contrast, several voices criticized the limited scope of existing law, ranging from upset that a right of publicity is not a federal right\(^{66}\) to disappointment with VARA’s under inclusiveness and strict standards.\(^{67}\)

Discussion also addressed the role of technology, both in creation and in dissemination of authorized and unauthorized works. For example, a photographer noted the importance of attribution that stays with images,\(^{68}\) and a photo company described the technology they use to persistently connect authorship information to images.\(^{69}\)

Looking at what lessons might be gleaned from the experiences of other countries, one panelist commented that there is “tremendous diversity in how different countries have implemented moral rights,”\(^{70}\) and another confirmed that moral rights litigation constitutes only a small percentage of the copyright cases on those countries’ litigation documents.\(^{71}\)

III. Subjects of Inquiry

The Copyright Office seeks public comments addressing how existing law, including provisions found in title 17 of the U.S. Code as well as other federal and state laws, affords authors with effective protection of their rights, equivalent to those of moral rights of attribution and integrity.

The Office invites written comments in particular on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and

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\(^{54}\) See Session 4: The Importance of Moral Rights to Authors, 8 Geo. Mason J. Int’l Com. L. 87, 90 (2016).


\(^{57}\) Indeed, CMI is of particular interest to visual artists who embed copyright information in their works only to find it unlawfully stripped from digital copies. This makes it difficult for potential users to identify and contact the copyright owner to obtain a license to use a work found online. See Columbia University Libraries, Comments Submitted in Response to U.S. Office of Copyright’s Apr. 24, 2015 Notice of Inquiry (Visual Works Study) at 1 (July 22, 2016) (“Noting that the Gemäldegalerie’s unique image rights language is meant to address the “challenges arising from a present inability to ensure that any person or machine encountering a visual work has ready access to rights information sufficient to allow the work to be identified, and sufficient to facilitate an informed decision regarding the display, reproduction and distribution of the work.”).


\(^{59}\) Many participants identified the right of attribution as particularly important to authors, both from a personal and from an economic perspective. For example, participants cited the role of copyright management information for purposes of attribution, and discussed the perceived strengths and limitations of section 1202. Keynote speaker Professor Jane Ginsburg posited ways to strengthen the right of attribution.

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\(^{62}\) Discussion also addressed the role of technology, both in creation and in dissemination of authorized and unauthorized works. For example, a photographer noted the importance of attribution that stays with images, and a photo company described the technology they use to persistently connect authorship information to images.

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\(^{64}\) The Copyright Office seeks public comments addressing how existing law, including provisions found in title 17 of the U.S. Code as well as other federal and state laws, affords authors with effective protection of their rights, equivalent to those of moral rights of attribution and integrity.

\(^{65}\) The Office invites written comments in particular on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and...
separately address each numbered subject for which a response is submitted.

General Questions Regarding Availability of Moral Rights in the United States

1. Please comment on the means by which the United States protects the moral rights of authors, specifically the rights of integrity and attribution. Should additional moral rights protection be considered? If so, what specific changes should be considered by Congress?

Title 17

2. How effective has section 106A (VARA) been in promoting and protecting the moral rights of authors of visual works? What, if any, legislative solutions to improve VARA might be advisable?

3. How have section 1202’s provisions on copyright management information been used to support authors’ moral rights? Should Congress consider updates to section 1202 to strengthen moral rights protections? If so, in what ways?

4. Would stronger protections for either the right of attribution or the right of integrity implicate the First Amendment? If so, how should they be reconciled?

5. If a more explicit provision on moral rights were to be added to the Copyright Act, what exceptions or limitations should be considered? What limitations on remedies should be considered?

Other Federal and State Laws

6. How has the Dastar decision affected moral rights protections in the United States? Should Congress consider legislation to address the impact of the Dastar decision on moral rights protection? If so, how?

7. What impact has contract law and collective bargaining had on an author’s ability to enforce his or her moral rights? How does the issue of waiver of moral rights affect transactions and other commercial, as well as non-commercial, dealings?

Insights From Other Countries’ Implementation of Moral Rights Obligations

8. How have foreign countries protected the moral rights of authors, including the rights of attribution and integrity? How well would such an approach to protecting moral rights work in the U.S. context?

Technological Developments

9. How does, or could, technology be used to address, facilitate, or resolve challenges and problems faced by authors who want to protect the attribution and integrity of their works?

Other Issues

10. Are there any voluntary initiatives that could be developed and taken by interested parties in the private sector to improve authors’ means to secure and enforce their rights of attribution and integrity? If so, how could the government facilitate these initiatives?

11. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.


Karyn Temple Clagett,
Acting Register of Copyrights and Director of the U.S. Copyright Office.

[FR Doc. 2017–01294 Filed 1–19–17; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Royalty Board


Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of two notices of intent to audit the 2013, 2014, and 2015 statements of account submitted by broadcasters Cox Radio (Docket No. 17–CRB–0009–AU) and Hubbard Broadcasting (Docket No. 17–CRB–0008–AU) concerning royalty payments each made pursuant to two statutory licenses.

FOR FURTHER INFORMATION CONTACT: Anita Brown, Program Specialist, by telephone at (202) 707–7658 or by email at crb@loc.gov.

[FR Doc. 2017–01319 Filed 1–19–17; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board


Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.