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LEGISLATIVE UPDATES

REWARDS WITHOUT RIGHTS: THE MOTION PICTURE INDUSTRY AFTER THE NATIONAL FILM PRESERVATION ACT OF 1992 AND FILM DISCLOSURE BILL OF 1992

INTRODUCTION

Throughout the twentieth century, Americans have watched motion pictures evolve from the silent screen to the big box office, and most recently, to home television viewing. As the birthplace of the moving pictures, the United States has used films to educate, inform, chronologize, and entertain generations.

In June 1992, Congress ensured that motion pictures will retain their place as part of America's national culture with its passage of the National Film Preservation Act (the Preservation Act),¹ which replaced the original National Film Preservation Act of 1988 (the 1988 Act). Like its predecessor, the Preservation Act recognizes that motion pictures are "an indigenous American art form [which] represent an enduring part of [the] Nation's historical and cultural heritage."² An enduring National Film Registry Collection was established as part of the Library of Congress specifically for the purpose of maintaining and preserving films that are chosen for their cultural, historical or aesthetic significance.³

With the passage of the original Act in 1988, beloved film characters such as Scarlett O'Hara, George Bailey, Vito Corleone, and Dorothy and Toto were assured a place in the nation's history. Under the terms of the new Preservation Act, however, many of the film artists who gave dimension to these characters feel less than privileged.⁴ Noticeably lacking from the new Preservation Act is a 1988 provision that prohibited the distribution or public exhibition of a "materially altered" film bearing the Registry seal, unless it carried a label conspicuously stating that it was an altered form of the film's original version.⁵ In response to that omission, S. 2256 and H.R. 5868 (the Disclosure Bill) were introduced in 1992 in Congress.⁶ Collectively titled The Film Disclosure Act of 1992, these bills, if passed, would mandate the labeling of any film that has been "materially altered" through

editing, colorization or other technical processes.⁷ As a result, Hollywood's most prominent directors and screenwriters who support the labeling requirement are aligning against producers and distributors who oppose the Disclosure Bill.

This update will examine the congressional intent underlying the National Film Preservation Act of 1992 and its effect on the present motion picture industry. A comparison will be made between the Preservation Act and the 1988 version of the same act which included a narrow labeling requirement. An examination of the Disclosure Bill will explore the benefits and burdens of mandatory film labeling, as well as a brief analysis of the artists' rights to be protected if the legislation is enacted. Finally, the ramifications of the Disclosure Bill on the motion picture industry, as well as the American viewing public, will be explored.

THE NATIONAL FILM PRESERVATION ACT

The passage of the National Preservation Act into law this year marked Congress' rededication to preserving motion pictures as a part of Americana.⁸ The 1992 version of the Preservation Act provides for many of the same methods and guidelines for preservation as did its predecessor, but significant differences are also apparent. Generally, the new Preservation Act is viewed as a positive step towards guaranteeing that motion pictures, like literature, will enjoy a long legacy for generations of film viewers.

A. The 1988 National Film Preservation Act

When Congress passed the original National Film Preservation Act of 1988, it, in effect, created the equivalent of a Library of Congress for motion pictures and films.⁹ A film that was selected for inclusion in the National Film Registry Collection bore a distinctive seal designating it as a nationally recognized film.¹⁰

A thirteen-member National Film Preservation Board (the Board) was established with its membership comprised of one representative each from various film industry organizations, including motion picture directors, copyright owners, educators and film archivists.¹¹ Board members served for three-year terms during which time they were responsible for selecting those films for inclusion in the National Film Registry.¹²

The 1988 Act included a controversial provision which required all studios, broadcasters, exhibitors and video cassette distributors to label any Registry film that had been "materially altered" prior to exhibi-

tion or distribution.¹³ The label was to state: "This is a materially altered version of this film ... It has been altered without the participation of the principal director, screenwriter, and other creators of the original film."¹⁴ Labeling was not mandated for the vast majority of altered films that had not been selected by the National Film Preservation Board.

The Librarian of Congress and the National Film Preservation Board had the responsibility of defining what constituted a "materially altered" film, and to refine periodically that definition.¹⁵ Under the 1988 Act, material alterations included colorization or any "fundamental post-production changes" made to the original version, but excluded the "reasonable requirements of preparing a work for distribution or broadcast."¹⁶ If a film had been edited to meet FCC standards or to make time for commercials, or if foreign subtitles had been added, it was not deemed to have been materially altered and did not require the label notification.¹⁷

The 1988 Act prohibited the knowing distribution or exhibition of a materially altered version of a film bearing the Registry seal without the mandatory label.¹⁸ The author of a Registry-protected film was able to sue the studio or distributor who, after the enactment of the Act, failed to comply with the labeling requirement prior to distribution.¹⁹ Although no case exists of an artist bringing suit under the 1988 Act, a recovery was allowable up to \$10,000.²⁰

B. The 1992 National Film Preservation Act

With the passage of the National Film Preservation Act in June 1992, the 1988 Act was repealed in its entirety.²¹ However, the new Preservation Act permanently entrenches the National Film Registry Collection initiated in 1988. Over the next four years, the Librarian of Congress will expand the Registry and investigate film preservation techniques.²² Dr. James Billington, the present Librarian of Congress, will oversee an extensive study of the current state of motion picture restoration with the goal of establishing a comprehensive film preservation program.²³

Reauthorizing many of the same rights found in the 1988 Act, the new Preservation Act will allow nomination of any film into the National Film Registry, provided that at least ten years have elapsed since its original publication.²⁴ Members of the general public, together with an augmented eighteen-member Board,²⁵ may submit their film recommendations annually to the Librarian of Congress, who may select up to twenty-five motion pictures for inclusion into the Registry each year.²⁶ Since the enactment of the 1988 Act, over 100 films have been selected for inclusion in the Registry.²⁷ The Board also bears the responsibility of obtaining complementary items for the archives, such as scripts, production reports and

director's notes.²⁸

Like the 1988 Act, the Preservation Act requires a film selected for the Registry to bear a seal designating it as a nationally-registered film, and prohibits distribution of that film without prior approval by the Board.²⁹ Failure to obtain the approval of the Board prior to distribution of an unauthorized copy may result in injunctive relief and a maximum \$10,000 fine against the distributor.³⁰

Conspicuously missing from the 1992 Preservation Act, however, is the mandatory labeling requirement for Registry-protected films that have been materially altered prior to broadcast or distribution. Under the new Preservation Act, no film, whether included in the Registry or not, needs to carry a label explaining that it has been altered from its original version. The removal of the labeling requirement from the Preservation Act has produced a renewed effort on the part of motion picture artists to demand stringent labeling of not only films in the Registry, but of all films presented in substantially different forms from their original versions.

The labeling requirement under the 1988 Act generated a great deal of controversy among owners, artists, the motion picture industry and the Board over the definition of "materially altered" and the enforcement of the labeling provision.³¹ The Librarian of Congress interpreted materially altered to include colorization or any fundamental changes in theme, plot or character, or any removal of over five percent of the original running time of a film.³² However, Dr. Billington believed that he was not in a position to determine the definition of materially altered.³³ According to Billington, the Librarian of Congress's primary responsibility should be to secure original copies of films for preservation, not to determine the criteria for mandatory labeling.³⁴ At his behest, Congress shifted its focus away from any labeling requirement and moved toward an expansive view of preservation when it passed the 1992 Preservation Act.³⁵ In effect, the Preservation Act reflects a general public perception that motion pictures have achieved a prominence in American culture and history. The shrinking protection of the motion picture artist, however, indicates the unwillingness of both Congress and the motion picture distributors to take any steps that may impact the lucrative post-production cable television and home video markets. The Disclosure Bill, discussed below, was introduced at the urging of film artists who wished to revive the mandatory labeling requirement missing from the Preservation Act, and to expand its reach to all films.

S. 2256 - THE FILM DISCLOSURE BILL

In the late 1980s, the advent of colorized versions of black-and-white films resulted in an uproar from motion picture artists who were distraught at the

alterations made to their films without their approval or participation. The outcry from Hollywood's creative corps grew louder in 1991 with the passage of the Visual Artists' Rights Act (VARA), where Congress initially recognized the moral rights of visual artists but limited those rights to painters, sculptors and photographers, thereby denying a complementary right to motion picture artists.³⁶

Proponents of the Disclosure Bill are largely motion picture artists who believe that mandatory labeling of altered films would align the United States with many of the European countries that statutorily grant an artist lifetime protection in her personal interest in the manner and style of presentation of her original art work.³⁷ Opponents of the Disclosure Bill are movie production houses and home video distributors who believe the bill will severely hinder the essence of their business, namely the dissemination of motion pictures to as many viewers as possible.³⁸ Third party observers have raised fears that the mandatory labeling requirement may be a violation of the First Amendment freedom of speech by imposing a prohibitive prior restraint.³⁹ Congress is debating whether the Disclosure Bill should be enacted or if film artists should be left to fight for their artistic rights in contract negotiations with movie producers.

A. Moral Rights and the Film Disclosure Bill

Motion picture artists advocate the passage of the Disclosure Bill as an initial recognition of film makers' artistic moral rights in the United States.⁴⁰ Unlike many industrialized nations of the world, the United States does not consider a motion picture artist to be the owner of the copyright of his film.⁴¹ Under the "work for hire" doctrine incorporated into the Copyright Act, the owner of the copyright is the principal who commissions his agent to perform the work;⁴² in the motion picture industry, the principals are the production houses. Therefore, as the rightful copyright owners under copyright law, producers argue that for so long as a motion picture remains a viable income producer, they should have the right to modify it to suit changing audiences.⁴³ Very few motion picture artists have the personal clout or the economic resources to retain independent ownership of their work, and they claim that the ability of an outside party to alter the original work violates both the integrity of the work and their own artistic moral rights not otherwise protected under the Copyright Act.⁴⁴

Artistic moral rights is an international concept formally recognized in the United States only within the very narrow provisions of VARA.⁴⁵ An artist's moral rights does not refer to the moral message or lack thereof in a film, rather it refers to a bundle of rights the artist retains in the substance of the work itself. The moral rights provisions of the Berne Treaty,⁴⁶ the international copyright standard, includes

a composite of rights⁴⁷ an artist retains in his work independent of the economic interests, including the right of integrity that would prevent mutilation or modification of a work that would harm the artist's reputation.⁴⁸

The United States became a signatory to the Berne Treaty in 1988, but reserved approval on the artists' moral rights provision.⁴⁹ Critics believe that the U.S. joined the Berne Treaty to convey a sense of leadership to the international community, yet it is failing to comply with those provisions by declining to codify moral rights provisions for all art forms, not only those falling within VARA.⁵⁰

American notions of copyright law are rooted in the common law tradition of interest in property; therefore, courts are more willing to protect the economic interests of a wronged artist than vindicating his or her personality (moral) interests.⁵¹ Courts have not formally recognized artists' moral rights, however they often will couch their decisions in equitable terms acceptable under U.S. law, such as unfair competition, defamation, breach of contract and invasion of privacy.⁵² Should the United States elect at a future date to enforce the full range of artists' moral rights as set forth under the Berne Treaty, U.S. copyright law could be dramatically altered. First, under an artist's right to paternity, the long-established work-for-hire doctrine would be altered to invest the moral rights in the artist absent his or her waiver of that right.⁵³ Second, an artist's right to integrity would mandate the artist's approval of any post-production alterations by movie producers and distributors.⁵⁴

As proposed, the Disclosure Bill does not afford a motion picture artist the same moral rights currently enjoyed by artists under the full protection of the Berne Treaty. For example, it does not give a film maker the right to stop the production or broadcast of an altered version of the film provided it bears a label noting the artist's dissent to the changes.⁵⁵ However, the labeling requirement does seem to foster the thrust toward film preservation recently rejuvenated under the National Film Preservation Act by thwarting potential public deception caused by viewing non-original films that have been distorted or mutilated.⁵⁶

B. The Disclosure Bill and U.S. Trademark Law

The Disclosure Bill purports to amend Section 43 of the Lanham Act (15 U.S.C. §1125), commonly known as the Trademark Act, to require disclosure of materially altered films.⁵⁷ As outlined above, in the United States it is the movie production houses and distributors that own the copyrights to motion pictures. Therefore, rather than altering the ownership rights in the films, the Disclosure Bill proposes to alter the rights in the representation of the work itself. Under section 43 of the Lanham Act, any person who employs "any false designation of origin, false or mis-

leading description of fact, or false or misleading representation of fact" is liable in a civil action by a person likely to be damaged by that misrepresentation.⁵⁸ The Disclosure Bill would serve to extend the protection afforded under the Lanham Act to motion picture artists whose films are altered without the proper labeling requirement.

As noted above, federal courts have not specifically endorsed moral rights for film artists, yet they have protected the same sort of rights proposed in the Disclosure Bill through applications of the Lanham Act itself.⁵⁹ In *Gilliam v. American Broadcasting Co., Inc.*, the Second Circuit Court utilized provisions of the Lanham Act to prevent misrepresentations in a television broadcast that could injure the plaintiffs' business or reputation.⁶⁰ The plaintiffs, known as Monty Python's Flying Circus, brought suit against ABC for editing out approximately twenty-four minutes of their original ninety-minute broadcast without their consent and in violation of their contract with ABC.⁶¹ The court found that the resulting broadcast served only as a "mere caricature of [the plaintiffs'] talents."⁶² Plaintiffs suffered irreparable injury because the "actionable mutilation" performed by ABC resulted in damage to Monty Python's professional reputation, compounded by the fact that they were little known in America at that time; moreover, the court found the altered broadcast had the potential to harm their ability to attract future audiences.⁶³ Another lower federal court found the Lanham Act is "designed not only to vindicate the author's personal right to prevent the presentation of his work to the public in a distorted form ... but also to protect the public and the artist from misrepresentations of an artist's contribution to the finished work," making it a suitable foundation for the addition of the protection afforded by the Disclosure Bill.⁶⁴

Under the terms of the Disclosure Bill, a neutrally-worded label would be affixed both to the exterior packaging and to the film itself to disclose to its viewers the nature of any material alterations and any objections raised by the film's artist.⁶⁵ A producer wishing to alter the original version of a film must make a good faith effort to notify the artist of the changes or be subject to injunctive and punitive damages at the artist's behest.⁶⁶ Once notified of the proposed alterations, a film artist has thirty days to raise his objections.⁶⁷ In order to facilitate this notification, the Disclosure Bill provides that a registry of artists be established through professional guilds or major copyright holders.⁶⁸ After the appropriate label is affixed to the film, the artist need not be notified of every usage of the revised version unless additional changes are subsequently made to the original version.⁶⁹

Although an increasing number of movies are produced with an eye towards home video distribution, film artists are fearful that producers and distrib-

utors may perform indiscriminate "technical surgery" on a work that may alter the content, tone and composition of the entire film.⁷⁰ For example, a technique such as lexiconning modifies film and dialogue by compressing them into a "marketable length" for home video viewing.⁷¹ Panning and scanning, possibly the most prevalent technical changes made to films when converting them to video form, gradually reduces or enlarges a film image to keep the characters' action in the center of the screen; this often results in actual loss of the visual action that a viewer would see taking place around the perimeter of the main action if viewed in a movie theater.⁷² Under the Disclosure Bill, lexiconning, panning and scanning, and most importantly colorization, must be revealed in the opening panel of a video or altered film.

C. The Disclosure Bill and the Motion Picture Industry

In his introduction of the Disclosure Bill to Congress in February 1992, Senator Alan Simpson noted: "The motion picture industry ranks second in producing a positive cash flow in U.S. balance of trade, and while protecting an artist's integrity, it is essential Congress do nothing to impede ... the financial arrangement by which pictures are made and distributed."⁷³ It should be noted that while the Disclosure Bill gives film directors and cinematographers the right to have their objections known, it does not prohibit the alteration of a film outright nor impede the exhibition of a film already altered.⁷⁴

The Artists' Rights Foundation, a coalition of motion picture artists boasting among its membership noted directors Francis Ford Coppola, Steven Spielberg, George Lucas, and Martin Scorsese,⁷⁵ firmly supports the Disclosure Bill as a small move toward legal recognition of film artists' moral rights that begins with "truth in labeling."⁷⁶ Director Martin Scorsese, in his testimony before the House Copyright Subcommittee, voiced the fear shared by many film artists that the ever-expanding video postproduction stages often destroy the original intent of the film artist in his work.⁷⁷

Opponents of mandatory labeling fear that the economic viability of the video and film sales after-market would be seriously harmed if viewers were subjected to labeling notices on their home video cassettes. The Motion Picture Association of America along with the Committee for America's Copyright (CACC)⁷⁸ fear that such labels will tell consumers that the film is not worth watching or renting.⁷⁹ They argue that consumer confusion will be widespread and viewers will actually be discouraged from watching altered movies, thus the "copyright intensive industries" will be unable to continue supplying a broad array of new marketable film titles.⁸⁰

The Video Software Dealers Association is perhaps the most vocal opponent of the Disclosure Bill.⁸¹

With a recent *Los Angeles Times* survey reporting that approximately 67% of the public prefers to watch the majority of their movies at home, the principle means by which video rentals are made and distributed would be dramatically altered by the Disclosure Bill.⁸² However, proponents counter this argument by noting that labeling could possibly open up a whole new video line of "classic original" films.⁸³

The American Civil Liberties Union has also joined CACC in lobbying Congress against the Disclosure Bill, charging that it entails an unallowable prior restraint on First Amendment rights of free speech.⁸⁴ Both the ACLU and CACC believe that the Disclosure Bill, if passed, would require "pejorative labels to be affixed to constitutionally protected works,"⁸⁵ absent any compelling government interest to overcome the strong presumption against restraints on speech. Although the Supreme Court recognizes that motion pictures fall within the ambit of free speech,⁸⁶ it has upheld statutes requiring similar labeling of films as constitutionally permissible.⁸⁷ Favoring public disclosure through the use of labels, the Court in *Meese v. Keene* noted that the disseminator of the labeled films could minimize any risk of deterring film viewers by including additional statements regarding the "quality" of the motion picture, such as "Academy Award Winner."⁸⁸

While the Court has overturned other labeling classifications of motion pictures as unconstitutional prior restraints, those cases generally arose after an administrative review process.⁸⁹ The Disclosure Bill, however, mandates no administrative review of altered films prior to distribution, but places the burden on the person who instigates the alteration to notify the artist who may then impose the labeling requirement.

The Disclosure Bill was also attacked by the former Bush Administration, which termed it a regulatory bill that was inconsistent with the Administration's policy of reducing governmental burdens on U.S. industry.⁹⁰ Absent evidence that the public was being harmed or was not aware that films are being technically altered, the Bush Administration did not support the Disclosure Bill.⁹¹ Some legislators further argue that moral rights should be left to contract negotiations between directors and producers rather than in mandatory statutory form.⁹²

IMPACT OF THE DISCLOSURE BILL

If the Disclosure Bill is enacted, the impact on motion picture artists would be significant as they would be allowed the minimal right to object to alterations of their works. However, the effect the Bill would have on the remainder of the industry arguably would be minimal. Under the terms of the Bill, the labeling requirement will not apply retroactively, thereby exempting colorization or other alterations made prior to its passage.⁹³ Films altered subsequent

to the Bill's enactment will be required to carry a label noting the changes, but only if the film's author demands a label within thirty-days after his or her notification.⁹⁴ The artist may not withhold consent, however he may seek an injunction to prevent the violation of his artistic rights⁹⁵ if the distributor has failed to make a good faith effort to ascertain the artist's objections prior to releasing an altered film version.⁹⁶

Arguably, the impact on the American viewing public will be slight. Although they will receive the benefit of full disclosure, most consumers do not "feel wronged" by altered movies as evidenced by the \$11 billion home video market.⁹⁷ It is unlikely viewing audiences will be deterred from watching a film that carries a label noting a technical alteration that, with the exception of colorization, is usually imperceptible to the average viewer.

CONCLUSION

The National Film Preservation Act and the Disclosure Bill would seem to be natural complements of each other by ensuring public awareness of the existence of original film versions. However, because motion pictures can regenerate economic profits with each technical transformation, movie producers are unwilling to grant a film artist the rights to preserve his or her original work in its original format. Arguably, neither the American viewing public nor the movie industry will be harmed by labeling. Rather, the viewing audience will have the option of selecting the movie in its original format or in an altered format. Thus, the passage of the Disclosure Bill would provide the motion picture artist with a small claim to his own artistic rights. And while the motion picture industry producers and distributors may suffer a de minimus inconvenience, the labeling requirement of the Disclosure Bill should not diminish the public's continued interest and enjoyment of this truly American art form.

Leslie A. Morse

1. National Film Preservation Act of 1992, Pub. L. No. 102-307, 106 Stat. 264 (signed June 26, 1992) (to be codified as 2 U.S.C. §§ 179-179k).

2. 2 U.S.C. § 178(1-2) (1988) (repealed).

3. 106 Stat. at 268 (to be codified as 2 U.S.C. § 179).

4. Author's Note: For purposes of this article, "film artist" is defined as a director, screenwriter, or cinematographer of a motion picture. See also S. 2256, 102nd Cong., 2nd Sess. § 3(c)(5)(B) (1992) (Film Disclosure Act of 1992).

5. National Film Preservation Act of 1988, 2 U.S.C. § 178c (1988) (The National Film Preservation Act of 1988, 2 U.S.C. §§ 178-178l, was repealed September 26, 1992 by the new Preservation Act 2 U.S.C.A. §§ 179-179k (West Supp. 1992)).

6. S. 2256, 102nd Cong., 2nd Sess. (1992); introduced Feb. 25, 1992 by Senator Simpson (R-Wyo) and Senator Metzenbaum (D-Ohio); H.R. 5868, 102nd Cong., 2nd Sess. (1992); introduced Aug. 19, 1992 by Representative Mrazek (D-NY). Author's Note: Neither S. 2256 or H.R. 5868 were passed prior to the closing of the 102nd Congress. As of press time, there has been no public statement by

any congressional representative assuring the reintroduction of the Disclosure Act in the new session.

7. S. 2256, *supra* note 4, at § 3. Author's Note: S. 2256 and H.R. 5868 are textually identical, therefore citations to the Disclosure Bill in this article will be made to S. 2256 only.

8. The provisions of the original National Film Preservation Act of 1988 expired September 27, 1991. H.R. Rep. No. 379 (Part I), 102nd Cong., 1st Sess. 14 (November 25, 1991).

9. 2 U.S.C. § 178c (repealed).

10. 2 U.S.C. § 178b(a)(2)(C) (repealed). Films eligible for selection included training films, educational films, and films deemed to be "historically significant." *See generally* 2 U.S.C. § 178 (repealed).

11. 2 U.S.C. § 178g(1) (repealed). The National Film Preservation Board membership will include, *inter alia*: The Academy of Motion Picture Arts and Sciences; the Directors Guild of America; the Writers Guild of America; the American Film Institute; the Department of Theater, Film and Television of the College of Fine Arts at the University of California, Los Angeles; and the Screen Actors Guild of America.

12. 2 U.S.C. § 178g(c)(1) (repealed).

13. 2 U.S.C. § 178c(a) (repealed). *See also Bush Signs National Film Preservation Act into Law*, THE ENT. LITIG. REP., Aug. 10, 1992, Legislation Section.

14. 2 U.S.C. § 178c(d)(1)(A) (repealed).

15. 2 U.S.C. § 178b(a)(2)(B) (repealed).

16. 2 U.S.C. § 178j(a)(5) (repealed).

17. 2 U.S.C. § 178j(b)(5) (repealed).

18. 2 U.S.C. § 178d(1-2) (repealed).

19. 2 U.S.C. § 178c(a-b) (repealed).

20. 2 U.S.C. § 178e(b)(1-2) (repealed).

21. 106 Stat. at 270, *see supra* note 5.

22. ENT. LITIG. REP., *supra* note 13, at Legislation Section.

23. 106 Stat. at 267, § 203(a)(B) (1992) (to be codified as 2 U.S.C. 179a). It is estimated that one-half of all feature films produced in the U.S. prior to 1951 and eighty percent of all silent films have been lost to deterioration. S. Rep. No. 194, 102nd Cong., 1st Sess. 7 (October 22, 1991). Currently, the Library of Congress is responsible for approximately one-half of all film preservation in the United States. *Id.* at 9.

24. 106 Stat. at 267, § 203(b)(B) (1992) (to be codified at 2 U.S.C. § 179a).

25. Two members-at-large will also be included. 106 Stat. at 269, § 204(a)(1) (1992) (to be codified as 2 U.S.C. § 179b).

26. 106 Stat. at 268, § 203(b)(1)(E) (1992) (to be codified as 2 U.S.C. § 179a).

27. Among the films included in the National Film Registry Collection are favorites such as: *The Best Years of Our Lives*; *Casablanca*; *The Crowd*; *Dr. Strangelove*; *The Godfather*; *Gone with the Wind*; *Gigi*; *The Grapes of Wrath*; *High Noon*; *It's a Wonderful Life*; *King Kong*; *Lawrence of Arabia*; *The Maltese Falcon*; *Mr. Smith Goes to Washington*; *On the Waterfront*; *Rebel Without a Cause*; *Singin' in the Rain*; *Snow White*; *Some Like it Hot*; *Star Wars*; *Vertigo*; *The Wizard of Oz*; 2001. Gary Arnold, *Four More Years (and 100 Movies) for Film Registry*, THE WASH. TIMES, August 3, 1992 at D4.

28. 106 Stat. at 270, § 206(b) (1992) (to be codified as 2 U.S.C. § 179d).

29. 106 Stat. at 271, § 207(a)(1) & (2) (1992) (to be codified as 2 U.S.C. § 179e).

30. 106 Stat. at 271, § 208(b)(1) & (2) (1992) (to be codified at 2 U.S.C. § 179f).

31. S. Rep. No. 194 at 9, *see supra* note 23. Some Board members advocated a narrow interpretation of materially altered, arguing that the "reasonable requirements of distribution" provision exempted the majority of technical alterations made to films in post-production stages.

32. *See* H.R. Rep. No. 379 (Part I), *supra* note 8, at 15 n.20.

33. *See* S. Rep. No. 194, *supra* note 23, at 11.

34. *Id.* Billington believed that viewers and others in the motion picture industry could better judge the benefit or harm caused to a film by alteration than could the Librarian.

35. *Id.* at 9.

36. Visual Artists' Rights Act of 1991, 17 U.S.C.A. § 106A (West 1977 & Supp. 1992), generally §§ 301, 411, 412, 501, 506. VARA grants only limited rights of integrity and attribution to painters, sculptors and photographers. Motion pictures are specifically excluded from VARA protection, *see* 17 U.S.C. §106A(c)(3).

37. Jeffrey L. Graubart, *U.S. Moral Rights: Fact or Fiction?*, N.Y.L.J., Aug. 7, 1992 at 5.

38. *Filmmakers Apply More Pressure for Film Labeling Law*, VIDEO WEEK, Sept. 28, 1992, at 4.

39. Matthew Marshall, *Filmmakers Testify for Movie Labeling*, L.A. TIMES, March 6, 1992, § F at 6.

40. If enacted, the Disclosure Act would grant motion picture artists the right of integrity which prevents the mutilation or modification of a work that would prejudice the work or the artist's reputation. *See infra* note 46. VARA recognizes the right of integrity as well as the right of attribution in painters, sculptors and photographers. *See supra* note 36.

41. A motion picture is specifically defined under U.S. copyright law as a "work for hire." 17 U.S.C. § 101(2) (1988).

42. The work for hire doctrine expressly states, "[The] person for whom the work was prepared is considered the author.... and unless the parties have expressly agreed otherwise... owns all of the rights comprised in the copyright." 17 U.S.C.A. §201(b) (West 1977 & Supp. 1992), *see also* Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989) (to determine if work is a "work for hire," the court applied general common law principles of agency prior to applying statutory definition).

43. Marshall, *supra* note 39.

44. *Id.*

45. Graubart, *supra* note 37.

46. Convention for the Protection of Literature and Artistic Works (Berne Convention), signed Sept. 9, 1986 at Art. 6bis (1). The Berne Convention provides parameters for defining an artist's moral rights as separate from the artist's economic rights. Under the terms of the Berne Convention, "the author [has] 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 said work, which would be prejudicial to his honor and reputation."

47. *Id.* The right of attribution is an artist's prerogative to be identified as the creator of a particular work or conversely to disclaim authorship. The right of integrity (sought to be protected under the Disclosure Bill) prevents the mutilation or modification of a work in such a way that would prejudice the work of the professional honor and reputation of the artist. The right of divulgation grants the artist the right to withhold a work until he determines when, where and if it should be released to the public. Finally, Berne Convention recognizes the right of an artist to modify his own work before or after it has been originally released, and the right to withdraw a work from public access altogether.

48. *Id.*

49. 2 Nimmer on Copyright § 8.21[A] (1992). The United States became a signatory to the convention Oct. 31, 1988, *see* Pub. L. No. 100-568. Selected provisions of the Berne Convention have been codified into U.S. copyright law at 17 U.S.C. § 101.

50. *Id.* However, early stirring of moral rights in the United States are apparent in the statutes of eleven states that have enacted some form of protection for artists' moral rights. 2 Nimmer on Copyright § 8.21[B]. States that have enacted laws protecting the rights of integrity and attribution for visual artists include, among others, California (California Art Preservation Act, Cal. Civ. Code §§ 980-990); New York (New York Artists' Authorship Rights Act, New York Arts and Cultural Affairs Law, Art. 11-14); and Illinois (Ill. Code Ann. Ch. 121 1/2 ¶¶ 1401-1408). *Id.* at § 8.21[G].

51. Roberta Rosenthal Kwall, *Copyrights and the Moral Rights: Is an American Marriage Possible?*, 38 VAND. L. REV. 1, n.67 (1985). Unlike countries which have adopted the full moral rights provisions under the Berne Convention that will read such rights into contracts absent an express waiver, U.S. courts presume moral rights are waived unless expressly provided for in a contract. Kwall at 14.