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 maritime industry 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.

Signed at Washington, DC, on January 13, 2017.

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 *kisb@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.[1] 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.[2] 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.[3] The current text of article 6*bis*(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.''[4]

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.

[2] *See* Sam Ricketson & Jane C. Ginsburg, International Copyright and Neighboring Rights: The Berne Convention and Beyond ¶¶ 10.03–.04, at 587–89 (2d ed. 2006).

[3] *See* Mihály Ficsor, World Intellectual Property Organization, Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms ¶ BC-6*bis,* at 44 (2003).

[4] Berne Convention for the Protection of Literary and Artistic Works art. 6*bis*(1), Sept. 9, 1886, *as revised* July 24, 1971, *and as amended* Sept. 28, 1979, S. Treaty Doc. No. 99–27 (1986).

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 commencing 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 6*bis'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 6*bis.*[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 6*bis* 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]

[5] Berne Convention Implementation Act of 1988, Public Law 100–568, 102 Stat. 2853 (''BCIA'').

[6] *See* discussion on the BCIA *infra* notes 15–23 and accompanying text.

[7] *See Moral Rights, Termination Rights, Resale Royalty, and Copyright Term: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary,* 113th Cong. (2014) (''*Moral Rights Hearing*'').

[8] *Moral Rights Hearing* at 4.

[9] *Id.*

[10] *Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary,* 114th Cong. 34–35 (2015) (written statement of Maria A. Pallante, Register of Copyrights and Dir., U.S. Copyright Office) (''*Register's Perspective Hearing*'').

[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.

[13] *See* William Strauss, *Study No. 4: The Moral Right of the Author* (1959), *in* Staff of S. Comm. on the Judiciary, 86th Cong., Copyright Law Revision: Studies Prepared for the Subcomm. on Patents, Trademarks, and Copyrights of the Comm. on the Judiciary, United States Senate: Studies 1–4, at 109 (Comm. Print 1960).

[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.

[15] H.R. Rep. No. 100–609, at 33 (1988).

[16] *See* S. Rep. No. 100–352, at 6 (1988); H.R. Rep. No. 100–609, at 33 (1988).

[17] *See* H.R. Rep. No. 100–609, at 37 (1988); S. Rep. No. 100–352, at 10 (1988); *see also* Letter from Dr. Árpád Bogsch, Dir. Gen., World Intellectual Prop. Org., to Irwin Karp, Esq. (June 16, 1987), *reprinted in Berne Convention Implementation Act of 1987: Hearing on H.R. 1623 Before the Subcomm. on Courts, Civil Liberties & the Admin. of Justice of the H. Comm. on the Judiciary,* 100th Cong. 213 (1987) (''In my view, it is not necessary for the United States of America to enact statutory provisions on moral rights in order to comply with Article 6*bis* of the Berne Convention. The requirements under this Article can be fulfilled not only by statutory provisions in a copyright statute but also by common law and other statutes.'').

[18] *See* S. Rep. No. 100–352, at 9–10 (1988); H.R. Rep. No. 100–609, at 37–38 (1988); *see also S. Exec. Rep. No.* 100–17, at 55 (1988) (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.'').

[19] *See* 15 U.S.C. 1125(a).

[20] *See* 17 U.S.C. 106(2).

[21] *See* 17 U.S.C. 115(a)(2).

[22] *See* 17 U.S.C. 203.

[23] *See* H.R. Rep. No. 100–609, at 34 (1988). 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.

[24] Visual Artists Rights Act (VARA) of 1990, Public Law 101–650, 104 Stat. 5128–29 (codified at 17 U.S.C. 106A). In the Report accompanying H.R. 2690 (Visual Artists Rights Act of 1990), the House Judiciary provided background information on the Berne Convention and moral rights, noting that the

Continued

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.[25] In contrast to how moral rights were often adopted elsewhere, with VARA, Congress identified specific instances in which the limited rights could be waived.[26] As part of the legislation, Congress also directed the Copyright Office to conduct studies on the VARA waiver provision and also on resale royalties.[27]

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.[28] 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.[29]

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 foreclosed some attribution claims under section 43(a) of the Lanham Act.[30] The Court unanimously rejected an interpretation of section 43(a) that would ''require attribution of uncopyrighted materials.'' [31] 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.' '' [32] 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.[33] 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.'' [34]

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.[35] In contrast, some scholars have argued that the Court did not write federal trademark and unfair competition law out of the patchwork entirely.[36]

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 6*bis*.[37] 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.[38] Furthermore, both the WCT and the WPPT include new obligations concerning rights management information (RMI).[39] These provisions protect new means of identifying and protecting works while also helping protect the rights of attribution and integrity.[40]

The United States implemented its WCT and WPPT obligations via enactment of the 1998 Digital Millennium Copyright Act (''DMCA''),[41] and signed as a contracting party to both treaties in 1999, three years before the

Congress at the time of the BCIA agreed that existing federal and state laws were sufficient to comply with the Berne Convention requirements, but that ''adherence to the Berne Convention did not end the debate about whether the United States should adopt artists' rights laws, and the Subcommittee on Courts, Intellectual Property, and the Administration of Justice continued its review of the issue in [hearings held] in June.'' H.R. Rep. No. 101–514, at 8 (1990). Congress cited the ''critical factual and legal differences in the way visual arts and audiovisual works are created and disseminated'' in support of providing additional protections for visual artists. H.R. Rep. No. 101–514, at 9 (1990).

[25] *See* 17 U.S.C. 101 (definition of a ''work of visual art''); § 106A(a)(1) (providing for the right of attribution); § 106A(a)(3) (providing for the right of integrity). Section 604 of VARA, codified at 17 U.S.C. 113, created special rules for removal of works visual art incorporated into buildings. Unlike Berne's article 6*bis,* VARA's protections only apply to works of visual art.

[26] *See* H.R. Rep. No. 101–514, at 18 (1990). VARA permits authors to waive these rights only if expressly agreed in a written instrument signed by the author. *See* 17 U.S.C. 106A(e).

[27] *See* Visual Artists Rights Act of 1990, Public Law 101–650, 608, 104 Stat. 5128, 5132 (1990). The Copyright Office's 1992 study concluded there was insufficient economic and copyright policy justification to establish *droit de suite* in the United States. *See* U.S. Copyright Office, Droit De Suite: The Artist's Resale Royalty xv (1992), *http://www.copyright.gov/history/droit_de_suite.pdf.* In 2013, the Copyright Office responded to a congressional request and issued a second report which examined the changes in law and practice regarding resale royalties, in both the United States and abroad, since the 1992 report. *See U.S. Copyright Office, Resale Royalties: An Updated Analysis* (2013), *http://www.copyright.gov/docs/resaleroyalty/usco-resaleroyalty.pdf.*

[28] *See* U. S. Copyright Office, Waiver of Moral Rights in Visual Artworks: Final Report of the Register of Copyrights xiii, 186 (1996), *https://www.copyright.gov/reports/waiver-moral-rights-visual-artworks.pdf* (''Waiver of Moral Rights'').

[29] Waiver of Moral Rights at 183.

[30] 539 U.S. 23 (2003). *Dastar* involved the distribution of an edited version of a 1949 broadcast to which Twentieth Century Fox had owned the copyright but which it failed to renew, placing the work in the public domain. Dastar distributed copies of the edited series listing Dastar and its subsidiary as the producer and distributor of the edited work, rather than Fox. Fox sued for reverse passing off, claiming Dastar violated section 43(a) of the Lanham Act's prohibition against false designation of origin.

[31] *Id.* at 35.

[32] *Id.*at 34.

[33] *See id.* at 31–32.

[34] *Id.* at 34 (internal quote marks omitted). The Supreme Court left open the possibility of a Lanham Act claim under section 43(a)(1)(B) where, in advertising for a copied work of authorship, the copier ''misrepresents the nature, characteristics [or] qualities'' of the work. *Id.* at 38.

[35] *See, e.g., Kehoe Component Sales Inc.* v. *Best Lighting Prods., Inc.,* 796 F.3d 576, 587 (6th Cir. 2015); *Gen. Universal Sys., Inc.* v. *Lee,* 379 F.3d 131, 148–49 (5th Cir. 2004); *Zyla* v. *Wadsworth,* 360 F.3d 243, 251–52 (1st Cir. 2004); *Carroll* v. *Kahn,* No. 03–CV–0656, 2003 WL 22327299, at *5–6 (N.D.N.Y. Oct. 9, 2003).

[36] *See, e.g.,* Jane C. Ginsburg, *Moral Rights in the U.S.: Still in Need of a* Guardian Ad Litem, 30 Cardozo Arts & Ent. L.J. 73, 83–87 (2012); Justin Hughes, *American Moral Rights and Fixing the* Dastar ''*Gap,*'' 2007 Utah L. Rev. 659 (2007). At least one commenter has argued that not only do section 43(a)(1)(B) claims survive *Dastar,* but so do some section 43(a)(1)(A) claims. *See* Hughes at 692–95.

[37] *See* WIPO Copyright Treaty art. 1(4), Dec. 20, 1996, 2186 U.N.T.S. 121 (''WCT''); *see also Summary of the WIPO Copyright Treaty (WCT) (1996),* WIPO, *http://www.wipo.int/treaties/en/ip/wct/summary_wct.html.*

[38] *See* WIPO Performances and Phonograms Treaty art. 5(1), Dec. 20, 1996, 2186 U.N.T.S. 203 (''WPPT''). Like the Berne Convention, the WPPT provides that the duration of protection shall be at least for the term of economic rights and shall be governed by national law. WPPT arts. 5(2)–(3).

[39] *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.

[40] *See* J. Carlos Fernádez-Molina & Eduardo Peis, *The Moral Rights of Authors in the Age of Digital Information,* 52 J. Am. Soc'y for Info. Sci. & Tech. 109, 112 (2001) (explaining how the WIPO Internet Treaties' rights management information provisions fit within the treaties and also are useful in protecting moral rights).

[41] Digital Millennium Copyright Act (DMCA), Public Law 105–304, 103 122 Stat. 2860, 2863–76 (1998) (codified as amended at 17 U.S.C. 1201–1205). The WIPO Internet Treaties were submitted to Congress for advice and consent the previous year, and the Senate voted to approve the Treaties shortly before passage of the DMCA. *See* S. Treaty Doc. No. 105-17 (1997); 105 Cong. Rec. S12,972–73 (daily ed. Oct. 21, 1998).

treaties entered into force.[42] Congress added a new chapter 12 to title 17, which contained two new provisions to implement the treaties—section 1201, which addresses technological protection measures, and section 1202, which protects rights management information (called copyright management information in U.S. law)[43]—but did not make any additional changes, finding that ''[t]he treaties do not require any change in the substance of copyright rights or exceptions in U.S. law.''[44]

Section 1202 includes prohibitions on both providing false copyright management information (''CMI''), and removing or altering CMI.[45] In addition to facilitating the administration of an author's or right holder's economic rights, the CMI protections afforded by section 1202 may have implications for authors' protection and enforcement of their moral rights.[46] However, two aspects of section 1202 may limit its usefulness as a mechanism to protect an author's moral rights. First, to be liable under section 1202, a person who removes copyright management information must know both that they have caused its removal and that such removal is likely to cause others to infringe the work.[47] Second, while most 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 its various 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]

---

[42] *See WCT Notification No. 10: WIPO Copyright Treaty: Ratification by the United States of America,* WIPO (Sept. 14, 1999), *available at http://www.wipo.int/treaties/en/notifications/wct/treaty_wct_10.html; WPPT Notification No. 8: WIPO Performances and Phonograms Treaty: Ratification by the United States of America,* WIPO (Sept. 14, 1999), *available at http://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_8.html.*

[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 explicitly carves out federal and state laws affecting Internet privacy. 17 U.S.C. §§ 1203–1205.

[44] H.R. Rep. No. 105-551, pt. 1, at 9 (1998).

[45] The term ''copyright management information'' in the Copyright Act is seen as a synonymous term for ''rights management information'' as used in the WCT and WPPT. *See* S. Rep. No. 105–190, at 11 n.18 (1998) (''Rights management information is more commonly referred to in the U.S. as copyright management information (CMI).'').

[46] Section 1202 makes it an offense to ''intentionally remove or alter any copyright management information,'' which includes the name of a work's author. 17 U.S.C. §§ 1202(b)(1), (c)(2). *See* Jane C. Ginsburg, *Have Moral Rights Come of (Digital) Age in the United States?,* 19 Cardozo Arts & Ent. L.J. 9, 11 (2001) (''The DMCA may contain the seeds of a more general attribution right. . . .''); *see also* Greg Lastowka, *Digital Attribution: Copyright and the Right to Credit,* 87 B.U. L. Rev. 41, 69–73 (2007).

[47] *See* 17 U.S.C. 1202(a)–(b); *see also Stevens* v. *Corelogic,* No. 14-cv-1158, 2016 WL 4371549, at *5, 6 (S.D. Cal. July 1, 2016) (''Under § 1202(b)(1), Plaintiffs must present evidence that [defendant] intentionally removed or altered CMI. . . . '' and ''[a]lthough Plaintiffs need not show actual infringement, the fact that there was none is relevant to Plaintiffs' burden to show that [defendant] had a reasonable ground to believe it was likely to happen.'').

[48] *Compare Murphy* v. *Millennium Radio Grp. LLC,* 650 F.3d 295, 305 (3d Cir. 2011) (rejecting argument that the definition of CMI under section 1202 is ''restricted to the context of 'automated copyright protection or management systems' ''), *and Williams* v. *Cavalli S.p.A.,* No. CV 14–06659–AB (JEMx), 2015 WL 1247065, at *3 (C.D. Cal. Feb. 12, 2015) (holding that ''[t]he plain meaning of § 1202 indicates that CMI can include non-digital copyright information''), *and Leveyfilm, Inc.* v. *Fox Sports Interactive Media, LLC,* 999 F. Supp. 2d 1098, 1101–02 (N.D. Ill. 2014) (noting that the majority of courts have rejected a requirement for CMI to be digital under section 1202), *and Fox* v. *Hildebrand,* No. CV 09–2085 DSF (VBKx), 2009 WL 1977996, at *3 (C.D. Cal. July 1, 2009) (''The plain language of the statute indicates that the DMCA provision at issue is not limited to copyright notices that are digitally placed on a work.''), *with Textile Secrets Int'l Inc.* v. *Ya-Ya Brand Inc.,* 524 F. Supp. 2d 1184, 1201 (C.D. Cal. 2007) (''[T]he Court [] cannot find that the provision was intended to apply to circumstances that have no relation to the Internet, electronic commerce, automated copyright protections or management systems, public registers, or other technological measures or processes as contemplated in the DMCA as a whole.''), *and IQ Grp., Ltd.* v. *Wiesner Publ'g, LLC,* 409 F. Supp. 2d 587, 597 (D.N.J. 2006) (holding that ''[t]o come within § 1202, the information removed must function as a component of an automated copyright protection or management system''). The majority position seems to accord with statements from the legislative history. *See, e.g.,* S. Rep. No. 105–190, at 16 (1998) (''CMI need not be in digital form, but CMI in digital form is expressly included.'').

[49] *See* Waiver of Moral Rights at 53.

[50] *See* Waiver of Moral Rights at 47–51, 53.

[51] *See* Performances (Moral Rights, etc.) Regulations 2006, SI 2006/18, arts. 5–6 (UK).

[52] *See* Beijing Treaty on Audiovisual Performances, June 24, 2012, 51 I.L.M. 1214 (2012) (''Beijing Treaty'').

[53] *See* Beijing Treaty art. 5 (''Moral Rights''), art. 16 (''Obligations Concerning Rights Management Information''). Negotiations to conclude this treaty took more than a decade, with a major point of contention involving the provision on contractual transfers. *See* Beijing Treaty art. 12; *see also* Press Release, WIPO, WIPO Diplomatic Conference Opens in Beijing to Conclude Treaty on Performers' Rights in Audiovisual Productions, WIPO Press Release PR/2012/713 (June 20, 2012), *available at http://www.wipo.int/pressroom/en/articles/2012/article_0012.html* (noting that as far back as the year 2000 negotiators could not agree on the issue involving transfer of rights, and a breakthrough compromise occurred in June 2011). This treaty has not yet entered into force, and the United States has not yet ratified it. The Obama Administration has submitted a legislative package to Congress in support of U.S. implementation of the Beijing Treaty. *See* Letter from Michelle K. Lee, Under Sec'y Commerce for Intellectual Prop. & Dir., U.S. Patent & Trademark Office, to Joseph R. Biden, President of the Senate (Feb. 26, 2016), *available at http://www.uspto.gov/sites/default/files/documents/Beijing-treaty-package.pdf* (treaty implementation package for the Beijing Treaty on Audiovisual Performances which includes a transmittal letter, Beijing Treaty Implementation Act of 2016, and Statement of Purpose and Need and Sectional Analysis).

[54] Founded in 2001, Creative Commons offers various open source content licenses. *Creative Commons Project,* Cover Pages (Aug. 22, 2008), *http://xml.coverpages.org/creativeCommons.html.* These types of licenses were held to be governed by copyright law rather than contract law in

Continued

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,[56] while, 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

Jacobsen v. *Katzer,* 535 F.3d 1373, 1380–83 (Fed. Cir. 2008).

[55] Creative Commons, *https://creativecommons.org/* (last visited Jan. 5, 2017) (''1.1 billion works and counting.'').

[56] For example, the PLUS Coalition has created an image rights language to allow for global communication of image rights information, and it is currently developing an image registry that will function as a hub connecting registries worldwide and providing both literal and image-based searches. PLUS Coalition, Comments Submitted in Response to U.S. Copyright Office's Apr. 24, 2015 Notice of Inquiry (Visual Works Study) at 1 (July 22, 2015) (noting that the Coalition'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'').

[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's Apr. 24, 2015 Notice of Inquiry (Visual Works Study) at 2 (July 23, 2015) (''Rights metadata that includes author attribution and source information would [ ] facilitate subsequent re-uses of visual works while at the same time support the interests of legitimate copyright owners.'').

[58] The Office co-hosted this symposium with the George Mason University School of Law and its Center for the Protection of Intellectual Property. Videos of the proceedings can be accessed on the U.S. Copyright Office Web site event page at *http://www.copyright.gov/events/moralrights/.* The official transcript has been published by the *George Mason Journal of International Commercial Law. See* Symposium, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States,* 8 Geo. Mason J. Int'l Com. L. 1 (2016), available at *http://www.georgemasonjicl.org/wp-content/uploads/2016/08/Summer-Issue-2016.pdf.*

[59] *See Session 4: The Importance of Moral Rights to Authors,* 8 Geo. Mason J. Int'l Com. L. 87, 90 (2016).

[60] *See Session 1: Overview of Moral Rights,* 8 Geo. Mason J. Int'l Com. L. 7 (2016).

[61] *See, e.g.,* Jane C. Ginsburg, Keynote Address, *The Most Moral of Rights: The Right to be Recognized as the Author of One's Work,* 8 Geo. Mason J. Int'l Com. L. 44, 48, 60–72 (2016); *Session 4: The Importance of Moral Rights to Authors,* 8 Geo. Mason J. Int'l Com. L. 87, 91–93 (2016) (comments of Yoko Miyashita, Getty Images).

[62] *See* Jane C. Ginsburg, *Keynote Address: The Most Moral of Rights: The Right to be Recognized as the Author of One's Work,* 8 Geo. Mason J. Int'l Com. L. 44, 72–81 (2016).

[63] *See, e.g., Session 2: The U.S. Perspective,* 8 Geo. Mason J. Int'l Com. L. 26, 30–34 (2016) (remarks of Duncan Crabtree-Ireland, SAG–AFTRA, & Peter K. Yu, Tex. A&M Univ. Sch. of Law); *Session 6: New Ways to Disseminate Content and the Impact on Moral Rights,* 8 Geo. Mason J. Int'l Com. L. 125, 139 (2016) (remarks of Stanley Pierre-Louis, Entm't Software Ass'n).

[64] *See Session 5: The Intersection of Moral Rights and Other Laws,* 8 Geo. Mason J. Int'l Com. L. 106, 119–20 (2016) (remarks of Paul Alan Levy, Pub. Citizen).

[65] *See Session 2: The U.S. Perspective,* 8 Geo. Mason J. Int'l Com. L. 26, 27–29 (2016) (remarks of Allan Adler, Ass'n of Am. Publishers (''AAP'')) (noting that the testimony of AAP at the 2014 hearing ''raise[d] the threshold policy question of 'whether to superimpose vague, subjective, and wholly unpredictable new rights upon a longstanding balanced and successful copyright system.''').

[66] *See Session 2: The U.S. Perspective,* 8 Geo. Mason J. Int'l Com. L. 26, 30 (2016) (remarks of Duncan Crabtree-Ireland, SAG–AFTRA).

[67] *See, e.g.,* Jane C. Ginsburg, Keynote Address, *The Most Moral of Rights: The Right to be Recognized as the Author of One's Work,* 8 Geo. Mason J. Int'l Com. L. 44, 53 (2016); *Session 5: The Intersection of Moral Rights and Other Laws,* 8 Geo. Mason J. Int'l Com. L. 106, 107–10, 113–14 (2016) (remarks of Sonya G. Bonneau, Geo. Univ. Law Ctr.; Eugene Mopsik, Am. Photographic Artists; & Nancy E. Wolff, Cowan, DeBaets, Abrahams & Sheppard LLP).

[68] *See Session 5: The Intersection of Moral Rights and Other Laws,* 8 Geo. Mason J. Int'l Com. L. 106, 110 (2016) (remarks of Eugene Mopsik, Am. Photographic Artists).

[69] *See Session 4: The Importance of Moral Rights to Authors,* 8 Geo. Mason J. Int'l Com. L. 87, 92 (2016) (remarks of Yoko Miyashita, Getty Images).

[70] *Session 7: Where Do We Go From Here?,* 8 Geo. Mason J. Int'l Com. L. 142, 147 (2016) (remarks of Mira Sundara Rajan, Univ. of Glasgow Sch. of Law).

[71] *See Session 1: Overview of Moral Rights,* 8 Geo. Mason J. Int'l Com. L. 7, 15 (2016) (remarks of Daniel Gervais, Vand. Law Sch.).

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

Dated: January 13, 2017.

Karyn Temple Claggett,

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

[Docket Nos. 17–0008–CRB–AU and 17–0009–CRB–AU]

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.*

SUMMARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to copyright owners of sound recordings the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114 which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms set for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by eligible nonsubscription services such as broadcasters and with distributing the royalties to copyright owners and performers entitled to receive them. *See* 37 CFR 380.33(b)(1).

As the designated Collective, SoundExchange may, once during a calendar year, conduct an audit of a licensee for any or all of the prior three years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See* 37 CFR 380.35.

On December 22, 2016, SoundExchange filed with the Judges notices of intent to audit licensee broadcasters Cox Radio, Inc., and Hubbard Broadcasting, Inc., for 2013–15. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.35(c). Today's notice fulfills this requirement with respect to SoundExchange's December 22, 2016 notices of intent to audit.

Dated: January 13, 2017.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

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

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 17–0004–CRB–AU, 17–0007–CRB–AU, and 17–0010–CRB–AU]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of three notices of intent to audit the 2013, 2014, and 2015 statements of account submitted by commercial webcasters Radionomy (Docket No. 17–CRB–0004–AU), IMVU, Inc. (Docket No. 17–CRB–0007–AU),