CATHERINE L. FISK

writing for hire

Unions, Hollywood, and Madison Avenue

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Contents

Abbreviations Used in the Text

AAA	American Authors Authority
AAAA	American Association of Advertising Agencies
ABA	American Bar Association
ABC	American Broadcasting Corporation
AFL	American Federation of Labor
AFM	American Federation of Musicians
AFTRA	American Federation of Television and Radio Artists
AMPTP	Alliance of Motion Picture and Television Producers
ASCAP	American Society of Composers, Authors, and Publishers
BBD&O	Baton, Barton, Durstine & Osborn advertising agency
BMI	Broadcast Music, Inc.
CBS	Columbia Broadcasting System
DGA	Directors Guild of America
FCC	Federal Communications Commission
HUAC	House Un-American Activities Committee
IP	Intellectual property
JWT	J. Walter Thompson advertising agency
MBA	Minimum Basic Agreement
NABET	National Association of Broadcasting Employees and Technicians
NBC	National Broadcasting Company
NLRA	National Labor Relations Act

NLRB	National Labor Relations Board
RKO	Radio Keith Orpheum
RWG	Radio Writers Guild
SAG	Screen Actors Guild
SP	Screen Playwrights
SWG	Screen Writers Guild
WGA	Writers Guild of America
WGAW	Writers Guild of America – West

WRITING FOR HIRE

Introduction

Written By: The Law and Norms of Attribution

> [P]erhaps the ghost-writer is among the honest literary men; in him alienation from work reaches the final point of complete lack of public responsibility.
>
> —C. Wright Mills, *White Collar*

To be a writer is not the same thing as to be an author. Writers are people who write as a vocation, or at least as an avocation. (People around Hollywood today are prone to say that you can't say you're a writer until you sell your screenplay or get hired to write on a TV show.) But to be an author means something more—authors are writers who in either a legal or a colloquial sense own their work and are recognized as authors of their work. In law, and in popular understanding, when writers work for hire, they are often not authors of what they write: they don't own the work, they have no right to have it attributed to them, they can't prevent the owners from changing what they write, and they have what C. Wright Mills called a "complete lack of public responsibility" for their work. This book is a history of the thirty-year struggle of writers to become authors of film, television, and, briefly, radio. Through their union, Hollywood writers won some (but not all) of the rights of authors. And it is also the story of how and why advertising writers, who never formed a union, largely failed to wage that struggle at all.

In 1973, three Hollywood screenwriters each received a phone call from their union, the Writers Guild of America, which since 1938 has represented film

and television writers in collective negotiations with studios, production companies, and TV networks. The Guild's screen-credits administrator wanted to know if the three writers would be willing to serve as arbitrators of a dispute over screen credit for writing the screenplay of a movie that a major studio was to release shortly. Three writers and a producer-director had written various drafts of the screenplay, and one of the writers was upset that the studio proposed to eliminate him from the screen credits.

Under the collective bargaining agreements between the studios and the Writers Guild, the Directors Guild, and the Screen Actors Guild, credits appear at the beginning of the movie, superimposed over the opening scene or a title sequence. These credits appear in a defined order, usually beginning with the studio and the various production companies that financed the film, followed by the names of the actors in starring roles, individual producers, the cinematographer, and certain others (the editor, composer, and so forth). The credit for the director is always on the screen by itself (Directed by . . .) as the last credit before the action begins. The writing credit (Written by . . . or Screenplay by . . .) always appears on a screen by itself just before the director's credit and for the same amount of time, and it identifies no more than two or three people as writers of the film, even if many helped write it.

The request to arbitrate a dispute over screen credit was a perfectly ordinary one for established writers to receive, as the Writers Guild is required by the collective agreement to resolve disputes among the many writers hired to work on movies. As in every such arbitration, the Guild chose three experienced writers to read all the versions of the script to decide who made the most significant contributions to the script from which the movie was finally shot.

The arbiters did not think much of the movie. One thought it was unoriginal, jesting that credit should be given to the writer of a recent acclaimed film on a similar theme. Another noted that crediting four people as writers "wouldn't help any of them," except that each of them would get a small share of the profits "if it ever gets on TV" (which the arbiter seemed to doubt). The third arbiter wondered "why anyone would want a credit on this picture, let alone why anybody would want to film it." The arbiters unanimously decided to grant credit to the production executive and the two-writer team. Acknowledging the likely disappointment of the writer who wrote the first two scripts and who would not get screen credit, one arbiter

said the writer should "not be anguished" because "to tell the absolute, honest-to-God truth in confidence, I think he might be better off not to have his name on this."

The studio released the movie with writing credits as the arbiters decided. Audiences who paid attention saw superimposed over the action in the opening scene, "Written by X and Y & Z." Hollywood insiders would have known that the ampersand meant that Y and Z wrote as a team; the "and" meant that X wrote separately and probably wrote the first draft. (As a condition of being allowed to read dozens of credit arbitration files from the 1950s to the early 2000s, I promised not to mention the names of any films or people involved in the arbitrations.) Although the uncredited writer must have been disappointed, he could make no appeal and no legal claim to challenge the arbiters' decision.[1]

The arbiters were wrong about the movie. It was a hit with critics and audiences alike. It was profitable. It became an icon of the genre. It remains on many critics' lists of the top movies of the 1970s. One of the credited writers went on to a hugely successful career in the industry. Two others found moderate success. The uncredited writer did not. He had one credit prior to that movie and none since, which means his career as a Hollywood writer ended with that movie, and it probably ended because he did not get credit for writing it.

The studio owned the copyright in the film, and the studio is the legal author of the film and of the scripts and story outline upon which it was based. None of the writers owned the copyright in their script because, under the work-for-hire provision of the United States Copyright Act, "the employer is the author of a work made for hire."[2] Film critics and the public often describe the director as the author (in French, *auteur*) of a film.[3] This practice greatly irks writers, all the more so because most writers work in obscurity but create the basis for celebrity for directors and actors. As explained by screenwriter Charles Brackett—who won four Academy Awards for writing classic films in the 1940s and '50s, including *The Lost Weekend* (1945) and *Sunset Boulevard* (1950)—even a successful film writer will "never be familiar to the general public. Nobody will fight for your autograph. When you drive to the premier, the crowd in the bleachers will peer into your car and say, 'oh, that's nobody.'" In his 2006 manifesto *The Schreiber Theory: A Radical Rewrite of American Film History,* critic David Kipen, using the Yiddish word for author, argued

that treating the director as the author of a film is like treating a book's editor as its author. But in law, neither the *auteur* nor the *schreiber* matters; neither is the author of the work.[4]

The literature on copyright has drawn a distinction between authors and owners, at least since Mark Rose published his seminal history of copyright.[5] Rose shows how copyright law evolved in eighteenth-century Britain from a regime of censorship and licensing of publication (in which authors were publicly responsible for their work but not owners of it) to a regime that defined authors as the owners of works. American copyright defines an author as the owner, even when the owner did not write the work. So the distinction I wish to emphasize is the one between authors and writers. When my daughter was young, she won as first prize at a horse show a plaque saying, "You are the author of your own life story." To be an author, the plaque suggests, is to have the power and responsibility to create history. Film and TV writing is unique in American letters in having a worker-controlled process for deciding when a writer is an author, for deciding the meaning of authorship (authorship in the ordinary sense, not in the copyright ownership sense), and for compensating workers based on the union's own credit determinations. In so doing—and this is the first main argument of this book—the Writers Guild reclaims for writers some of the rights and responsibilities of authors, rights and responsibilities they lost under the copyright work-for-hire rule.

The collectively bargained Minimum Basic Agreement ("MBA") between the Writers Guild of America (WGA) and the Alliance of Motion Picture and Television Producers gives power to determine screen credit to the Guild. The credit rules are detailed in Schedule A, a thirty-page addendum to the MBA, and in the Screen Credits Manual, which the WGA drafts and WGA members vote to adopt. (A similar MBA with a similar Schedule A and credits manual apply to television writing, although credit arbitrations are rare because TV writers usually resolve credit disputes through informal negotiation.) These complex credit rules are the most detailed statement in American law of the meaning of authorship. They are drafted by a committee of WGA members appointed to represent film and TV writers who have differing viewpoints on the roles of the first writer, subsequent writers, and production executives and, from time to time, the entire WGA membership votes on changes to the credits rules.[6]

Disgruntled writers who believe the Guild's credit arbitration violated their rights rarely sue. While the Guild, like all labor unions, has a legal duty of fair representation to administer its contracts, including the credit system, fairly and competently, that legal duty simply requires the Guild to avoid arbitrary, invidiously discriminatory, or bad faith conduct; ordinary mistakes in credit arbitration do not violate the duty. And writers cannot sue the studio directly, for there is no provision in any individual writer's contract of hire or for sale of a script governing the allocation screen credit except a standard term stating that credit will be awarded per the WGA's minimum basic agreement with the studios. At the urging of the WGA's lawyers, courts have resisted every effort to add more searching judicial oversight to the union's administration of the credit system.[7] This situation requires everyone to take seriously the Guild's role in credit determinations, and it enables the Guild to make trade-offs among competing goals.

Credit and the intellectual property rights and compensation tied to it—especially residual payments (for reuse of the work, as when a theatrical movie is shown on TV, or for when a TV show is broadcast, streamed, or downloaded after the first exhibition) and separated rights (to write a novel, stage version, or a sequel based on the story and to reacquire the screenplay if it is not made into a movie within a stated term)—are established in the MBA, and they may not be negotiated in a writer's individual contract.[8] Writers have these rights because the founding Guild leaders spearheaded an effort in 1933 to secure writer ownership and profit participation. They were the most vocal and visionary proponents of writers becoming owners of their work, and when in the 1950s their efforts finally came to fruition, the credit system that was originally designed solely for attribution became a system that affects writers' compensation in very direct ways. The system depends on the WGA's fairness and rigor in administering credits. It took writers three decades of hard work between 1933 and 1960 to achieve this state of dominance in determining writing credits. This book is, in part, a history of that effort.[9]

A second main argument of this book is that the efforts of film and TV writers to gain legal rights as authors (some measure of ownership, creative control, and the credit or blame that goes with having one's name associated with a work) is a usable past, especially in the post-industrial, fissured economy of today.[10] By unionizing, this group of highly educated freelance writers was able to negotiate for control over who was recognized as an author of works

and for compensation that turned on that recognition. The survival and flourishing of unionization in this narrow sector of the American economy, especially in a sector that valorizes individual achievement, reminds us that collective representation of labor, even highly compensated labor, matters in post-industrial American capitalism. Writers unionized in Hollywood for good reasons, and they remained fairly militant unionists because they understood the power of collective action in the early version of the "gig economy" that was Hollywood. Although writers have always believed that talent is highly individual, and some have made millions while others barely scraped by, they united over their common issues and held their union together through tumultuous strikes, persecution of leftists, industry downsizing, and huge changes in the way that movies and TV are created and delivered.

A third argument of this book is that screen credit is a form of contractually created intellectual property. It is one of the very few forms of intellectual property in the modern economy that is designed by workers for workers and without the involvement of the corporations that control most intellectual property policy. Norms about attribution became rights once employees unionized. Critics of unions have lamented the tendency of unions to create and insist on adherence to rules, sometimes at the expense of worthy goals like customer service, efficiency, or productivity. But rules are essential if we are to have rights, and rights are essential to fairness, equality, and property. The substantive and procedural credit rules distinguish the WGA and Hollywood from any other area of cultural production, and they are unique in the law. They bring the rule of law—uniform rules, fairly applied, based on evidence and reasoned argument—to the question of what it means to be the writer of a story. Unlike other places in both law and culture where authorship is taken as a (relatively) easily discernible *fact,* credit arbitrations treat authorship as contestable and as something that can be determined only through a process designed and administered by and for Guild writers. Everyone in Hollywood knows that credited authorship is, in some sense, a fiction when multiple writers have worked on a film or TV show. As one screenwriter put it: "We regularly sign our names to work we have not written . . . Behavior that would be a disgrace for a novelist and grounds for dismissal of an academic is business as usual for us. Our defense is that we do it openly, and everyone knows it's being done. It's part of the lore of the movie business." In short, a film's legal authorship, and sometimes even its

credited authorship, is not factual authorship and is a legal fiction in every sense of the term. But it is important to writers that it be a *legal* fiction.[11]

The legalism of the credit system matters because compensation (residuals, separated rights, and bonuses) is tied to credit. In fact, credit affects the labor market for writers and the willingness of companies to invest in projects. The WGA does not formally decide who gets hired or what gets written. But in determining who is credited for writing, the WGA effectively determines who will be hired in the future.[12] Credit influences the judgments of film critics, agents, producers, and knowledgeable consumers. Credit affects how studios evaluate ideas and how they attract investment capital to finance production. The importance of Guild credit determinations for the labor and product markets in Hollywood explains, in part, why the Guild survives conditions that in other industries have led to de-unionization. In a high-velocity labor market in which people switch jobs frequently and demand for the product is unpredictable, the perceived reliability of screen-credit determinations helps production and finance companies match investment capital with human capital. Moreover, residuals compensate writers during periods of slack employment, thus keeping their human capital in the industry. The WGA plays a significant, albeit indirect, role as an intermediary in the market for ideas that lead to projects and to creating a market for the completed projects.[13]

Advertisements, of course, have no signed author. As in Hollywood, men and women working on Madison Avenue made a great deal of money writing in the middle decades of the twentieth century. They worked for executives who knew—as one 1950s ad executive put it—that the company's most valuable assets rode down the elevator every night.[14] Agencies worked hard to identify and nurture writing talent, and many noted writers started their working lives in advertising. Unlike film and TV writers, however, advertising copywriters are largely unknown to the public. There is no formal system of attribution. When advertising awards are given, they name the ad agency, its creative director, and its art director; they do not name the individual writer or artist. An ad is almost invariably unsigned, even when a celebrity writer, director, photographer, or illustrator has participated in creating it. This status has been true even during periods when the community of ad writers

and film and TV writers overlapped and even when valorizing the individual creator might have benefited the product, the advertiser, and the ad agency who recruited a noteworthy writer or artist to work on an ad campaign. This book explores what ad agency employees said about why Madison Avenue does not publicly attribute work, and also explores the work practices within one large ad agency that occasionally created forms of crypto-attribution.

In 1923, Helen Landsdowne Resor, an executive at J. Walter Thompson, which was then the largest advertising agency in the world, hired Edward Steichen to bring his modernist photographic eye to a campaign for Jergens lotion. Steichen was a well-known artist; Landsdowne Resor chose him for the campaign because she was an admirer of modern art. (She was not alone among ad executives in admiring all things modern and modernist. She also was not alone in recruiting fine artists to work on advertisements, although she was more serious about her interest in art than some; she became a trustee of the New York Museum of Modern Art.) Beginning in September 1923, Steichen took all the Jergens advertising photographs, and he continued to do so until the 1930s. They were beautiful and arresting modernist images of women's hands and arms in close-up. As one senior copywriter said of the Jergens campaign, Steichen's photos "succeeded in getting some very charming illustrations on what hands can do in building romance." Although Steichen occasionally included his Jergens and other advertising photographs in the art gallery shows of his work in the 1920s and 1930s, his photographs were never attributed to him in the advertisements.[15] Yet doing so might have helped Jergens by suggesting it was a high-class product. Hoping to attract new or better consumers and add cachet to a product by associating the product with great art, a number of ad agencies recruited eminent art painters (including Georgia O'Keefe and Stuart Davis), photographers, and illustrators (Norman Rockwell is today the most famous, others included Maxfield Parrish and Rockwell Kent).[16] In radio and television in the 1930s and 1940s, noted screenwriters did freelance work on shows produced by ad agencies. Although occasionally artists signed artwork and actors were credited in radio, writers were never credited in ads.

While today we consider attribution of authorship to be normal in film and television and inconsistent with the very nature of advertising, there is no

reason that this should be so. Screen credit could be given only to the studios that made and financed movies or shows; screen credit could be superimposed on TV commercials; and the artwork and copy of print ads could note authorship in small print just as photo credits and bylines are given in newspapers and magazines. To whatever extent it may be true today that the "entertainment" portion and the "advertising" portions of what appears on a screen are made by different people working for different companies under different conditions and subject to different attribution norms, there was a great deal more overlap at mid-century. The people who freelanced for ad agencies writing advertiser-sponsored radio and TV programs were many of the same people who wrote films. And even those who wrote only ads or only radio, films, or TV were demographically similar—they went to the same colleges and universities, they lived in the same cities (principally New York, Chicago, and Los Angeles), and they traveled in the same circles. This book uncovers the history of the mid-twentieth-century labor practices that created the very different norms of authorship in two closely allied and overlapping industries that employed similar (and sometimes the same) people to write.

Writers in Hollywood, unlike writers on Madison Avenue, had their names attached to their work because Hollywood writers formed a labor union. While today substantial nonunion sectors exist in nondrama cable and reality television, since 1938, all Hollywood motion pictures and scripted television shows—now including shows created by Netflix, Amazon, and Hulu for streaming on the internet—have been produced by workers where everyone from the director, actors, and writers to the gaffers, grips, and drivers belongs to a union. Writers wanted to claim the cultural status and some legal rights that they would (or did) enjoy as authors of novels, plays, and short stories, and they used the power of unionization to create binding, writer-controlled legal norms mediating creation, ownership, private attribution, and public recognition. It was in the interests of studios, too, for their products to be authored, just as were other high-status cultural products, even if the public did not recognize the names of film authors as easily as they recognized the names of novelists or actors. Movie moguls sought legitimacy as creators of art by attributing authorship to writers and directors just as plays, novels, and short stories were authored. Ad executives, in contrast, thought ads were more effective if they read as if they were a message

directly from the advertiser to the consumer, without identifying the text and image as the product of a creator's imagination. Nevertheless, two different labor-law regimes in two similar occupations resulted in very different work cultures, compensation systems, and approaches to attribution and intellectual property.

Although ad writers sometimes chafed at the anonymity of their work, their nonunion workplace provided no institutional framework to channel their frustration into organized demands for change. Instead, they embraced a self-conception as professionals devoted to the interest of their clients to justify their own invisibility from public notice in the field in which they worked. Even the so-called Creative Revolution in advertising of the 1960s did not change the attribution norms, notwithstanding that ads acknowledged their nature as ads and ad copy occasionally explicitly acknowledged the existence of a copywriter. A 1965 Avis ad, written as a first-person narrative of a copywriter whose Avis rental car did not live up to a promise Avis had made in a previous ad, said, "I write Avis ads for a living. But that doesn't make me a paid liar. . . . So if I'm going to continue writing these ads, Avis had better live up to them. Or they can get themselves a new boy."[17] The ad is arresting because it breaks the convention of ignoring the existence of a writer behind the ad, and it is effective because it suggests that the writer uses and cares about the product he sells. Still, neither the agency nor the writer was identified.

In the absence of law requiring credit to the actual author, economic sectors that value accurate attribution developed norms and some contractual rights to attribute work to individuals. Newspapers came to use bylines, and in the wake of scandals about fabricated stories, some papers expanded the credit to include every reporter who had worked on the story. Academic journals require accurate attribution of authorship, and some limit the number of authors to prevent diffusion of responsibility for false claims.[18] Courts require lawyers to sign pleadings. Hospitals require doctors to sign medical charts. Architects must sign blueprints. Other norms and laws require attribution, but without the involvement of an employee representative, most aspects of attribution have been treated as company assets or as systems to protect the public, not as a protection for the rights of employee creators or as a device to share profits of the enterprise.[19] Democratically adopted and regularly applied legal rules requiring credit to employees is a signal achievement of the WGA.

Thus, a fourth argument of this book is that the difference in attribution between Madison Avenue and Hollywood is due in significant part to the different labor practices and, specifically, the unionization of Hollywood writers and the embrace of norms of professional duty to client by advertising writers.

Law, Norms, and the Industrialization of Authors

In the twentieth century, creative work in the production of texts, images, and sounds—that is, the work of authorship—often occurred as part of a commercial enterprise. Corporations became the creators, authors, and owners of many of the texts, technologies, images, and information that constitute popular culture because the law by 1930 was clear that employees are not "authors" of their works; their employers are. Authorship in the sense in which everyone other than copyright lawyers understands it became largely disconnected from ownership.

That disconnection bothered writers. It was, and remains today, a major impetus for writers' unionizing. Erik Barnouw, who in the 1940s was the second president of the Radio Writers Guild and became a professor at Columbia and an historian of the radio-and-television business, was a passionate critic of the legal fiction of corporate authorship. In *The Television Writer,* his book about "the world of the television writer" as it stood in 1962 after the first full decade of the business, Barnouw excoriated "the industrialization of the writer," which was his shorthand for the paucity of legal rights of writer employees of media companies. His particular target was copyright law. The Constitution, Barnouw maintained, singled out only two occupations for special protection: "authors and inventors," to whom Congress could give "the exclusive Right to their respective Writings and Discoveries." The copyright work-for-hire doctrine, Barnouw maintained, was anathema to this goal. The Founding Fathers, he said, "considered it important to strengthen the independence of writers and inventors by giving them control, at least for a time, over uses made of their work and revenue from it." But the work-for-hire doctrine became "the Magna Carta" of twentieth-century media corporations because it took away writers' independence. Barnouw used the example of his first script for the radio show *Cavalcade of America,* which he wrote as an employee of the advertising agency retained by

DuPont, the show's sponsor. Although Barnouw received on-air credit for his episode, "Dr. Franklin Goes to Court," the copyright registration in the Library of Congress read: "by Erik Barnouw. Author: E. I. Du Pont de Nemours & Company."[20]

Writers have generally accepted that corporate ownership of collectively created works facilitates management and renewal of copyright in them. But Barnouw—channeling the refrain of many twentieth-century writers—complained that the "industrialization of writers" had gone too far. The writer

> almost never received air credit, was not paid for rebroadcasts, and did not share in subsidiary rights. Revisions were made without his consent and even without his knowledge. Scripts could be made to mean the opposite of what the writer intended, and sometimes they were. The writer could be barred from rehearsal, and on many series he was, as a matter of policy. It was precisely as if the founding fathers had written: "Congress shall have Power to deprive Authors of all Right to their respective Writings."[21]

Noting that for every form of contemporary corporate entertainment "to be set in motion, a lonely man still has to think and work with pencil or typewriter," Barnouw insisted that industrialization's divorce of writers from their legal and cultural status as authors was enabled by the copyright law and was a terrible injustice.

The Writers Guild of America sought control over screen credits to fight against this injustice. Guild leaders wanted screen credit to reflect the historical fact of authorship. Authorship designations should be *authentic* so that writing credits retain meaning to writers, studios, and the public. Yet, and somewhat contradictorily, the Guild decided to concentrate credit on one or two people to create the impression that the screenplay (and thus the film) reflects the creative vision of those persons. This strategic use of the concept of authorship enhances writers' status vis-à-vis directors by portraying movies as the *creative vision* of a distinct author as opposed to a committee. Writers since the beginning of film have debated whether to credit every writer who worked on a film. An "additional writing by" credit existed in various forms before 1948, and the Guild debated reviving it in 2000 for writers who

contributed significantly to a script but less than the amount required to get "screenplay by" credit. Its defenders say it is inequitable that people get no credit for significant contributions. Others say that too many credits diminish the significance of all writing credits. The view that has prevailed is that writers will be regarded as authors of film, in the sense of being creators of its creative vision, only if and when one or two writers control, and are perceived as controlling, the script content and the story construction.[22]

The work relationships of writers in mid-twentieth-century film, television, and advertising are where authorship was constituted. That is, workplaces generated legal and social norms mediating creation, ownership, attribution, and public recognition as dominant features of twentieth-century authorship. Résumés, references, and portfolios make claims about creation of quotidian work in the recent past, and biographies and histories tell the story of biography-worthy people and their work. Gender played a surprising role in enabling attribution of work, especially in the anonymous world of advertising. Women found good jobs and achieved success as writers in film and advertising between 1930 and 1960 to a greater extent than in any other male-dominated profession. Their gender was sometimes deemed an asset and often marked them, which means that their status as women authors (not just authors who happened to be women) is integral to how we understand some authors.[23] But neither employment law nor intellectual property law protects the employee author or speaks to the desire to know the story behind the ad campaign that launched the VW Beetle in the United States, the invention of the silicon chip or the iPod / iPad / iPhone, the writing of a truly great presidential speech, or to know which of the many writers who worked on a film or TV show wrote the most memorable scenes.[24]

When the author of a work is an employee, one might imagine that employment law would protect some right of attribution, but it does not. The essence of authorship in twentieth-century work is not captured by copyright (who owns the work); it must be described as a sort of trademark, too (whose name can be associated with the work). Yet trademark law does not regulate the authorship claims of employees.[25] In some legal systems, copyright law protects what is known as a "moral right" *(droit moral)* of attribution that prohibits false designations of authorship of copyrighted works and, more affirmatively, allows an author to claim authorship and so prevent the work from not being attributed to her, even if it isn't falsely attributed to

another.[26] But American intellectual property law, with one exception not relevant here, does not recognize or protect moral rights. When Congress in the 1930s considered a bill to amend copyright law to recognize moral rights, the bill contained an exception for movie studios (among other entities) so that corporate employers could alter employee-produced works and also designate authorship as they pleased. As Peter Decherney explains, the Hollywood studios considered moral rights entirely inconsistent with their business model.[27] In sum, the person or entity that employs a person to create a work for hire has all the rights of copyright owners, including the right to rewrite it, throw it in the trash, or produce the story into a movie or TV show, or attribute it to anyone or to no one. No statutory or common-law claims have been successful in regulating screen credit.[28]

Intellectual property lawyers tend to insist on a close relationship between copyright and patent law and an individual, literary-artistic-scientific model of creation associated with modernism in the arts and literature and with the now largely discredited notion that great inventions were the product of one or a few great minds, usually the mind of the person named on the patent. This lawyerly focus on authors, inventors, and owners has been incommensurate with the relatively small percentage of twentieth-century creative people whose efforts were rewarded largely or solely through copyright or patent ownership. Regardless of the dearth of law in the books, in workplaces, a set of social practices identify particular people with the ideas and intellectual property that they generate. Although lawyers might not initially recognize these practices as law, a law in action *does* govern the allocation of credit for creating work. Thus, the fifth major argument of this book is that modern authorship is a socio-legal concept formed not only, perhaps not even principally, by the actual work of creating or by copyright law's dubbing some person or entity as an author. Rather, modern authors created themselves through social and legal processes through which individuals and firms were *recognized as being* authors. In the workplace, *attribution* of work, rather than *ownership* of the intellectual property represented in it, defines the modern connection between creators and their work. Just as significantly, the relationship between people and intellectual property is constituted by social and legal processes of *recognition*.

By analyzing the formal (and unspoken) contractual structures of creative labor, this book offers a socio-legal history, or a historical structuralist

ethnography and legal anthropology of the contracting behavior of writers on the issue of authorship. I seek to illuminate the role of what is today called "soft law" in defining the authorship of collectively created work. A main argument of this book is, thus, as follows: to understand how writers in these two industries defined authorship of work, it is important to examine their work relations and the way that they did (in Hollywood) and did not (in advertising) resort to contractually defined rules to assert claims to being recognized as the authors of their work. That is an argument about the necessarily tangled relationship between labor, copyright, and authorship in twentieth-century popular culture. It is, especially, an argument about intellectual property and labor history: we can only understand the history of intellectual property in collaboratively created works of popular culture by examining the history of labor practices. Copyright law obscures authorship. Labor practices can create or obscure it even further. But in Hollywood, union contract rules defined employed writers as authors once writers, rather than the studios, controlled the designation of screenplay authorship.[29]

Christopher Tomlins has called for an approach to socio-legal studies generally, and legal history in particular, that eliminates the old conjunctive metaphor of "law and society" and replaces it with a new metaphor of the nature of law in society as "law as . . . ." That is, instead of studying law in relation to some other distinct domain of social activity (society, history, or economics) that lies outside law, we might imagine them as the same: law as . . . , as in law as history or history as law.[30] To understand the intellectual property in film, television, and advertising, one must study the history of labor relations in these industries. History—and specifically labor history—is not just an interesting perspective. Rather, the labor history is the only way to understand the operation of the intellectual property regime.

What the history of attribution practices reveals is more than just the nature and operation of a system of work relations and intellectual property. It is a perspective on what sociologist of art Howard Becker calls an "art world"—the people and organizations who produce those objects that are defined as art.[31] By insisting that film and television be attributed to people, writers and directors sought to assimilate their work to the art world, or what French theories Pierre Bourdieu would call the field, of true art, as opposed to the commercial or business practices that advertisements were seen to be. Conversely, by obscuring the writers behind advertisements, ad agency

executives distanced their work from the art world and assimilated themselves to the world of professional advisors of business.[32]

The Three Functions of Attribution and Their Relation to Intellectual Property

Corporate ownership of intellectual property and corporate employment were initially regarded as a threat to innovation and, therefore, to entrepreneurship, precisely because the good ideas and work of individual people would not be accurately attributed and fairly rewarded, and people would lose the incentive to innovate and to work. Firms avoided malaise by devising attribution schemes to reward and promote innovation. (Advertising agencies periodically confronted dissatisfied copywriters who needed recognition within the firm and the industry, even as agency leaders insisted that all light should shine on the agency and its clients. So they invented new intra-firm or industry-wide awards.) Thus, attribution became a *reward*.[33]

Attribution also serves a *trademark* function: the same novel will sell better with a *New York Times* best-selling author's name on it than with mine, and a scientific study a respected university scientist produces is generally considered more reliable than one pharmaceutical company employees conduct. Hollywood has generally preferred to market its wares under the names of actors and directors, but occasionally, it uses writers and prohibits highly paid writers from removing their name from screen credit precisely because the name will help sell the film to audiences and critics. (Since *Death of a Gunfighter* (1969), directors seized the power to substitute the pseudonym "Alan Smithee" for the director's name when they thought the studio's version of the film would tarnish the director's reputation, or when the film was bowdlerized when edited for TV.)[34]

Attribution also serves a *legitimating* function. When Hollywood studios became concerned about unauthorized duplication of DVDs, the Motion Picture Association of America commissioned a series of short films to screen before movies in theaters. Each of these infomercial-cum-documentaries featured a technical worker explaining how piracy affected his livelihood by hurting sales of motion pictures. The anti-piracy spots sought to legitimate corporate copyrights in films by linking them to the efforts of "normal" people, not movie stars, marquee directors, highly paid screenwriters, or

studio executives whose names are usually associated with movies and to whom authorship of films is conventionally attributed. Banking on the emotional value of an antipiracy plea delivered by a set builder in a flannel shirt—a guy who in no circumstances would ever have a claim to intellectual property rights in a film—is a persuasive rhetorical strategy because it links the sanctity of corporate copyrights to the paychecks of real people.

Norms of attribution, however, are not the same as legal ownership of the work, and they do not confer control over the work that actual authorship entails. The right to receive screen credit did not save Hollywood writers from frustration when studios allowed scripts to languish or from chagrin when their stories were changed. The grim denouement of *Chinatown* (1974) was not in the script Robert Towne wrote, and it was not the ending he wanted. (Spoiler alert—the protagonist Evelyn Mulwray (Fay Dunaway) is killed in the movie; in the script, she survives and escapes the web of corruption.) Yet Towne won a best screenplay Oscar and made his name on the film.[35] The screenplay for *Friendly Persuasion* (1956) was nominated for an Academy Award (and the film won the Palme d'Or at Cannes), but the film had no screenplay credit because the writer, Michael Wilson, was blacklisted as a communist sympathizer in 1952 just a year after having won a Best Screenplay Oscar for *A Place in the Sun* (1951). To avoid the embarrassment of awarding a best screenplay Oscar to a writer the Academy was pretending did not exist, the Academy changed its rules to remove the screenplay from the ballot. (Twenty-five years later, the Academy reinstated Wilson's nomination in for the film, along with his nomination for *Lawrence of Arabia* (1962) and his Oscar for *The Bridge on the River Kwai* (1957).)

The legal fictions and cultural constructs of intellectual property—the author as proprietor, the trademark brand as corporate property, workplace knowledge as a trade secret—were recycled into an all-purpose notion that knowledge, human capital, and persona could be regarded in law and in life as an investment vehicle and an asset to be managed. In economic terms, an innovation or someone's talent or a bit of knowledge could produce two separate revenue streams: one from the intellectual property itself (the copyright, the trademark, the trade secret) and one from the attribution of the intellectual property to a person. Authors, publishers, lawyers, marketers, and others have long known that a marquee name like Virginia Woolf or James Joyce has a market value, wholly apart from the value of the books that bear their names.[36]

Claimants to the value of attribution and to commodified personas embraced intellectual property as a framework for making arguments about the value of attribution. A right of attribution is protected when the association between a company (or its goods or services) and a name, word, or image is a registered trademark, as in "a Chanel suit." But the identity of the creator need not be known to the consumer for a valid trademark to exist—it does not matter whether Coco Chanel herself designed a suit or Henri Bendel designed the hat in the Cole Porter song, "You're the Top" ("You're a Bendel bonnet, a Shakespeare sonnet . . ."). In some circumstances, the right of publicity protects against misappropriation of one's likeness for commercial purposes. Thus, when the Ford Motor Company commissioned an advertisement with a soundtrack featuring a song made famous by Bette Midler but sung by a woman who only sounded like Bette Midler, the court allowed Midler to sue for misappropriation: "The human voice is one of the most palpable ways identity is manifested. . . . The singer manifests herself in the song. To impersonate her voice is to pirate her identity."[37] But when one is employed to create a persona, the employee may not have the right to prevent use of the persona. So intellectual property hasn't been useful to employees because attribution rights are as alienable as intellectual property rights are. Bela Lugosi became the classic image of Count Dracula after he starred in the iconic 1931 film (and his face remains dominant in a Google images search of Dracula). After Lugosi's death, his heirs claimed that Lugosi's image as Dracula was Lugosi's property and theirs to inherit. But in the litigation over it, a California Supreme Court opinion insisted that the employer owned that Dracula, not Lugosi or his heirs, because Lugosi had created him while employed by a movie studio.[38]

Trademark and the right of publicity are the areas of law that recognize the value of attribution. They became the apogee of modern intellectual property when effective control of texts or images was rendered difficult through technological and cultural changes allowing rapid circulation of pirated works. And yet employee creators of intellectual property cannot trademark themselves, nor can they bring a right of publicity claim for a misattribution of their work that results in an enhancement of another's persona or reputation at the expense of their own. The legal regime under which many creators worked deprived them of the intellectual and financial independence of idea entrepreneurs. In sum, although law's imagination of

authorship has many facets, including copyright, trademark, and publicity, when it comes to employees, it is at best unclear whether the employee is the author of her persona or her works. In many cases, the employee creator is not, in law, an author, even of her persona, which may in some cases feel that she is not the owner of herself. Ironically, the advertising agency employees who enhanced the value of personas like Lugosi's or Midler's, and those who sought to capitalize on them in ways that courts later found illegal, were not the "authors" (in the ownership or attribution senses) of the works that created or infringed upon that value.

Art, Commerce, and the Modern Author at Work

In ad agencies and in film and television production, as in law and in culture, those who talked about the nature of creativity imagined the relationship between a person and a creative work in two ways that existed in tension. First, there is the modernist ideal of authorship: to be an author is to conjure a work out of imagination and to exercise comprehensive compositional control over it. The work reflects the uniqueness and the individuality of its author, and the individuality of the author is proven by the uniqueness of the work. James Joyce is the author of *Ulysses,* and *Ulysses* is proof of the individual genius of Joyce. Of course, a number of canonical modernist texts borrow conspicuously and were fluent in pastiche and parody; *Ulysses* famously borrowed from classical literature, advertising, and many other sources. But modernist notions of authorship insisted upon the distinction between them and the kind of commercial authorship involved in twentieth-century forms of cultural production as exemplified by advertising agency and entertainment industry work.[39]

The modernist conception of individuality and creativity existed, as it continues to exist, alongside another. This second version emphasizes not the essential, miraculous, unique genius of the individual's perception and creations and a notion of artistic merit wholly divorced from public acceptance, but instead, the mixture of hard work, fortuity, and marketing that enables works to come into existence and those who create them to capture the public eye. This Madison Avenue notion of authorship places primary importance on the *perception* of the relation between an author and her work, and it recognizes that the perception is created by the investment of time and

resources in marketing. To be an author or inventor is to be a repository of a felicitous mix of inspiration, labor, money, cleverness, and luck that enables a person and her work to seize fifteen minutes of fame. Madison Avenue knows that the genius of the author cannot be divorced from the canniness of the publicist, and it accepted an interdependence of creativity and commerce in producing all work.[40]

In the heart of Madison Avenue, right alongside the norm of corporate attribution of any ad campaign, there exists a deep faith in the transformative power of fierce originality. Both the creative people and the company managers valued some of the same qualities in agency employees that they valued in "noncommercial" writers and artists—creativity, effective use of words, compelling visual images or melodies. Many at JWT esteemed both things that could be described with the adjective *modern* and *modernism* as a movement in art and literature, and they sometimes conflated being modern (up to date) with being modernist (as an aesthetic style). They deliberately and unconsciously aligned the firm's work and work practices with all things modern, including the aesthetics of modernism.

Of course, neither the modernist nor the Madison Avenue view of the nature of authorship is a pure type. The great modernist writers and artists knew they needed to market themselves and their works, just as Madison Avenue agencies knew they needed to cultivate and recognize individual talent. And everyone knows that great creative accomplishments often reflect the assistance of many besides the named author. The reputations for great genius of many great modernist writers and artists are partly a result of successful marketing. Moreover, twentieth-century copyright law embraced both the modernist and the Madison Avenue conceptions of authorship. Lawyers seeking to expand property rights in valuable mass culture commodities like movies, photographs, or popular music frequently invoked the creator's unique and transformative vision as the basis in law for protecting property rights in the work.[41]

In the early- and mid-twentieth century, modernism in literature and the arts insisted on a vision of the creative process and on a notion of the author at odds with the increasingly collaborative and commercial nature of the process by which many texts, images, and sounds were being produced. Modernism offered, according to literary scholar Paul Saint-Amour, a "portrait of the artist as a lone insurgent" creating high culture works of great artistic

integrity. Modernism defined itself as being distinct from Madison Avenue; critical theorist Andreas Huyssen called it "the Great Divide" in the twentieth-century arts. Modernists harbored an "obsessive hostility to mass culture" and "insist[ed] on the autonomy of the art work." Modernist critic and modern art booster Clement Greenberg (1909–1994) wrote a famous essay, "Avante Garde and Kitsch" (1939), in which he insisted on the separation of art from mass culture. What Greenberg dismissed as kitsch—"popular, commercial art and literature with their chromotypes, magazine covers, illustrations, ads, slick and pulp fiction, comics, Tin Pan Alley music, tap dancing, Hollywood movies, etc., etc."—is where I want to explore the law and norms of authorship. What he deemed a travesty—the power of promoters, dealers, publicists, and advertisers to define or, worse, to create great artists or authors—I see as a new kind of intellectual property. Modernism defined its identity in relation to modern commercial mass culture, and in that respect, it depended on commerce for its identity and it depended on the Madison Avenue habit of defining the author by recognition and attribution.[42]

It is important and interesting to read a television show as Michael Szalay does for the symbolism, metaphor, and allegory that reflect the studio's corporate strategy.[43] Yet it takes adjustment for many to analyze motifs in *Game of Thrones* or *Deadwood* as reflecting what HBO thinks or conveys rather than what a writer thinks or conveys. Even if much literary criticism abandoned focus on authorial intention around the time that theorists announced the author was dead, we still find it more intelligible to talk about writer David Milch's vision and language in *Deadwood,* not HBO's. And until studios and networks always produce similar works, those who admire one film or television program for its writing want to see other work by the same writer. That is especially true if you're trying to hire a writer—every writer on an HBO show is not a perfect substitute for every other. So the writer's name has trademark value distinct from the studio or network name. Studios and networks want to tread a very fine line between locating the value of the show in the studio or network (an HBO show) and in the writer or director. Hiring an acclaimed writer will generate buzz at the development stage and when the project is released to audiences, even if the work is poorer than the writer's prior work. Hence, studios don't want to subsume the identity of the writer entirely into the corporate brand, and they don't want celebrity writers to be able to remove their name from projects. Yet the Writers Guild has

fought for the right of writers to use a pseudonym or even to remove their name from the credits entirely and sacrifice the writer's share of the profits so that writers can protect themselves from being associated with projects that they consider harmful to their reputation. The Guild relies on legal processes to manage the conflict among these meanings and to make difficult and extremely high-stakes choices about which of its members will get the considerable financial rewards of credit in an environment in which all participants know that authorship is collective but credits name individuals.

Even in the realm of "literature" and "high art," marketing mattered; the relationship between the publisher and the author, and the dealer and the artist, was an important feature of the modernist world long before Andy Warhol famously tried to collapse the distinction between art and commerce by painting soup cans, referring to himself as a brand and his studio as "the Factory," and disclaiming authorship of some of his paintings by deflecting questions about the intent of his work to his assistants who, Warhol said, actually created them.[44] Warhol's merger of artistic talent, transformative vision, and the ability to generate hype does not make sense except against the backdrop of modernism's insistence on the separation between art and commerce. Artistic labor markets depend, in part, on reputation to determine the dollar value of creative labor.[45]

Law both facilitated and reacted to a modern conceptualization of talent as not merely inhering in a person, nor even being the product of the talented person's effort, but as reflecting the investment of the promoter and the impresario, the TV hosts, the DJs, and even the social and serendipitous relation between the artist and the crowd. As the social theorist Pierre-Michel Menger observed, one should understand the value of artistic labor as a matter of reputation as much as talent. "[T]he appraisal of art and artists varies with the organizational traits of each art world, since it reflects the cooperative and competitive activities of the various members. . . . Rather than being a causal factor, talent becomes a dependent variable, socially determined by the behavior of employers on one side of the market and consumers on the other side. This is why talent may be conceived as embodying not only artistic abilities and technical skills, but also behavioral and relational ones."[46] Attribution was, thus, a function of the labor market and the consumer market, but it was enormously valuable to the creative worker. As with other things of value, people began to think of attribution as a species of

property. As intellectual property concepts of authorship permeated legal conceptions of attribution, other areas of law recycled copyright's established equation of text with property and unoriginality with copyright infringement into a new equation of persona with property and unauthorized representation with theft. Madison Avenue's marketing of pop songs and pop stars made it possible to say that when someone else on Madison Avenue chose to ask a singer to sing too much like Bette Midler it was an act of "pirat[ing] her identity."

Threat of copyright-infringement litigation prompted musicians to abandon the longstanding musical tradition of borrowing and riffing on melodies, rhythms, and passages from existing music,[47] squelched certain forms of satire and parody, and thus changed the way in which contemporary musicians negotiate their relationship to both the sounds, and the reputation, of their forebears.[48] Musicologists and literary scholars have noted, usually with regret or alarm, that the expansive copyright protection enables authors and musicians, their heirs, and their recording or publishing companies to control the uses to which creative works are put. The control is not merely about how sounds, words, and images will be used, but also how the reputation of a past generation of creative workers will be shaped by the work of a new generation. The dogged efforts of James Joyce's heir to prevent uses of Joyce's works and correspondence that might portray the Joyce family in a light not favored by the heir are an effort to blend the copyright of the author as proprietor with the tort that treats the persona as property.[49] It is modernism harnessing the power of law to fight back against the postmodernist or poststructuralist claim that the reader, not the author, gives meaning to a work.[50]

Hollywood and Madison Avenue have been metonyms for many things; in this book, they are used to stand for two contrasting twentieth-century visions of the nature of authorship and the role of labor relations in constituting some writers as authors and others not. But they were also, in both a figurative and a literal sense, places where creators worked for intellectual property owners and, in so doing, worked out the nature and meaning of modern authorship. They were places where the meaning of authorship mutated to emphasize the value of attribution over the value of creation and the value of nonattribution as a good in itself. But by so doing, and by modeling how and why attribution should be alienable, Hollywood and Madison Avenue created the conditions that would give rise to a backlash—the search

for the real people behind the company name. In some sense, the screen-credit regime the WGA administers exists because movie and television producers consider it in their interest to shore up the romantic model of authorship in the face of its increasingly being challenged by the reality that most art, writing, and other copyrighted works were created as works for hire and that attribution of creative work could be as saleable as the work and the copyright in it.

Structure of this Book

As is perhaps fitting for a book on writers, this book has a three-act structure. The first act ("Beginnings") introduces the labor relations and attribution practices in the two industries and charts the efforts of writers to secure the legal and social rights of authors. Focusing on the J. Walter Thompson (JWT) agency in the 1930s and 1940s, Chapter 1 traces the anonymity of ad authorship to the emerging conception of advertising as a learned profession in which the agency served as an expert advisor dedicated to advancing the client's interests. JWT executives, just like white-shoe lawyers of that era, sought social status by describing themselves as professionals devoted solely to the client's interest, which led them to insist that work be attributed by clients only to the agency, not to individuals, and by the public only to the advertiser and never to the agency. The agency relied on norms of professionalism cultivated through personnel policies rather than on employment contracts or intellectual property law to define and police writer claims to authorship or ownership of their work. Chapter 2 shows that abuses of screen credit and desire for control of script copyrights were two of the most important issues that drove screenwriters to unionize in the early 1930s. Writers today tell a story of how the writers of the 1930s sacrificed ownership of script copyrights to gain the right to bargain collectively and the right to control screen credit. The evidence from the legal proceedings and from the Writers' Guild deliberations of the 1930s and 1940s, however, tells a more complicated story.

Act II ("Intersections"), the middle three chapters, covers the crucial period when writers working for advertising agencies and Hollywood companies began to do the same work under different authorship norms. From the 1930s to the early 1950s, ad agencies wrote and produced radio and TV shows for their clients to sponsor, and they sometimes recruited film writers to do

the work. The intersection of the labor relations of Madison Avenue with labor relations of Hollywood in the early days of TV very nearly resulted in ad agency staff gaining the author rights that film and TV writers secured by unionizing. Chapter 3 describes the first encounter advertising agencies had with writer demands for ownership and attribution of their work, which occurred in the mid-1940s when freelance radio writers employed by agencies joined the Radio Writers Guild. The contract demands made by freelance radio writers were strikingly different from the personnel practices that agencies used for their staff copywriters on the crucial issues of ownership of rights in scripts and on-air credits for writers. Chapter 3 argues that the legal categories of employee and freelancer, and the notion that writers who occupied the status of "employee" were more closely connected to the agency than those who occupied the status of freelancer, were what enabled the agencies to fend off claims for authorship. Legal statuses thus became a firewall.

The same conflict flared up again when, as recounted in Chapter 4, TV writers unionized. Ad agencies employed the same people to do the same work as production companies and television networks, but they brought to that work a very different set of personnel practices and norms of authorship. To demand attribution of authorship of the shows they wrote and produced contravened both long-established anonymity norms and, equally as important, the very notion of a loyal agent. This chapter also shows that TV writers began regularly to assume the managerial role of production executive at the same time they were still engaged in writing. It therefore sheds light on the long debate over which person—the writer, the producer, or the director—should be understood as the author of film and TV by showing that authorship is a *legal* role that has always been deeply entwined with contractual issues over which writers negotiated vigorously both in their individual contracts and, especially, in the Guild's collective agreements with the networks and studios.[51]

The magazine format that TV ultimately adopted (in which ad agencies produce commercials that were interspersed in programs that Hollywood produced, just as ad agencies create advertisements interspersed with articles written by magazine staff or freelance writers) ended the intersection of ad writing and TV writing. But the Guild's insistence on screen credit for TV writers enabled the creation of compensation through residuals and the

separation of rights in scripts. Chapter 5 shows how writers gained some control over subsidiary rights as well as contract provisions requiring payment to credited writers for the reuse of their material. Those payments—known today as residuals—have been a cornerstone of writers' compensation ever since. In telling the history of the origin and early expansion of residuals tied to screen credit, Chapter 5 shows the crucial role the Writers Guild played in overcoming the considerable collective action and administrative challenges in creating residuals as a novel form of intellectual property and deferred compensation.

The book's third act ("Denouement") examines the significant legal rights to credit and the labor-relations models of the two sectors in the years after the division between Madison Avenue and Hollywood attribution practices were relatively settled. To illuminate the significance of screen credit, Chapter 6 offers a new perspective on the blacklisting of scores of writers on allegations that they were communist or because they refused to answer questions before the House Un-American Affairs Committee (as it was colloquially known; HUAC). Every book on the blacklist has observed that the Guild's contractual right to determine screen credit proved to be vulnerable. What no one has ever explained, perhaps because no one today realizes, is that for those successful and talented screenwriters who continued to write and sell scripts, even as they dodged HUAC subpoenas by living in Mexico and sold their work under pseudonyms or through fronts who were credited as the authors of their work, the Guild continued to enforce its own mechanisms to award credit. The Guild sometimes arbitrated credit disputes, even when everyone knew that the studio would never abide by the credit arbitrators' decision. The continued operation of the credit-arbitration machinery enabled the Guild to regain power over credits when the blacklist began to fall apart in 1960. And, in some cases, the records of these apparently useless credit arbitrations helped the Guild to restore credits to blacklisted writers in the 1990s and 2000s. Credit corrections, like every other credit determination, often pitted one Guild member against another, or the heirs of one against the heirs of another, when both were not only deeply invested in issues of reputation and authorship but also beneficiaries of the residual payments that turn on screen credit. Legal norms were essential to the Guild in making these painful and high-stakes decisions.

Chapter 7 examines the significance of Hollywood writers' employee

status to their claims to credit. It also examines the culture of being a corporate employee and therefore not an author on Madison Avenue in the period after agencies had confined themselves to production of advertisements and commercials Writers skirmished with ad agencies and movie, TV, and radio production companies in the 1930s, 1940s, and 1950s over whether writers were employees or independent contractors and labor or management. Whether writers were independent contractors or employees mattered for whether they could unionize, whether collective negotiations would violate antitrust laws, and whether they could claim ownership of their work under copyright law. The eventual resolution of the legal issue—that freelancers were employees precisely because the employing company has the right to direct the writer in the act of writing and revising—defines the legal status of employee in terms of control over writing. That control is an essential attribute of an author. The writer's lack of control, particularly when combined with the anonymity and anxiety about the quality of the work produced in the corporate-culture factories, sparked a literature about alienation and conformity in 1950s corporate writing. Today, the shorthand name for that period is drawn from the title of Sloan Wilson's 1955 novel, *The Man in the Gray Flannel Suit,* but there were a dozen other post-WWII novels about the alienation of ad agency copywriters and other corporate creatives of the 1950s. Lengthy debates by office memo at JWT explore what agency leaders and copywriters said about the norms of anonymity and loyalty to agency and sponsor and the problem of alienation. The alienation of the corporate writer stemmed from a series of legal and personnel choices about whether the agency should make writers more closely identified with their work or less, more like modern authors or more like modern professionals.

Drawing on interviews I conducted with three dozen working television writers in Los Angeles in 2013 and 2014, the Conclusion explores the significance of the different laws and norms of attribution and what contemporary television writers say that unionization has accomplished for them. There are many reasons for the wide gulf in the work and norms of advertising and film and TV writers since the 1960s, but one of them is that Hollywood writers remained unionized. What they say about their experiences suggests possibilities for collective representation of white-collar workers in the twenty-first century entertainment and knowledge industries.