

**"A SEA OF RED INK AND BROKEN DREAMS": COPYRIGHT,  
GATEKEEPING, AND THE CURTAILING OF CREATIVITY  
AND CREATOR'S RIGHTS IN THE AGE OF STREAMING**

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## ABSTRACT

In May of 2023, members of the Writers Guild of America (WGA) and the Screen Actors Guild of America (SAG-AFTRA) went on strike to protest unfair labor practices after a breakdown in contract negotiations with the Alliance of Motion Picture and Television Producers (AMPTP). From the picket line to social media, creators decried the reduction of wages in terms of minimums and residuals, the shrinking of writers' rooms, and the proliferation of AI in Hollywood. The strikes took social media by storm, causing audiences and creators to weigh in on the matter. Discourses ranged from support for creators and outrage at their plight to capitalism's stifling and censorship of creativity to the purpose of intellectual property in the context of AI. In the midst of these fevered discourses, the WGA published an article in which they called media corporations such as Netflix and Disney the "New Gatekeepers", citing their power and influence in terms of setting employment and labor standards and hoarding of intellectual property. With this article as a launching point, this thesis explored how copyright law facilitates the economic, ethical, and creative conflicts between creators, media conglomerates, and audiences in the context of streaming services. To that end, a discourse analysis was conducted, analyzing 100 social media posts across Twitter (formerly known as X), Tumblr, and Reddit. The discourses surrounding the writers' strike highlighted several areas in which there was a breakdown in the intent behind copyright law and how it actually functions and impacts those in the media industry. With this in mind, this thesis proposed solutions to these issues by considering alternatives to copyright such as the

General Public License and Creative Commons while also looking to differing interpretations of copyright in other nations such as Japan, Poland, and France.

...But poetry, beauty, romance, love, these are what we stay alive for.

—Peter Weir, *Dead Poets Society*

To my family, who bring poetry, beauty, and love to my life.

To my pup, Ellie, who always knew when it was time to go for a walk.

And to Nick, who I couldn't have done this without.

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## CHAPTER 1

### INTRODUCTION

I found out the news of the merging of the streaming services HBO Max and Discovery+ where I find most of my news – on social media. In the wake of the announcement, I saw post after post promoting piracy and as fears mounted over the possibility that TV shows from both platforms would be taken down and lost to the void. These fears were not unfounded, as 87 works from the catalogues of both HBO Max and Discovery+ did not make the cut on the newly christened Max platform (Hamilton, 2023). Netflix, Hulu, and other streaming services soon followed suit, removing shows and films from their platforms. At the same time, studios in Hollywood began shutting down production and canceled releases for several films, including those mostly complete like *Batgirl* (Cain, 2022). These moves were all made in the name of cutting costs (Rizzo and Whitten, 2023). Online discussions surrounding these events ranged from simple outrage and sadness to the perils of censorship to capitalism stifling creativity and the rights of creators. At the height of these discussions, Alex Hirsch (writer for and creator of Disney's *Gravity Falls*) took to X (formerly known as Twitter) to highlight the pushback he received from Disney censors when submitting his scripts for approval (Hirsch, 2022). In Hirsch's emails with Disney, the hundreds of tweets by angry fans, and news articles written about the upward trend of show cancellation, two latent themes emerged: loss and unfairness. Fans were left disappointed that their favorite shows and movies were no longer accessible. Artists and creators were unable to tell their stories or build lives for themselves both financially and professionally. Meanwhile, the streaming

services – and the media corporations backing them – profited, albeit not at the rate Wall Street investors wanted them to (Szalai, 2024).

The competing interests of creators, corporations, and the public came to a head in the summer of 2023 when the Writers Guild of America (WGA) and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) went on strike to address the inequitable wages and practices writers and actors faced in Hollywood (Coyle, 2023). After months on strike and a discomfiting amount of stubbornness from Hollywood executives, union members of both guilds voted to accept a new contract that addressed some concerns but not others (Lowe and Williams, 2023). Though the 2023 strikes are over and no longer a mainstay on social media feeds, they brought the deep-seated issues of power and equity in the entertainment industry to the forefront of public thought.

Though the strike was initially centered around labor issues – fair compensation, better working conditions, etc. – the online discourses surrounding them quickly highlighted that labor issues were just one piece of the puzzle in a broader conflict that is connected to intellectual property and copyright law more specifically. While not the only type of intellectual property present within Hollywood, scripts and other forms of creative writing are the foundation on which everything from films to TV shows to commercials lies. Without writers, there would be no Hollywood. However, as Alex Hirsch’s experiences with Disney censors indicate, writers, their thoughts, and creativity are not what is considered most valuable. Instead, the value is placed on a sellable/marketable end product (films, TV shows, etc.) which are mostly owned by media companies. The emphasis on the end product makes sense, given it is tangible. The

marketability of these products is determined by studio executives, which again makes sense considering the studios are taking a risk by spending money on a given script or screenplay. However, this power the studios have leaves writers to accept their terms or risk their work never reaching the audiences they would like to reach. This is especially true when large media corporations such as Netflix, Disney, and others have the lion's share of the capital needed to produce and distribute film and TV shows. Their investment is protected by copyright, which allows them to monopolize potential profits for over a century. While it is certainly a company's right to be discerning when it comes to spending money, the conflict Hirsch had with Disney censors and the feelings of loss and frustration I came across online during the Writers' strike and preceding events brought several questions to mind. Mainly, what is lost when we allow major corporations to decide what stories get told, how they get told, and who has access to them? If copyright law is meant to provide protection and incentives to all authors and creators to ultimately promote progress for greater society, why are creators living in precarity? If copyright is meant to protect creators, then why does it seem to be that those who benefit the most from copyright are not the ones actually creating? Further, who is this progress for, if audiences are seemingly frustrated by a lack of media that resonates while ownership of media is increasingly ephemeral in the streaming era?

Additionally, screenwriters in Hollywood occupy a grey area legally speaking. They are both employees creating works-for-hire and creating their own screenplays to sell to studios in their spare time. When creating works-for-hire, screenwriters waive their right to copyright their work in exchange for wages and benefits, which unions like the WGA negotiate for on their behalf. Likewise, when pitching – or selling – a script to a

studio, writers are often contractually obligated to waive their copyright, ostensibly in exchange for a fair fee or share of future potential profits (residuals). The wages, fee, and wages negotiated by the WGA are meant to be a stand in for the protection, leverage, and incentives that copyright law supposedly promotes. The wage issues and job precarity that writers went on strike to highlight indicate that perhaps the legal framework for works-for-hire and the signing over of copyright need to be reformed. The fraught legal position screenwriters find themselves in is also underscored by the myriad of books dedicated to helping fledgling screenwriters navigate the legal landscape of the media industry, such as Geiger and Suber's (2019) *Creativity and Copyright: Legal Essentials for Screenwriters and Creative Artists* or Stim's (2022) book *Getting permission: Using & licensing copyright-protected materials online & off*, among many others. Though the writers on strike did not specifically invoke copyright law, it was a watershed moment that highlighted several areas where copyright could be improved.

Thus, this thesis aims to explore how copyright law facilitates power struggles between creators, media conglomerates, and audiences in the context of streaming services. After the 2023 writers' strike, the Writers' Guild of America published an article (WGA, 2023) in which they argued that media companies such as Netflix, Disney, and Amazon are leveraging copyright and intellectual property law to gatekeep what creators can create and the media that audiences have access to (WGA, 2023). I utilize this article as a foundation from which to further explore the economic, ethical, and creative conflicts that audiences, creators, and media companies face in the current era of streaming. This thesis will be divided into five chapters that will explore these conflicts in a few ways. In Chapter 1, I examine how power weaved itself throughout the moral,

ethical, and legal ideas that informed the evolution of intellectual property and copyright from the 15<sup>th</sup> century to today. In Chapters 2 and 3, I investigate how copyright law functions in the current media landscape, focusing on the ways in which media conglomerates leverage copyright to influence industry labor standards, change definitions of media ownership, and upend the social contract between creators and audiences in the streaming era. In Chapter 4, I conduct a discourse analysis of social media posts concerning intellectual property, copyright law, and the state of the current media landscape published during the Writers Guild of America strike that lasted from May 2, 2023, to September 27, 2023. The discourses that take place in this time frame highlight the different interests and perspectives of creators, media conglomerates, and audiences. In Chapter 5, I consider alternative perspectives and solutions to copyright from other countries and anti-copyright movements.

### **Copyright Law: Yesterday and Today:**

Copyright law is an essential thread in the tapestry of the media and entertainment industry because it dictates the rights that go along with ownership of creative works (Paul, 2021). It is also the most visible and broadly applicable type of intellectual property, making it invaluable within the entertainment industry. Power weaves itself throughout the moral, ethical, and legal ideas that formed the foundation of intellectual property and shaped copyright law throughout its evolution from the 15<sup>th</sup> century to the present. As such, questions of power inform the conflicts between streaming platforms (and the corporations that own them), creators, and audiences that are rocking the current media landscape. At its core, copyright law addresses the dissemination, production, and control of information and has done so since its inception (Atkinson and Fitzgerald,

2014). What information is worth publishing? Who has the right to publish said information? Who can make those decisions? Keeping these questions – and their answers – in mind is essential when considering how copyright law has shaped and continues to shape the media and entertainment industry.

Copyright law is one of four branches within intellectual property law. Intellectual property refers to “creations of the mind” such as literature, art, inventions, and symbols, among others (World Intellectual Property Organization [WIPO], 2023). Though they are created in the mind, they must be brought into being to be considered property worth protecting (Grimmels, 2009). In other words, ideas cannot be protected: novels must be written or typed, paintings and designs must be drawn, and photographs must be taken to be considered intellectual property. Trademarks, trade secrets, patents, and copyright law all work together to protect a person or a corporation's intellectual property. Law regarding trademarks, trade secrets, and patents apply to industrial property such as devices, products, and the tools (words and symbols) used to market them (Packard 2013). For example, the “tudum” sound that plays before each episode is trademarked since it has become a symbol of Netflix as a brand (Netflix, n.d). Netflix also has several patents that protect the functions and features of their streaming service (Netflix, n.d). Unlike industrial property law, copyright law applies to literary and artistic endeavors, such as movies, TV shows, books, and other kinds of art (Packard, 2013). In other words, copyright law protects the *content* Netflix distributes while industrial property law protects *how* it distributes said content. Though industrial property law is a fascinating and important component of intellectual property, this paper focuses on copyright law since it is what allows media corporations to produce and stream content.

Copyright law, like all law, is a multifaceted and complicated legal framework that informs and reflects our culture, politics, and society. Modern copyright law came to fruition after a long history of societal shifts, social movements, technological advancements, and power disputes (Atkinson and Fitzgerald, 2014). Copyright law is founded on the ideas of ownership, possession, authorship, and progress, among others (Birnhack, 2001; Bracha, 2008; Atkinson and Fitzgerald, 2014; Silbey, 2022). These ideas have and do change as our world does, though many have argued that they – and copyright more broadly – have not changed enough in the face of the rapid technological and cultural shifts brought about by the Internet (Patry, 2011; Balkovic and Micunovic, 2015; Cho and Zhu, 2017). Tracing how these ideas have informed the evolution of copyright law is imperative in understanding how copyright is supposed to function theoretically and how that might differ from the way copyright functions in the current media landscape.

Copyright, or the idea that ideas and their expression are property in need of protection, is a fairly modern concept in the scheme of human history. Atkinson and Fitzgerald (2014) note that the core concepts tied to copyright – ownership, possession, authorship, and progress – come into their modern definitions after the transition from obligation-based society to entitlement-based society. Obligation-based society places the needs of the community over the needs of the individual. In this type of society, information is distributed based upon the needs of the people, which is decided by those in power. Thus, obligation-based societies do not have a strong sense of authorship, since writings and art were commissioned by the ruling class. These attitudes correspond to the bulk of things such as literature, paintings, and other works being handmade:

Sinnreich (2019) notes that patrons in the 15<sup>th</sup> century were much more concerned with the skill and quality of the work they commission rather than the identity of the person doing the work. This changed when mass production enters the scene with the creation of Gutenberg's printing press in 1440 and puts the human element of crafted items into question (Sinnreich, 2019). The printing press allowed cultural works to be mass produced outside of the control of the Church and the monarchy. As cultural works moved from handcrafted to mass produced, artistry and authorship gained importance as proof of "a human element that made a work more palatable and relatable" (Sinnreich, 2014, p. 38). From this need for proof of human involvement came the ideals of the Renaissance: skill with painting, music, and literature became synonymous with talent, imagination, and genius (Kostylo, 2010; Sinnreich, 2019). Thus, the advent of the Renaissance in Italy and the printing press in Germany in 1440 marked the switch from obligation-based thinking to entitlement-based thinking (Atkinson and Fitzgerald, 2014).

Atkinson and Fitzgerald (2014) note that attitudes based on obligation evolved into those based on entitlement as Europe began to become industrialized. An entitlement-based society places the benefit of the individual over communal good. Prior to this point, ownership and possession existed and thrived in terms of landownership (Atkinson and Fitzgerald, 2014). As the publishing industry took shape, possession and ownership of literature became wrapped up in authorship and the idea of benefitting from one's own labor (Kostylo, 2010). These changes were incremental until the introduction of Gutenberg's printing press in 1440. This printing press revolutionized publishing as it allowed anyone to print information in any location and any language they wanted to. What was before an arduous and expensive process that belonged to the Church became a

tool that common people could – and did – use. This newfound ease of printing led to the Protestant Reformation, which allowed thought and action to be divorced from the will of the Church. Freed from the pervasive power of the church, the nobility could put forth their own agendas. To do so required gaining control of the spread of literature. This is where licensing enters stage left.

As previously noted, power continuously underpins the function of copyright law, now and in the past. Copyright law addresses the production, dissemination, and control of information, whether it is fiction or non-fiction. In essence, copyright law has its roots in censorship. This is apparent in the licensing systems of European countries in the 15<sup>th</sup> and 16<sup>th</sup> centuries. Since that time, the history of copyright and the printing industry were intertwined. The proto-copyright law of that time initially intended to censor books in such a way that benefited those in power, which was typically the monarchy of a given nation (Birnhack, 2001). An official license granted printers exclusive rights to print literature permitted by their licensors for distribution in a given domain. Kostylo (2010) notes that licenses were initially granted as favors and were meant to act as exceptions to existing laws rather than as the recognition and legitimization of an author's or creator's inherent rights that would come to develop over time.

The first license in Europe was granted to Venetian printers in 1486. Over the next several decades, licensing would take Europe by storm, culminating in the establishment of the royal licensing system in England in 1517 (Birnhack, 2001). Though licensing arrived in England in 1517, it wasn't until 1538 that the monarchy began leveraging the power of licensing in earnest for its own benefit. That year King Henry VIII aimed to prohibit the publication of “naughty books”, likely in response to his

estrangement from the Catholic Church that arose from his wish to divorce his wife (Birnhack, 2001, p. 23; Atkinson and Fitzgerald, 2014). Released from the chokehold of the Catholic Church, England experienced political, social, and economic rupture that would come to create the perfect environment for copyright law to evolve and flourish.

By 1557, a series of acts and charters had been enacted that culminated in the creation of a legal printing monopoly granted to the Stationers Company, a guild for England's printers (Birnhack, 2001). The guild was granted responsibility for licensing and registering works in all of England. Except for the monarchy, only a member of the guild could print or publish material once it was registered (Atkinson and Fitzgerald, 2014). The monopoly was beneficial for the monarchy and for the guild. For the monarchy, having one company allowed to disseminate information allowed works to be examined before publishing, which could prevent the spread of rebellious sentiment (Birnhack, 2001). The Company benefitted from gaining bargaining power over authors, consumers, and other printers by virtue of being able to pick and choose what was published (Birnhack, 2001). At this time, copyright only protected the right to print and publish books, which was granted indefinitely to the Stationers (Stern, 2009). For the next hundred years, the Stationers Company maintained their monopoly through consistent lobbying.

Though the Company was able to keep their monopoly for a long time, they did not exist unopposed. The licensing system that allowed them their power was the topic of hot debate, particularly for scholars who championed free speech. John Milton, a prominent poet and intellectual of the time, was especially vocal in his contempt for the Stationers and licensing in general (Rose, 2010). His book, *Areopagitica*, disparaged the

licensing system and the Stationers role in it by emphasizing the importance of the free flow of knowledge and information (Rose, 2010). In 1695, Parliament refused to renew the Licensing Act that gave the Stationers their powerful monopoly, which allowed the ideas of the Enlightenment to take root and thrive (Birnhack, 2001; Atkinson and Fitzgerald, 2014; Rose, 2010). Instead, despite years of Stationer lobbying, they enacted the Statute of Anne in 1710 (Birnhack, 2001).

By the time the Statute of Anne was enacted, England was operating as a constitutional monarchy, which led Parliament to wrest power from the Crown incrementally (Birnhack, 2001). Commonly known as the origin of modern copyright law, the Statute of Anne was remarkable for a few reasons. Firstly, it was partially a product of Enlightenment ideals. Leading up to the Statute's enactment, the Enlightenment was in full swing across Europe. Philosophers John Locke, Thomas Hobbes, and Immanuel Kant were just a few of the influential scholars to argue for individual agency and the political freedom to improve oneself through the attainment of knowledge and application of reason (Birnhack, 2001; Stern, 2009). With this premise in mind, these scholars and their contemporaries established the ideas of freedom of speech, freedom from oppression, and human rights, among others. Evidence of this cultural shift shines through the Statute's preamble, which states that the purpose of the law was to encourage "Learned Men to compose and write useful Books" (Atkinson and Fitzgerald, 2014, p. 25). Further, unlike previous acts regarding publishing, the Statute did not prohibit the publication of certain materials (Rose, 2010). Under the Statute of Anne, anything could be published, even if it was anti-monarchy or anti-religion.

Secondly, it granted the author of a work – rather than the bookseller or publisher – the exclusive right to reproduce said work (Atkinson and Fitzgerald, 2014). Giving rights to the author of a work rather than the printer or the seller came about through John Locke’s labor theory. This theory proposed that when a person puts their labor into an object, they are entitled to own and benefit from the creation of that object (Locke, 1690; Russell, 2003; Rose, 2010). In the case of publishing, the benefit was primarily economic. The Statute ensured that right for 14 years, which could be renewed for another 14 years, after which the work would be available to the public (Stern, 2009). By limiting the amount of time an author could benefit from the publication of a work, Parliament put to rest the perpetual copyright that the Stationers had been entitled to up until that point, further limiting the power of the monarchy. The combination of a limited copyright and permission to publish materials of all subjects paved the way for a robust public sphere (or public domain) that would allow Enlightenment ideas – and the political systems to maintain them – to flourish and eventually reach the United States.

Though the founders of the United States eschewed the power of monarchy, economic power was still an ever-present influence. Since the beginning, copyright has been intertwined with the economic success and progress of the United States (Goss, 2007; Silbey, 2022). According to Sinnreich (2019), between 1790 and 2008, at least ninety laws pertaining to copyright alone were passed by Congress: this averages out to a new law every two or so years. With that in mind, it’s hard to overstate the influence copyright has had in the evolution of our laws, culture, and economics. Copyright in the U.S begins with the Constitution, which imbues Congress with the authority to “promote the progress of science and useful arts by securing for limited Times to Authors and

Inventors the exclusive Right to their respective Writings and Discoveries.” (U.S. Const. Article 1, Section 8) This line in the Constitution places three boundaries on the idea of copyright: time, authorship, and progress. Allowing copyright to exist for a set amount of time prevents the kind of perpetual monopoly that aided England’s monarchy in censoring information given to the public. Granting this right to “Authors and Inventors”, rather than a specific regulatory body also ensures a free, competitive market in which all ideas are allowed to be transmitted. Thus, an author’s right to his own creation cemented as “the official ideology of American copyright” (Bracha, 2010, p. 114). Finally, the Constitution states that the purpose of copyright is to promote progress, both on an individual and nationwide level. On an individual level, progress referred to the financial security of authors, inventors, and creators. The granting of copyright was predicated on economic incentive: if authors aren’t rewarded financially for their efforts, then they won’t feel inclined to create anything or contribute to society (Gross, 2007). Is economic gain the only incentive to create and promote progress? Though this notion is arguable – especially considering the spur of profit-free creation and sharing that dominated the Covid 19 pandemic – it is a sentiment that echoes through each iteration of copyright law after the Constitution.

The Constitution established that copyright applied to science and the “useful arts”. As technology advanced, more works and materials were considered worthy of protection. The Copyright Act of 1790 was the first law concerning copyright passed after the Constitution. Under this act, holding a copyright entitled an author (or whoever held the copyright) to be the sole person permitted to print, reprint, publish, or sell their work (U.S Copyright Office, 2023). It also expanded the types of works that could be

copyrighted to maps, charts, and to books printed before the law was enacted (U.S Copyright Office, 2023). It required that authors register their works with a clerk of their local district court, after which they would have the copyright for fourteen years that could be renewed for an additional fourteen years at the end of the term (U.S Copyright Office, 2023). If the work was never registered or if the 28-year term had been completed, a work was available to the public. Holding a copyright entitled an author (or whoever held the copyright) to be the sole person permitted to print, reprint, publish, or sell their work (U.S Copyright Office, 2023).

The Industrial Revolution brought with it new technologies and cultural works that lawmakers needed to reckon with in terms of copyright. The 1800s saw several key moments that defined the trajectory of U.S copyright law. During this period, the Copyright Act of 1790 was amended three times: in 1802, 1831, and 1871 (Atkinson and Fitzgerald, 2011). These amendments further expanded copyrightable works to include photographs (including negatives), etchings and paintings, dramatic works such as plays (script and public performances), musical compositions, and fine art models (Atkinson and Fitzgerald, 2011). The 1802 amendment outlined the steps required to register a work for copyright: a copy of the book had to be given to the District Court clerk with a record of the deposit being put in the book and published in newspapers, followed by giving a copy of the book given to the State Department within six months of registering the copyright (Sampathkumar, 2022). The amendment passed in 1831 lengthened the copyright term to 28 years with the possibility to renew for a further fourteen years from publication (Bracha, 2010).

In 1834, the Supreme court ruled on its first copyright case, *Wheaton v. Peters*. This case arose when Supreme court reporter Henry Wheaton sued his successor, Richard Peters, for abridging his court reports and selling them to the public (33 U.S (8 Pet.) 591 (1834); U.S. Copyright Office, 2023). The Supreme Court ultimately ruled in favor of Peters, which laid the foundation for current copyright law in a few ways. The first is that it reinforced Congress and statute law as the grantor of copyright, not natural law (law based on the natural world and human rights) (Bracha, 2010; Sampathkumar, 2022). The importance of following statute law was further cemented when the Court denied Wheaton’s copyright because he did not register his copyright properly. Of the steps outlined in the 1802 Copyright Act amendment, Wheaton had only fulfilled two of the three steps, and thus his work was not protected under copyright (33 U.S. (8 Pet.) 591 (1834); U.S Copyright Office, 2023). The Court also maintained that copyright functioned to facilitate the spread of information and knowledge by ruling that court reporters could not copyright the written opinions of judges but could copyright the way in which those opinions were presented (U.S Copyright Office, 2023). This part of the ruling paved the way for the Supreme Court case, *Selden v. Baker* (101 U.S. 99 (1879)), which established that ideas themselves could not be copyrighted, but the way they are packaged is protected under copyright. This became known as the “idea-expression dichotomy”, an idea that would prove to be a mainstay in copyrightability cases to this day (Lim, 2018; Silbey, 2022). Over the course of the 19<sup>th</sup> and 20<sup>th</sup> centuries, copyright law continued to evolve. These two centuries saw rapid innovation in technology, which added cause to expand the kinds of work protected to be further expanded to include “films in 1912, sound recordings in 1970, and computer programs in 1980” (Sinnreich,

2019, p. 50). Now, copyright protects any work in a “fixed, tangible medium”, which covers anything physical or watchable (Packard, 2019; Sinnreich, 2019).

In addition to changes in technology, the influence of trade, commerce, media corporations, and lobbying on copyright law cannot be overstated. Copyright and intellectual property law has evolved in several ways due to international trade agreements and globally minded policy shifts. These agreements and policy shifts have come about due to what David and Halbert (2016) call “global network capitalism”. Global network capitalism refers to the increasingly globalized nature of commerce in which digital technology facilitates the management of supply chains, manufacturing, and production that occur simultaneously in different parts of the world (David and Halbert, 2016). This framework allows for an unprecedented level of production and with it, unprecedented profits. However, David and Halbert (2016) note that globalized production comes with a lack of control over intellectual property, especially in conjunction with the rapid spread of knowledge via the Internet. In other words, copying and infringement has become easier than ever, whether it be manufacturing knockoffs, music file sharing and sampling, publishing fanfiction and fanart, or stealing someone else’s art. In response, there has been a push toward the expansion of intellectual property rights and what Lessig (2006) calls, “IP maximalism”. Lessig (2006) argues that the push for IP maximalism over time has created a system in which culture is no longer free but controlled and commercialized by those in power. This is evident in the complex intellectual property laws that have been passed both domestically and internationally.

Copyright in the United States as we know it today evolved partly due to the establishment of several international treaties and trade agreements that set recommended

standards for copyright and intellectual property laws for member countries. The Berne Convention was the first of these treaties when it was passed in 1886. There are three standards that the Berne Convention requires of its member countries that are most pertinent to copyright in the United States. The first is that each country must give the same IP rights to foreign authors as they would to domestic authors (World Intellectual Property Organization, 2024). The second is that “protection must not be conditional upon compliance with any formality” (WIPO, 2024). In other words, IP rights must be granted automatically. Third, protection for IP rights must last at least fifty years after an author’s death (WIPO, 2014). Though the U.S would not sign on to the Berne Convention until 1988, it did provide inspiration for several copyright laws in the interim. For example, the U.S formally recognized the copyrights of foreign authors in 1891. Further, Congress would go on to expand the amount of time copyright lasts, the types of works warranting protection, and other significant changes that would make U.S copyright law more in line with those abroad.

The most notable of these is the copyright law of 1976. The Copyright Act of 1976 and its subsequent amendments set the foundation for how copyright functions today. This act establishes the scope of copyrightable works, how long copyright lasts, the rights copyright holders are entitled to, defined infringement of said rights and outlined the penalties of doing so and introduced the concept of “fair use”. The passage of this act transformed the copyright landscape and further cemented the complicated relationship between evolving technology, corporate and public interest, and the law. In terms of the scope of copyrightable works, the Copyright Act of 1976 established that any works “fixed in a tangible medium” are protected by copyright. The broad strokes

painted here with that phrase allow for the introduction of technologies in the future, which would become instrumental with the advent of the Internet (U.S Copyright Office, 2024). Additionally, the act states that these works are protected as soon as they become tangible, which is a departure from requiring a copyright to be registered in decades prior. While registration with the U.S Copyright Office is not required for protection, it does make litigation easier in cases where infringement is involved (Snyder, 2021).

There are five exclusive rights that the Copyright Act of 1976 granted to copyright holders: 1. The right to reproduce the work through copying or recording 2. The right to create and publish derivative works 3. The right of distribution through various means 4. The right to perform the work publicly (i.e. artists need permission to sing a song belonging to someone else) 5. The right to display an audiovisual work in public. (Copyright Act 1976; U.S Copyright Office, 1977). The Act allows for the transfer of these rights in part or in full either through the transfer of ownership or through licensing (Copyright Act, 1976; U.S Copyright Office, 1977). For example, AMC Networks purchased the intellectual property rights to Anne Rice's *The Vampire Chronicles* series in 2020 (AMC, 2020) This would allow them to adapt Rice's 18 novels into the TV series *Interview with the Vampire* and stream it on AMC+ in 2022. Infringement refers to any violation of the rights listed above as well as the importation of a work that is in violation of those rights (Copyright Act, 1976; U.S Copyright Office, 1977). If AMC Networks had not purchased the rights to Rice's novels, but still created and broadcast their TV adaptation, they would have been infringing and thus vulnerable to a suit from Rice herself or her estate if it occurred after her passing in 2021.

Perhaps one of the most important components of the Copyright Act of 1976 is the inclusion of “fair use” doctrine, which establishes acceptable uses of copyrighted materials (Copyright Act, 1976). Section 107 of the Act mentions that the use of copyrighted materials for educational purposes, for journalistic purposes (critique, commentary, etc.), and scholarship could be protected under fair use (Copyright Act, 1976). For example, copying pages of a book and disseminating them to students for the purpose of classroom activities is generally considered to be protected by fair use. However, it’s important to note that whether something falls under fair use is to be decided on a case-by-case basis, to be decided in the courts using one of four determining factors outlined in the Act (Copyright Act, 1976). These factors are 1. Whether the use of copyrighted materials is for commercial or educational use or is transformative in nature, 2. Whether the work is published or unpublished and if the commercial availability of the original work is impacted, 3. How much of the original work was used in the new work, and 4. Whether the use of the work impacts the commercial viability of the original work. (Copyright Act, 1976). The subjective nature of these determining factors has received much criticism from legal scholars, judges, and attorneys since its inception (Lessig, 2006; Netanel, 2011). This subjectivity is difficult to navigate both for those knowledgeable in intellectual property law and the public, especially as the Internet and all the technology that comes with it has made the creation and distribution of intellectual property easier, faster, and more accessible.

Another component of the Copyright Act of 1976 is the expansion of the copyright term. Prior to the Act’s passage, the copyright term was 28 years with the opportunity to renew the copyright for another 28 years on expiration. Once passed, the

Act established the new copyright term as the life of the author plus fifty years (Copyright Act, 1976). This brings the U.S in line with the Berne Convention and all nations who had signed on to it. Though this is certainly a huge leap considering the previous term was for a possible total of 56 years, it was eclipsed a little over 20 years later in 1998. That year, the Sonny Bono Copyright Term Extension Act was passed by Congress, which would increase the copyright term to 70 years after the death of an author (Copyright Act, 1998).

Interestingly, this does not apply to intellectual property produced by employees of a company, otherwise known as “works for hire”: the limit in this case is ninety-five years after publication or 120 years after creation, whichever comes first (Sonny Bono Copyright Term Extension Act, 1998). This is especially pertinent to and potentially problematic for creators in the entertainment industry. If copyright is meant to protect an author’s right to benefit from the fruits of their labor, is it right that corporations can benefit from the labor of creators long after they have left the company and even after their eventual deaths? If IP law is meant to provide a balance between the needs of authors/creators, the public, and corporations, how has it become so obviously skewed in one direction? Many intellectual property scholars have pointed to the hand that mega corporations have had on the evolution of copyright law, either through lobbying or litigation, to encourage the passage of copyright laws or establish legal precedent for the interpretation of said laws (Lessig, 2006; Horton; 2013; Sinnreich, 2019). Their efforts have resulted in the gatekeeping the WGA discussed in their article and in the stagnation and curtailment of the public domain and the public sphere. The ever-expanding boundaries of intellectual property and copyright law have facilitated the hoarding of

intellectual property and prevention of works entering the public domain and public sphere. This betrays the original intentions of copyright set forth in the Constitution and gives media companies and conglomerates unprecedented power to shape the media industry. They do so by setting labor standards, shifting definitions and connotations surrounding media ownership, and by transgressing the social contract between creators and audiences.

## CHAPTER 2

### GATEKEEPING AND THE STIFLING OF THE PUBLIC SPHERE, THE PUBLIC DOMAIN AND FREE CULTURE

The public sphere and the public domain are two concepts that are often used interchangeably but are two distinct concepts that contribute to copyright law and the media landscape in different ways. The public domain is a legally constituted arena which is comprised of non-copyrighted works that are able to be used by anyone in any fashion to create new works. For example, Disney's seminal work, *Steamboat Willie*, entered the public domain on January 1<sup>st</sup>, 2024, leading to the creation of a variety of memes, videos, and even a horror video game featuring the original Mickey Mouse himself (Curran, 2024). While the public domain has become one of the most important and at times controversial components of the current copyright landscape, it is important to note that its conception as a separate concept worthy of legal scholarship and public scrutiny occurred relatively late in the scheme of modern copyright law (Rose, 2003).

The public domain was preceded by the public sphere, a term coined in the 1970s by Jurgen Habermas. Habermas (1974, 2006a) utilized his theory of the public sphere to analyze the relationship between citizens and their governments within the context of Western democracies. According to Habermas (1974), the public sphere is "the realm of social life in which something approaching public opinion can be formed" (p. 49). The idea of the public sphere has its origins in the 18<sup>th</sup> century. At this time "society" became a distinct entity due to the increasing occurrence of bourgeois citizens meeting in public spaces to discuss their needs and interests (Habermas, 1974, 2006a). This process led to the formation of a public body that established and propagated public opinion through a

variety of discursive practices such as journalism, literature, and the arts (Habermas, 1974). It is in the discourses generated in this scene that the Enlightenment ideals of private autonomy, free and equal political opportunity, among others were cemented as tenets of democracy and free thinking. Additionally, the public sphere came to be recognized as “an open and ideologically neutral space – where everyone is afforded entry and opportunity to speak, and where ideas rise and fall on their intrinsic value rather than on the basis of sovereign edicts or whims” (Cohen, 2023, p.1).

Legal scholars have increasingly emphasized the connection between the public sphere and the public domain. While they are not synonymous, they are both essential to the proliferation of culture: the public sphere is a communicative culture-building process, and the public domain contains the cultural works needed for that process to thrive. However, due to the “IP expansionism” previously discussed in Chapter One, scholars are concerned that the public domain is in jeopardy. Copyright now protects all tangible works and term limits are the longest they’ve ever been, leading to diminishing additions to the public domain. Lessig (2006) and other legal scholars warn that the prevention of works going into the public domain also stymies the creation and proliferation of the public sphere, thereby betraying the existence of free culture (Menis, 2021; Geiger, 2016; Cantatore, 2013; Tushnet, 2007; Samuelson, 2006).

Copyright is known to be a balancing act between commercial/corporate needs versus public interest. However, Geiger (2016) highlighted that IP policy tends to ignore the social aspects of copyright law, instead focusing on the “property” component of intellectual property and the economic benefits that property can bring. According to Geiger (2016), much like real estate, the emphasis in copyright is now to accrue as much

IP as possible, keeping corporations' needs and interests at the top of the media hierarchy. Term limits that allow works to go into the public domain are one of the last functions left to ensure that public interest is accounted for in the media industry (Geiger, 2016). Thus, the public domain is the antithesis to accumulation of power brought about by the hoarding of copyrighted works and the influence of copyright policy by corporate interests. This power allows corporate juggernauts like Amazon, Netflix and Disney to gatekeep a lot of the media people are able to consume.

After the Writers' strike, the WGA (2023) published an article in which they call Disney, Amazon, and Netflix "the new gatekeepers". (p.1). They outlined how these corporations use their wealth, influence, and intellectual property to shape the media industry. To understand the power these behemoths have it is essential to understand what gatekeeping is and how it works. Shoemaker and Vos (2006) define gatekeeping as "the process of culling and crafting countless bits of information into the limited number of messages that reach people each day" (Introduction section, para. 1.). In essence, the gatekeeper receives information and makes a variety of decisions on how that information is passed on. The gatekeeper decides which information is important, how it ought to be packaged, and when to pass it on, among other factors (Shoemaker and Vos, 2006).

Gatekeeping has primarily been used to explain the framing and flow of information in journalism, though scholarship has evolved to consider gatekeeping theory in other fields such as literature, sociology, and media and communications studies to name a few (Furgal et al. 2020; Crisp, 2021; Radomska, 2024). Essentially, gatekeeping theory proposes that all information must pass through several "gates" before it can be consumed by the public (Shoemaker and Vos, 2006). At any point in this series of gates information

can either be pushed through as-is, changed and then passed through, or ignored completely; these decisions are made by a gatekeeper or a series of gatekeepers as said information passes through a corporate hierarchy (Shoemaker and Vos, 2006). Though the term gatekeeping and gatekeeper have connotations of power, it's important to note that not all gatekeepers are created equal. Both an investigative reporter and an editor-in-chief function as gatekeepers, but an editor-in-chief certainly has more power and influence than an investigative reporter, even though the collection of information begins with the reporter.

While information is the currency of the journalism industry, the media and entertainment industries focus on the creation of cultural works, which is anything from books, to music, to film and television (Strandvad, 2009; Throsby, 2015; Davis, 2015; Smits, 2019; Crisp, 2021). Similarly to journalism, there are several “gates” a cultural work must go through on its way from author/ creator to the public. Throsby (2015) notes that books are “the output of a long supply chain beginning with authors and proceeding through a series of value-adding stages that include agents, publishers, editors, distributors, and booksellers.” (p. 1). Though this is specifically about the literary industry, the production of film and television also goes through value-adding stages, beginning with “idea development” then moving through stages of scriptwriting, finding directors and producers, casting, pitching to studios, securing financing, and production (filming, editing, etc.) (Janssen and Verboord, 2015; Landau, 2018). All of this occurs before the cultural work can be distributed, which continues the cycle of gatekeeping. This process often takes years to complete if the work does not get permanently shelved. A recent example is the video game *Dragon Age: The Veilguard*. It was released in October 2024

after being in what gamers call “development hell” for eight years during which the direction, writing, and mechanics of the game were constantly changing until a final direction was settled upon (Kemph, 2024).

For films, television, and video games, the interests of fans/audiences, creators, and studio executives are negotiated at each stage (or gate) of development. This arithmetic often deprioritizes the needs of creators and audiences compared to the studio executives and the corporations they represent. Writers, video game developers, and animators are just some of the many creators working in the media industry to highlight the poor working conditions on film sets and in gaming and animation studios as well as the lack of job security, among other labor concerns (Arnold, 2023; Stedman, 2024). Poor working conditions, lack of job security, low wages, and opaque employment contracts are often the first and most consistent barriers to entry for many creators when it comes to the media industry. Though unions such as the WGA advocate for creatives on these issues, the terms that are agreed to often still favor studio executives and media companies over individual creators, maintaining the gatekeeping power of said companies.

Beyond the stages of actually creating a cultural work, there are many hoops to jump through to get that work to the public. Crisp (2021) notes that there are several nodes of gatekeeping through which cultural works will pass in the distribution process. These nodes include “distribution and publishing, marketing, IP ownership, funding, hardware manufacture, production, retail, curation, regulation, and archiving” (Crisp, 2015, p. 87). In both the production and distribution stages, Crisp (2015) asserts that power does not lie in any one node of gatekeeping, but in the accumulation of many by a single entity. This is

in line with the WGA's arguments which cite Disney, Netflix, and Amazon as gatekeepers in the modern media landscape.

These companies' gatekeeping influence is mostly seen in entertainment and in employment. In terms of entertainment, Netflix and Disney (among other video streaming companies), set the standard for "good" television and film. Though standards of "goodness" – quality of storytelling, set design, sound design, costuming, etc. – are also negotiated by other cultural mediators such as critics and audiences, large media companies have financial and social capital that independent companies and creators lack (Crisp et al., 2015). Thus, they get to decide what stories get told, which points-of-view matter, which storytelling styles get priority or even published at all while owning the IP they create for 125 years. Mega conglomerates like Disney, Sony, 21<sup>st</sup> Century Fox, Viacom, Comcast, and Time Warner as well as media companies like Netflix and Amazon also set standards for employment within the industry. Netflix and Disney alone are the first and second largest employers within the entertainment industry when it comes to writers, according to internal data from the Writers Guild of America West (2023). Thus, they are able to set industry standards for wages and compensation for creators throughout the industry. Further, these companies amass intellectual property and control how it is produced and distributed. While unions such as the WGA do negotiate wages on behalf of member screenwriters, their negotiating power is limited. Returning to the example of Anne Rice's intellectual property, once AMC purchased the rights, the company had many options as to how to exercise those rights. One option would be to either sit on those rights and prevent them from entering the public domain or being used by another company. The second would be to produce, publish, and distribute films, TV shows, or any other type of media.

Third, AMC could have produced said media but not published it which would waste the work of creators and disappoint audiences.

Fortunately, AMC decided to create and publish the series *Interview the Vampire* to both critical and public success. However, recent examples of both the second and third options taken by other media companies such as Warner Bros. have drawn stark criticism from both entertainment industry employees and audiences (Oller, 2024). The power these companies wield in influencing culture and labor is key reason industry professionals went on strike in 2023. A more in-depth discussion concerning the influence these companies have in terms of IP, labor, and public interest will accompany the discourse analysis and conclusions in chapters 4 and 5.

## CHAPTER 3

### METHODOLOGY AND METHOD

#### **Methodology:**

This thesis aims to conduct a discourse analysis of social media posts that discuss intellectual property, copyright law, gatekeeping, and the state of the current media landscape posted during the Writers' Strike that started on May 2<sup>nd</sup>, 2023, and ended on September 27<sup>th</sup>, 2023. According to Gill (2000), discourse analysis is more of an umbrella term that describes a collection of different methods (Gill notes 57 in total) that focus on speech or text to illuminate phenomena in a variety of academic fields from sociology to policy analysis to media studies. Across the different kinds of discourse analysis, there are a few tenets that are consistent.

The first is that discourse – both talk and text – is the focus, rather than a means to an end. This marks, as Wood and Kroger (2000) note, “a shift from using features of talk to explain behavior (talk as resource) to a focus on talk as the behavior to be explained (talk as topic)” (p. 8). The focus on discourse as a subject is justified by the second tenet of discourse analysis, which is the idea that language is constructive; it constructs reality rather than being informed by it (Wood and Kroger, 2000; Gill, 2000). This means that talk between people doesn't just describe the world around them, it's the process of talking and conversation that shapes their world and how they see it. This leads to the third tenet of discourse analysis: that discourse is an “action oriented” social practice (Gill, 2000). In other words, people do things with their words, whether that be entertaining, placing blame, persuading someone to do or feel something, making themselves look good, etc. The word talk is a verb, after all. Lastly, discourse analysts are

concerned with the variability in discourses. Since there are a wide variety of people talking and taking part in discourses, multiple realities and versions of the world are constructed (Wood and Kroger, 2000). How these realities harmonize, and clash is a key focus in many studies utilizing discourse analysis, particularly when it comes to critical discourse analysis (CDA). CDA examines discourses within the context of systemic issues and social structures concerning race, gender, and class with overarching considerations of power (Wood and Kroger, 2000).

This critical approach is well-utilized in the field of legal studies, particularly in regard to copyright law (Rose, 2003; Samuelson, 2005; Hollis, 2017; Paul, 2023). This makes sense if we consider that, “talk creates the social world in a continuous, ongoing way; it does not simply reflect what is already there.” (Wood and Kroger, 2000, p.4.) As we can see in the history outlined in previous chapters, copyright law has also been constructed, bit by bit, legislation by legislation and ruling by ruling. Industrial powers had – and continue to have – a heavy hand in its construction. Law is not an immutable force that springs into existence; it is built and changed over time through discourse. In relation to copyright law, for example, Rose (2003) notes that the concept of the public domain in English common law was formulated through debate by politicians, philosophers, and deliberation in court, in addition to other discursive practices. Thus, this thesis aims to consider what the discourses stemming from the writers’ strike tell us about how IP and copyright law shape the experiences of creators and audiences in the media and entertainment industries. The purpose of this discourse analysis is not to generate statistics that can be extrapolated to broader populations, but to understand how and why people are talking about intellectual property and what that means for the future

of IP law, copyright law, and IP policy. To that end, I do not propose that the themes that emerged in my analysis represent all opinions concerning intellectual property. Rather, they highlight places where there may be a breakdown between the intent of the law and how the law affects the public.

Why use social media as a site to interrogate issues surrounding copyright law?

The use of new media – social media in particular – in democratic processes has become a well-researched area of study (Papacharissi, 2002; Shirky, 2011; Roberts, 2014). In his book, *New Media and Public Activism*, John Michael Roberts (2014), outlines how social media have become a tool to connect politicians with their constituents, organizations with those they serve, and citizens to each other. While social media is a tool for connection and communication, it can also be constituted as a space, a kind of public sphere that houses and encourages deliberation between citizens, allowing for disparate groups to come to a consensus around norms and values, which governments can then use to create policy. Over the last two decades, social media has been increasingly used by people of all ages to express themselves socially and politically. Though there is a divide between scholars on the efficacy of online activism, the potential of digital technologies to effect change is well-documented (Christensen, 2011). For example, online activism was pivotal in the #MeToo movement in 2017, which ultimately facilitated marked societal shifts concerned sexual harassment, sexism, and a range of other topics brought to light by the movement (Williams et al., 2019).

While many critique online activism as being too easy, or “slacktivism” this ignores both the emotional labor involved in sharing personal testimony online as well as the labor involved in logistical endeavors such as boycott coordination and picketing

scheduling, among others (Keller et. al, 2018; Schuster, 2013). Shaw (2001) also notes that participants both online and in real life feel empowered by the connections they make with each other and are able to take ownership of their experiences by sharing them online. These connections and feelings of empowerment are crucial to those on strike, especially when a strike that occurs over a long period of time can lead to financial hardship, as it did for creators on strike in 2023. The discourses inspired by the Writers' Strike of 2023, especially those that surround copyright, are a part of the deliberative process that could inform the future of copyright law, making social media – one of the core places where these discourses took place – a suitable field of inquiry.

### **Methods:**

This thesis has been guided by three research questions:

1. What do social media discourses surrounding the WGA strike of 2023 reveal about the impacts of copyright law on creators and audiences?
2. As evidenced by the discourses surrounding the WGA strike, in what ways does current copyright law function to support the gatekeeping of media by streaming services such as Netflix, Disney+, and others?
3. What do discourses by creators and audiences indicate about the beneficiaries of intellectual property legal regimes in the United States? How do these discourses inform ideas about the future of copyright law?

These questions are answered by analyzing posts by creators and audiences on Tumblr, Twitter/X, and Reddit during the Writers' strike, which took place between May 2<sup>nd</sup>,

2023, and September 27<sup>th</sup>, 2023. Twitter/ X was chosen because it was the primary social media that writers and the WGA used to publicize their messages (Rice, 2023). Tumblr was chosen because it is primarily used by creatives and fans; both groups have vested interests in the outcome of the strikes. Finally, Reddit was chosen because it is primarily used as a place where people gather for a debate on a wide variety of topics. A total of 100 posts will be analyzed across all three platforms: 25 posts on Tumblr, 50 posts on Twitter/X, and 25 posts on Reddit. An extra ten posts were chosen on Twitter/X because these posts have the least amount of text; Twitter/X has a character limit of 280 for non-subscribers. Posts were searched for using the same search terms across all platforms. These terms are “Writers’ strike”, “WGA”, “WGA strike”, “copyright”, and “intellectual property”. Additionally, the contrasting perspectives of independent creators and those employed in industry who create works-for-hire is essential to consider given the fact that creators who create works-for-hire are not considered authors under copyright law (Fisk, 2016). Thus, their perspectives and interests concerning copyright and intellectual property law may differ from individual creators, especially in the context of ownership and labor struggles. It is worth noting, however, that the majority of screenwriters occupy both spaces – they are employed in writers’ rooms creating works-for-hire at the same time that they are working on their own scripts that they will then pitch to studios. So, they are both copyright holders and not copyright holders. This gray area adds another layer of difficulty when it comes to navigating copyright in the media and entertainment industries.

Tumblr posts are found through searching for specific tags. I utilized the “tags” feature to search for posts using the tags “Writers’ strike”, “WGA”, “WGA strike”,

“copyright”, and “intellectual property”. These tags were searched for as a group and individually, since most Tumblr users put multiple tags on their posts to reach as many people as possible. As such, there was significant crossover with posts showing up in multiple different searches. To stratify the posts pulled for analysis over time, every twentieth post was pulled for analysis. This was done both to bound the sample size and show the progression of the discourses over the course of the strikes. Tumblr posts work a little differently than Twitter/X and Reddit. One key feature is the “reblog”, which allows a user to repost a blog post to their own blog, typically with their own response or commentary to the original post added. These function almost the same as comments on other social media. After circulating throughout Tumblr, a post could have a reblog chain with multiple people’s commentary while still being considered a single post. This feature, in addition to the comments, makes Tumblr a textually heavy social media platform. Since the amount per text is higher, the total number of Tumblr posts chosen for analysis is lower than that of Twitter/X.


Additionally, Tumblr does not have an advanced search option on its website. While it is possible to search for Tumblr posts through Google, filtering for posts made within certain dates, accessing posts in that way changes the formatting of said posts. Tumblr posts accessed through Google were typically linked to the original poster’s blog, which showcases the metrics of the post (how many people reblogged it, who liked the post, who commented, etc,)but seeing the commentary attached to a reblog or the content of a given comment requires clicking on it and being brought to another page. These metrics are also shown as one big list, rather than separated out by reblog, comment, or like. Below are some examples of the difference:


MAY. 8 2023  
#WRITER'S STRIKE #THE BUSINESS OF VIDEO GAMES #WORKING IN THE GAME INDUSTRY  
27 NOTES

## Notes

 [ulti-matus](#) liked this

 [wonderer125blog](#) liked this

 [agentgreenbean](#) reblogged this from [theburnedoutnerd](#)


 [agentgreenbean](#) liked this


 [theburnedoutnerd](#) reblogged this from [askagamedev](#)

 [brandonvout](#) liked this

 [alarajrogers](#) liked this

 [frogbitsalad](#) liked this

 [comeseewhatididthere](#) liked this

 [supercomputer276](#) reblogged this from [askagamedev](#)

 [acetrainerjess](#) liked this


 [wizard-of-whispers](#) liked this

Figure 1. Tumblr Post Accessed through Google

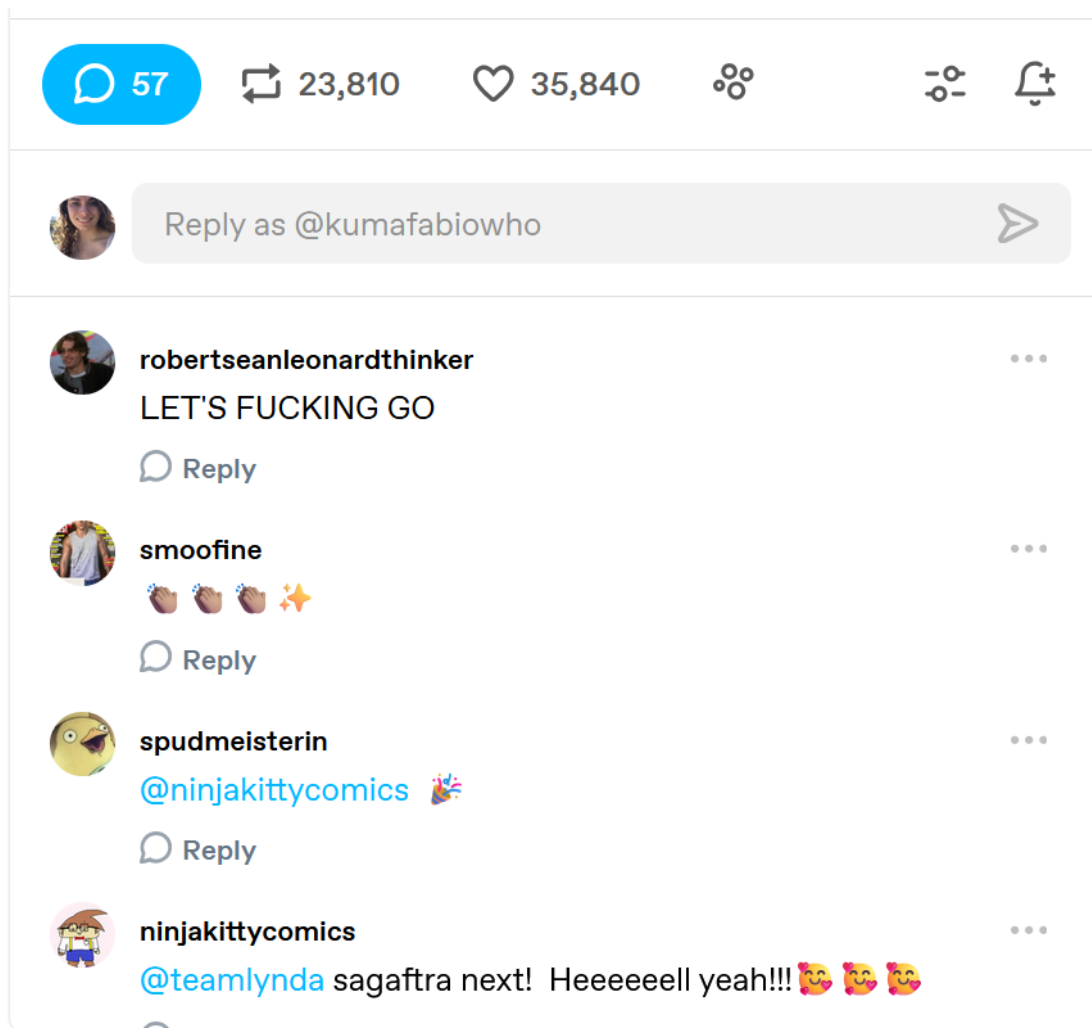





Figure 2. Tumblr Post Accessed through Search Feed 1

57 **23,810** 35,840

 **seriously-mike**  leafy-socrates 

Okay, I understand basics like getting paid and not being stuffed into a broom closet with nerdy colleagues having hygiene issues, but do we really need to codify the obvious?

"AI can't write." Of fucking course it can't. Even if you make it generate sixty thousand characters long narration about gravel, you'll notice the obvious mistakes and incoherences and if you don't fix them, it's all on you. Also, thanks to plaintext being unable to be pounded into fine fairy dust and averaged like images are, AI can and will retrieve chunks of actual text like full phrases written by someone with actual creative intent, and when old-school plagiarism checking software catches that (and we are talking about "when" rather than an "if"), you can kiss your writing career goodbye.

#wga strike #wga #ChatGPT

Figure 3. Tumblr Post Accessed Through Search Feed 2

This change in formatting makes it difficult to see the comments, reblogs, and tags of other Tumblr users, which is a key discursive feature of Tumblr. Thus, Tumblr posts were accessed through the website's search function. Initially, I had intended to manually filter out posts made outside of the dates of the Writers' strikes (May 2<sup>nd</sup>, 2023, to September 27<sup>th</sup>, 2023). However, on collecting posts for analysis, the results fell in line with the dates of the Writers' strike without manipulation. I assume this is because the topics discussed on Tumblr follow current trends and rarely last longer than the initial engagement. Tagging is also similar to hashtagging on other social media websites; hashtags are typically created and fixed to a certain moment in time. Another reason I chose this method of searching is that accessing posts through Tumblr's search function rather than a targeted Google search is the same way that Tumblr users would have accessed the posts during the strikes aside from Tumblr algorithms pushing content on their dash and is thus more authentic. An example of one of the searches for Tumblr posts is demonstrated below:

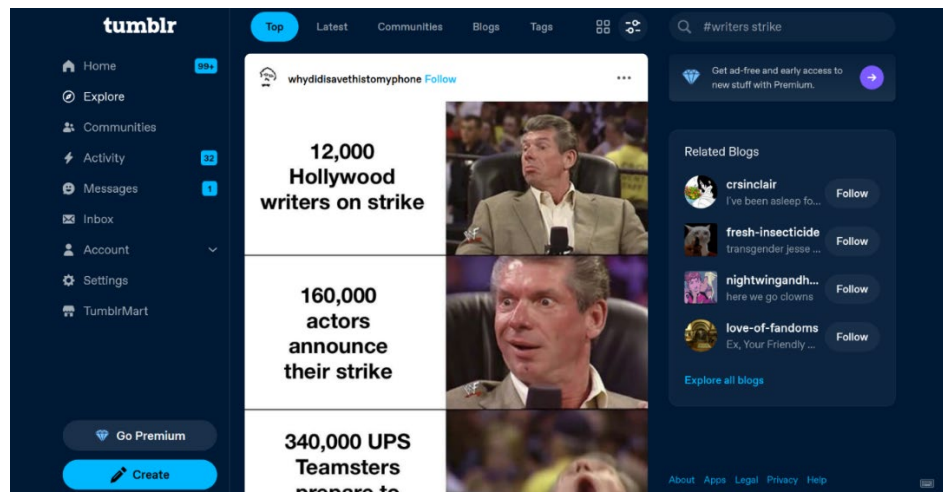


Figure 4. Tumblr Search Feed Example 1

On Twitter/X, it is possible to do an advanced search that includes the hashtag and posts made between certain dates. It is also possible to filter posts by keywords and phrases, language, engagement (number of likes and comments), accounts posting, and mentions. For simplicity, the filters used in gathering Twitter/X posts was for the dates of the Writers' strike, posts made in English, and the hashtags mentioned above. This is shown in the screenshots below:

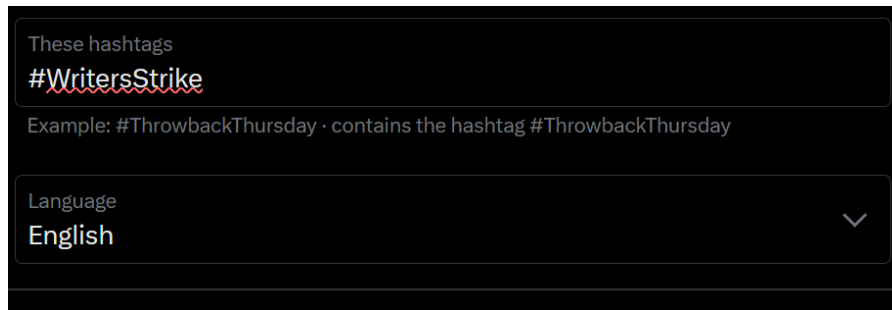


Figure 5. Twitter Search Filter 1

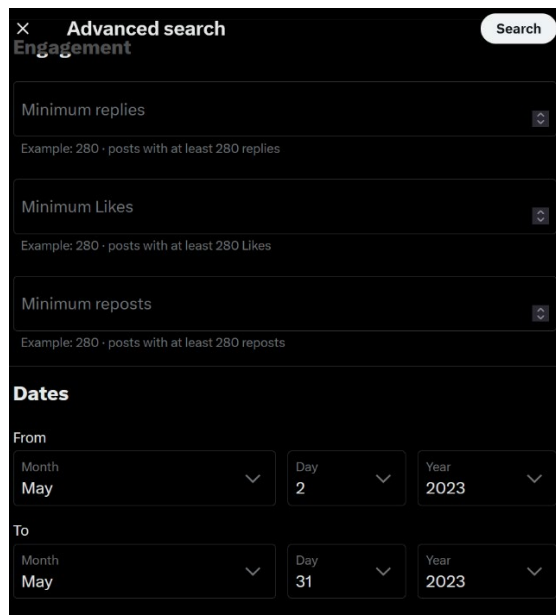


Figure 6. Twitter Search Filter 2

Search results on Twitter/X are further categorized into “Top”, “Latest”, “Media”, and “People”. Posts in the “Top” category are tweets with the most engagement while the “Latest” category has all posts with a given hashtag in chronological order. The “Media” section highlights videos tagged with the hashtag and “People” lists usernames including the phrase. Since the focus of this discourse analysis is texts, results in the latter sections were irrelevant. Additionally, all tweets were collected from the “Latest” category to maintain a sense of how the discourses surrounding the strike changed over time. Given the large number of posts made on Twitter, I filtered my Twitter searches further by bounding them by each month of the strikes. For example, a search for #WritersStrike would be searched for from May 2<sup>nd</sup> to May 31<sup>st</sup> of that month, then June 1<sup>st</sup> to 2<sup>nd</sup> and so on until the end of the strikes on September 27<sup>th</sup>, 2023. This made the number of posts more manageable to sift through. Even so, the volume of posts necessitated choosing every 20<sup>th</sup> Tweet for analysis with twelve or thirteen tweets chosen for each month, bringing the total number of tweets analyzed to fifty.

Reddit’s search system is different than both Twitter and Tumblr’s. Posts on Reddit are searched for using keywords, rather than hashtags. Relevant results are categorized into “Posts”, “Comments”, “Communities”, “Media”, and “People”, that function similarly to those on Twitter. Posts can further be filtered by “Relevance” (how closely the post matches the search term), “Hot” (how many upvotes a post has), “New”, and “Comment Count”. Like Tumblr, Reddit does not have an advanced search function on the website itself; it is not possible to bound search results between two dates. Also, since Reddit searches for posts by keyword, rather than a hashtag, it will pull up posts made at any time containing those keywords. For example, a search of “Writers’ strike”

on Reddit will bring up posts from four years ago that reference a different writers' strike or a post from 48 minutes ago that discusses the aftereffects of the 2023 strikes.

Therefore, the use of Google searches for posts within the timeframe of the 2023 strikes makes more sense for collecting Reddit posts than it did for Tumblr, even if it is not an accurate reflection of how Reddit users would have been exposed to posts at the time.

Since Google shows total results in the tens of thousands for each search term, every 30<sup>th</sup> post was chosen for analysis.

Across all three platforms, choosing every *n*th post functioned to mitigate bias that may result from gravitating toward posts that reflected my own personal views about the issues covered by the 2023 Writers' strike. Due to the highly emotional nature of the strikes and the discourses surrounding them, discourses became heated very quickly.

Though it was challenging to engage with ideas that I found antithetical to my own, the clash of differing perspectives and ideas (mine and those of users on all three platforms) proved valuable in elucidating the complexities of the modern entertainment industry and the intellectual property landscape it weaves itself around. Overall, perspectives on the writers' strike were as varied as they were subjective, which reflects the ongoing conflicts dogging copyright law that were outlined in the history detailed in Chapter 1.

As with selecting posts, collection of posts was varied between the platforms due to differences in the amount of text. Since the Twitter/X posts had little text and fewer comments than Reddit and Tumblr, posts were collected by taking screenshots. This separated out the selected tweets (and their comments) from the main feed that showcased the search results for given hashtags. Reddit and Tumblr had much more text than Twitter/X. For example, a post could be several paragraphs long and have up to

hundreds of comments, with some comments rehashing similar ideas and having similar content to others. This is ideal for understanding and analyzing overarching themes, but impractical in terms of taking screenshots. Thus, only a few Tumblr and Reddit posts and/or comment exchanges were screenshots to demonstrate salient points.

It is also worth noting that on Reddit, users can delete their accounts, but their comment is still maintained on the post. For an example, see below:

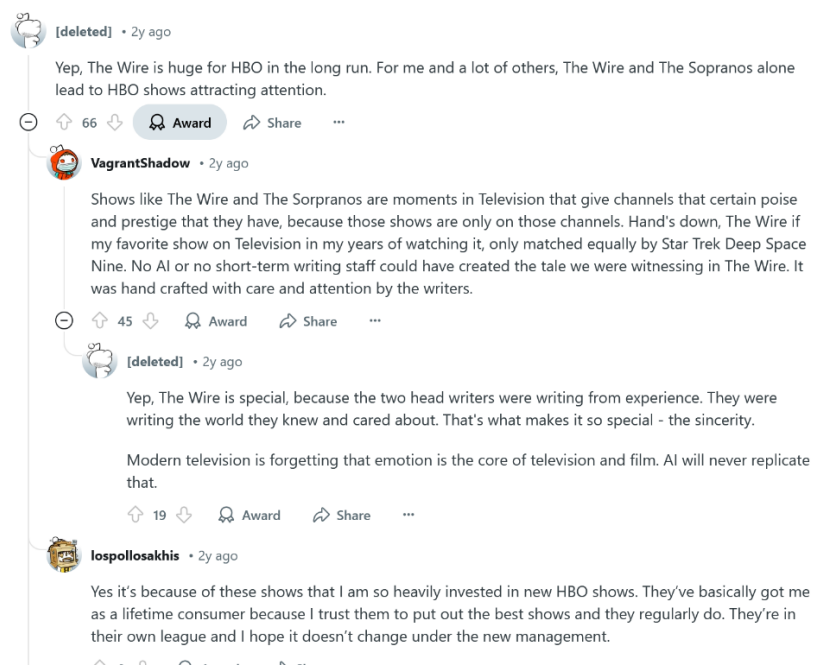


Figure 7. Reddit Deleted Account Example 1

Additionally, a user may delete a comment they have made on a post, but if another user has commented on it before it is deleted, then their reply is maintained on the post. This results in a lack of context that can obscure the flow of an argument between users on a comment thread:

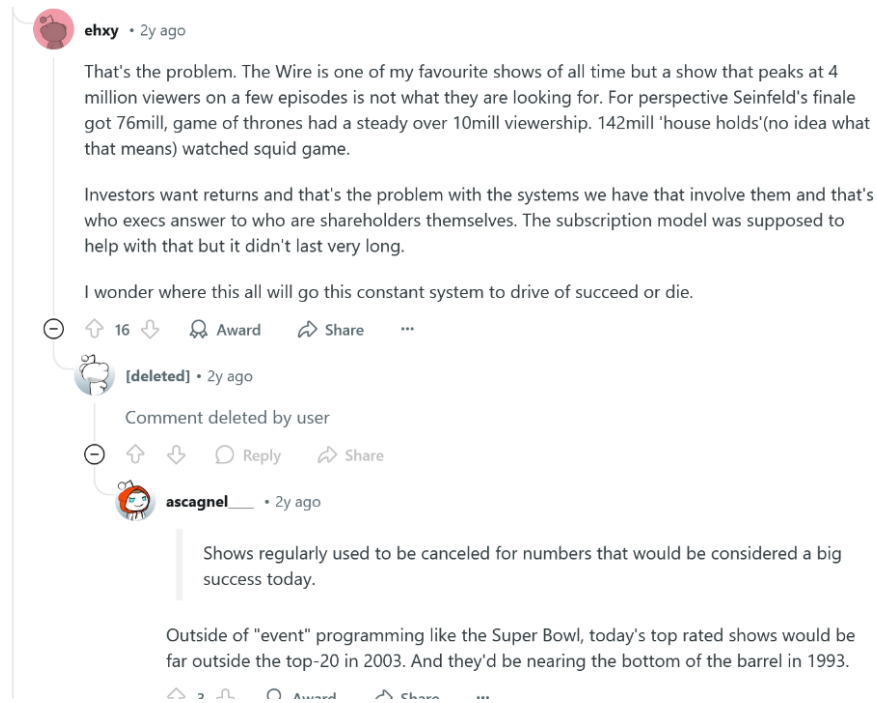


Figure 8. Reddit Deleted Account Example 2

In addition to muddying the flow of a conversation between users on a comment thread, the deletion of accounts and comments prevents getting a sense of the exchange as it happened in real time. Despite these small hiccups, there was still a plethora of posts and comments that helped paint a picture of some of the discourses surrounding the Writers’ strike that were made at the time. These discourses centered around themes of gatekeeping, labor issues, intellectual property (copyright most prominently), and broader philosophical and ethical debates within the media industry. These themes will be explored more in the following analysis.

## **CHAPTER 4**

### **“NETFLIX CAN BITE ME”: DISCOURSES SURROUNDING THE WRITERS’ STRIKE**

Though it may seem as if the Writers’ strike of 2023 sprung out of nowhere, it is just the most recent strike and protest in a long line of activism aimed at addressing the power imbalances at the core of the media industry. Much like the strikes of 2023, the majority of these strikes and protests centered on the unfair labor practices experienced by creators and industry professionals. Though there has only been one major protest in the U.S specifically directed at intellectual property and copyright law in recent years, IP and copyright has always been part of the conflict between creators, Hollywood studio executives, and the public. This is because creative works are the foundation the media industry was built on and are increasingly a part of the fabric of social life with the advent of social media and content creation. In short, IP and copyright law concern “everything the light touches,” to quote a certain animated lion (Allers and Minkoff, 1994). This becomes clear just looking at the range of different subreddits (forums) where Reddit users posted about the Writers’ strikes, intellectual property, and copyright. The topics these subreddits focused on ranged from the AI debate (r/aiwars) to support for writers and screenwriters (r/writing and r/Screenwriting) to creating a space to discuss unpopular opinions (r/TrueUnpopularOpinion). The breadth of applicable topics becomes broader and more noticeable looking at the actual Reddit posts pulled, with users bringing up concerns that range from the cancellation of TV shows to creator contracts and labor practices to the philosophy and ethics of intellectual property, among many others. These concerns are echoed in the posts found on Tumblr and Twitter as well. Their broad applicability highlights that these issues do not just exist in the media industry – they seep into everyday life and affect everyone. Thus, the discourses brought to the forefront

by the Writers' strike of 2023 and then discussed by netizens across Twitter, Tumblr, and Reddit indicate how important it is to understand the connection between copyright law and the power it affords media corporations in shaping the experiences of creators and audiences not only in the media industry but in public life as a whole.

### **“Hot Labor Summer”: Labor Issues, Gatekeeping, and Copyright:**

At the height of the Covid-19 pandemic, an audio clip of a person saying, “Darling, I have no dream job -- I do not dream of labor” in a quasi-North Atlantic accent took the Internet by storm. The quote, which many attribute to celebrated civil rights activist James Baldwin, originated in a tweet by @thetrdz which was later adapted into the viral audio clip by TikTok user @mrhamilton (Clark, 2023). Both the original tweet and the Tiktok audio clip captured the feelings brought on by the shift from work to creative pursuits that was facilitated by the Covid-19 quarantines happening across the globe. Those who were able to quarantine – a privilege in and of itself – took on a wide variety of pursuits from baking to gardening to crochet. These discussions of labor ramped up as the labor market shifted and shriveled over the course of the pandemic, coalescing in what Reddit user NominalNom (2023) would call “Hot Labor Summer” in response to the discourses surrounding the WGA and SAG-AFTRA strikes in the summer of 2023.

Indeed, labor issues were a core issue among those discussing the Writers' strikes on social media for both creators and audience whether they were in support of the strikes or not. Across all three platforms (Tumblr, Twitter, and Reddit) audiences and creators alike were primarily concerned with compensation, whether it be tangible (monetary, healthcare, etc.) or intangible (security, upskilling/upward mobility, entertainment, etc.).

How does this relate to intellectual property and copyright laws? As noted earlier in this thesis, theories of labor are at the foundation of intellectual property and copyright. In effect, copyright and intellectual property and the expansion thereof have been predicated on a range of theories that have to do with labor. The first of these theories have to do with economic incentives: the idea that if one is rewarded financially, they will be more likely to create or invent (Gross, 2007; Albrecht, 2017). This theory plays to the idea that an individual is most invested in “maximizing their own happiness” and it is thus the responsibility of governments guide that impulse to benefit society as a whole via copyright and intellectual property (Fisher, 2001; Albrecht, 2017, p. 8). In this context, copyright functions as a limited monopoly that allows authors or creators to reap as much profit as they can before their IP is inevitably copied (Albrecht, 2017). It is much harder to create something from scratch than it is to take an existing idea and copy it or tweak it; a limited monopoly protects that initial risk and encourages continuous risk-taking for creators by offering that security. Another theory underpinning copyright and intellectual property is Locke’s (1690) labor theory. Locke’s theory of labor is similar to the incentive theory in that it focuses on creator compensation for their labor but approaches it from a fairness and justice perspective rather than an economic perspective. Locke (1690) proposed that a creator has a natural right to be rewarded for his or her own work and it is the government’s job to protect that right provided it does not harm others or the natural world.

Owning and making intellectual property is the lifeblood of the entertainment industry. As Twitter/X user Gav\_Leaf noted:

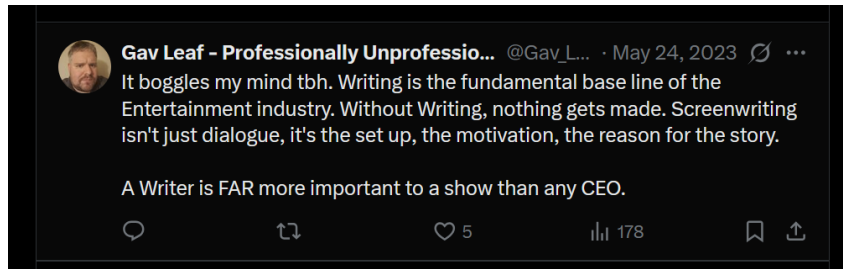


Figure 9. Tweet 1

Given its importance, it is no wonder that the compensation and incentives to create rhetoric foundational to copyright and IP was a major focus for social media users discussing the 2023 Writers' strikes. Throughout its history copyright law had to find a balance between a myriad of stakeholders. This is especially pertinent in the entertainment and media industries, which are comprised of creators, performers, producers and studio executives, and media conglomerates (Albrect, 2017). All of these actors have different and often competing interests. On all three platforms, discourses surrounding compensation became emotional and heated quickly due to these competing interests. Still, the heated nature of the conversations did not stem the flow of discourse: no matter how many times an argument ended up with at least a few people calling each other morons, many posts, particularly on Reddit, would still have hundreds of comments with thoughtful insights on the contentious nature of compensation in the media industry.

While I use the term creator to connect the issues discussed during the Writers' strikes to the broad range of workers (animators, costume designers, etc.) within the media industry, it is important to note that the Writers' strike was primarily centered on the needs of screenwriters in Hollywood. This is why the WGA is a big player in the conflict and most of the concerns mentioned in the collected social media posts reference issues specifically facing screenwriters. However, many non-screen writer creators joined

in on the strikes in various ways (through picketing and donations, social media awareness) out of solidarity and recognition that the issues apply to all of Hollywood. Additionally, posters and commentors often brought up their own experiences in adjacent fields to either support or refute certain arguments. So, while many of the examples of gatekeeping and labor conflicts that the WGA mentions in their 2023 article that serves as the foundation of this research are geared toward screenwriters and the way they move through the industry, the term “creators” is used here to highlight that screenwriters are not the only ones affected by the gatekeeping practices of studios and media corporations. The Writers’ strike simply gave screenwriters more awareness than other workers in the media industry. Furthermore, while the majority of posts linked compensation and gatekeeping in line with the WGA’s “The New Gatekeepers” model, others argued that the WGA and the writers on strike were in fact the gatekeepers.

Reliance on the utilitarian financial incentive rhetoric within IP and copyright law was a common theme throughout the posts and comments made during the Writers’ strike on Reddit, Tumblr, and Twitter even if there was no explicit mention of IP or copyright. This makes sense considering pay and benefits were a key reason why the WGA went on strike (The Associated Press, 2023). At the time, the WGA and AMPTP (Association of Motion Picture and Television Producers) failed to come to an agreement during their triannual contract negotiations for the MBA (Minimum Basic Agreement), which sets standards of employment for screenwriters represented by the WGA. This failure to negotiate is what prompted WGA members to vote unanimously to strike until their demands were met (Frank, 2023). Word soon got out on social media, with strikers

posting photos, videos, and textual commentary providing information and context about why the WGA was striking.

Many strikers and their supporters appealed to the public by referring to the idea that creators need financial incentives and compensation to create. These appeals mostly centered around how streaming has changed the structure of the industry, particularly for writers. As Reddit user Prince\_JellyFish (2023) wrote in a post explaining the ‘why’ behind the Writers’ strike, “we’re getting paid less for doing more work.” For example, the shift from network television to streaming or SVOD (Straight to Video on Demand) has undermined the use of residuals to keep creators afloat in between jobs. Residuals are the money writers are paid whenever their work is reused after an initial release (Contreras, 2023). This can be when a theatrically released movie is aired on cable, when movies or TV shows are released on VHS and DVD, entertainment shown on flights, or – most importantly for the 2023 strike – shows and movies are released on streaming platforms. (Contreras, 2023). Residuals are calculated in a variety of ways, but writers are mostly promised a percentage of gross revenue or a certain flat fee each time an episode or film is re-aired (Vox, 2023). Their necessity shines through in many of the posts and comments on Twitter, Tumblr, and Reddit. This is apparent when creators are defending their need for residuals and better pay structures against those who are against the strike or those simply confused about why the strike needs to happen at all. In their post titled “Hollywood writers will lose the strike (and it’s their own fault)”, a Reddit user (who has since deleted their account) made two assertions that struck a nerve with commentors:

...the writers are vastly overestimating the value of their labor. As I mentioned earlier, massive entertainment companies are losing money. Why are they losing money? Because less people are consuming their

content. Why are people consuming less of their content? *Because the writing is bad.* Entertainment is supposed to be escapism, nobody outside of the Hollywood/Southern California bubble wants to be lectured at or preached to by what is supposed to be a temporary escape from reality. Especially not by a group of people who are astoundingly out of touch with the average American...

... their demands are ridiculous. Bob Iger might be an out of touch millionaire, be he was absolutely right when he said that the strikers' demands are unrealistic. Residuals on streaming shows regardless of how they perform? Never gonna happen, the money has to come from somewhere and if the show isn't performing well you're not going to get paid. Mandatory minimum numbers of writers per project? Absolutely not gonna happen in a million years...

...Finally, they are lying about quite a lot. They claim to be on starvation wages, yet the average Hollywood writer makes *far* more money than the average working class American that they're laughably trying to drum up support from. (deleted, 2023, paras 2 and 4).

This Redditor was one among many frustrated audience members who decried the poor writing quality of recent TV shows and films, citing it as the number one reason that writers are not deserving of the pay they currently receive let alone the increased pay and benefits they are asking for via strike. On the particular post mentioned above, several creators refuted these claims by highlighting that better pay and more consistent pay leads to better quality writing. As Thomasisawesome (2023) noted:



**Thomasisawesome** • 2y ago

A couple of things you don't seem to be considering.

You seem to think writers and actors make millions. Most of them make far less. An average annual salary for writers is around \$60-80,000 a year. Almost like a regular job. The trouble is that with streaming services, there are far fewer episodes per season than with broadcast shows. Remember how The Simpsons seemed to have like 25 shows a season? But look at a show like Schitt's Creek which averages about 13 episodes a season, or Succession, which only had about ten per season. On top of that, unlike with network TV where seasons started basically on a yearly schedule, streaming series can go years between seasons. This kind of uncertainty makes it harder for a writer to have a steady paycheck.

Figure 10. Reddit Post 1

Though Thomasisawesome did not explicitly mention the need for residuals, he highlights why writers are more reliant on them now than ever – streaming has reduced the total amount of time that screenwriters are employed. Redditor absurdsurb (2023) agreed and furthered Thomasisawesome’s comment, chiming in by saying, “It’s these same financial decisions that have caused the strike and the poor quality of content. (para 1). While comments on this post did not go much further in explaining the connection between shorter shows and residuals, discourses elsewhere did. In an Ask (a question submitted to a Tumblr user’s blog) submitted to Tumblr user fratboykate, Anonymous (2023) asked, “I’ve seen some people on twitter claim writers make more money a week than most of us make in a month so I’m trying to understand what the issue is.” (para. 1). In her response, fratboykate (2023) walked the user (and anyone who stumbled upon the blog post) through the math of the current wages, highlighting the disparity between how high the dollar amount seems and how it does not go as far as it should:

5k a week for 14 weeks (*and that's a long room--a lot of rooms these days are 8-10 weeks--those are the dreaded mini-rooms we're trying to kill!*) is \$70,000. for roughly three months of work. you'd think we're cooking with gas... BUT HOLD UP. that's gross! let's see everything that has to come out of that check:

- 10% to our agent
- 10% to our manager
- 5% to our entertainment attorney
- 5% to our business manager (not everyone has one but a lot of us do. i do, so that's literally 30% immediately off the top of every check)
- most of these breakdowns ive seen downplay taxes severely. someone made one that says writers pay 5% in taxes and i would like to ask them "in what universe?". that doesn't even cover state taxes. the way taxes work in the industry is really complicated, but the short of it is most of us have companies for tax reasons so we aren't taxed like people on w2s/1099. if we did we'd be even more fucked. basically every production hires a writer's company instead of the writer as an individual. so they engage our companies for our services and then at the end of the year we (the company) pay taxes as corporations or lics (depending on what the writer chose to go with). my company is registered as a "corporation" so let's go with those rates. california's corporate rate is 9% and the federal corporate tax rate is 21%. there's other expenses with running a business like fees and other shit so my business managers/accountants/bookkeepers have recommended i save between 35-40% of everything i make for when tax season comes.

Figure 11. Tumblr Post 1

Like many other creators taking to social media to spread awareness and support for the strikers, fratboykate underscores how complicated compensation and employment is for writers in the entertainment industry. Screenwriters are not technically employees, but businesses entering into a negotiation with a studio for payment, so they have more costs than a typical employee. She also noted that employment is precarious at best; screenwriters are only paid per episode or per week over the course of a show's season. In both their arguments, Thomasisawesome and fratboykate mention how the number of episodes per season has shrunk over time. In an interview with Vox, screenwriter Warren Leight (2023) explained in a Vox interview that the network TV season "started in September, ran 22 episodes and ended in May" (01:41). This meant that screenwriters writing for network television had steady employment for forty weeks out of the year (Yorks, 2023).

As shows began to be made SVOD, streaming services switched the writing process to entirely pre-production, with writers expected to write an entire season in 10 or so weeks in what became known as the "dreaded mini rooms" according to fratboykate (2023, para1). In her wage analysis of a 14-week writers' room, fratboykate (2023) continues her defense of the strikes and the need for increased wages by noting that after taking out the previously mentioned costs, it leaves \$28,000 dollars for a screenwriter to live off as they are working and in the time between writing jobs, which can be anywhere from 6 months to a year. Instead of needing to find one job to sustain them for a year, creators had to find multiple jobs to maintain the same earnings made on network television (Yorks, 2023; Fisk, 2023). In the period of downtime - which is not really downtime, as it is filled with scriptwriting, pitch preparation and a whole host of unpaid

work per Reddit user SVW1986 (2023) – residuals can help bridge the gap in between writing jobs and help writers pay their bills. At least, that used to be the case. Tumblr user gingerswagfreckles(2023) illustrated the devaluation of residuals by posting the following photos of her father’s residual checks from episodes he had written on Saturday Night Live:

Saturday Night Live - Bill Pullman / New Edition	\$0.01	12/31/2022
Saturday Night Live - Brendan Fraser / Bjork	\$0.78	12/31/2022
Saturday Night Live - Chevy Chase / Lisa Loeb	\$0.01	12/31/2022
Saturday Night Live - Chris Farley / The Mighty Mighty Bosstones	\$0.75	12/31/2022
Saturday Night Live - Chris Rock / The Wallflowers	\$0.01	12/31/2022
Saturday Night Live - Claire Danes / Mariah Carey	\$0.77	12/31/2022
Saturday Night Live - Dana Carvey / Dr. Dre	\$0.01	12/31/2022
Saturday Night Live - David Alan Grier / Silverchair	\$0.01	12/31/2022
Saturday Night Live - David Alan Grier / Snoop Doggy Dogg	\$0.01	12/31/2022
Saturday Night Live - David Duchovny / Puff Daddy	\$0.73	12/31/2022
Saturday Night Live - Gabriel Byrne / Alanis Morissette	\$0.01	12/31/2022
Saturday Night Live - Garth Brooks	\$0.77	12/31/2022
Saturday Night Live - Greg Kinnear / All Saints	\$0.74	12/31/2022
Saturday Night Live - Helen Hunt/Hanson	\$0.78	12/31/2022
Saturday Night Live - John Goodman / Jewel	\$0.01	12/31/2022
Saturday Night Live - John Goodman / Paula Cole	\$0.76	12/31/2022
Saturday Night Live - Jon Lovitz / Jane's Addiction	\$0.78	12/31/2022
Saturday Night Live - Julianne Moore / Backstreet Boys	\$0.74	12/31/2022
Saturday Night Live - Kevin Spacey / Beck	\$0.01	12/31/2022
Saturday Night Live - Laura Leighton / Rancid	\$0.01	12/31/2022
Saturday Night Live - Lisa Kudrow / Sheryl Crow	\$0.01	12/31/2022
Saturday Night Live - Mariel Hemingway / Blues Traveler	\$0.01	12/31/2022
Saturday Night Live - Martin Short / No Doubt	\$0.01	12/31/2022
Saturday Night Live - Matthew Broderick / Natalie Merchant	\$0.74	12/31/2022
Saturday Night Live - Matthew Perry / Oasis	\$0.77	12/31/2022
Saturday Night Live - Nathan Lane / Metallica	\$0.78	12/31/2022
Saturday Night Live - Pamela Lee / Rollins Band	\$0.01	12/31/2022

Figure 12. Tumblr Post 2

Saturday Night Live - Phil Hartman / Bush	\$0.01	12/31/2022
Saturday Night Live - Rob Lowe / Spice Girls	\$0.01	12/31/2022
Saturday Night Live - Robert Downey Jr. / Fiona Apple	\$0.01	12/31/2022
Saturday Night Live - Roma Downey / Missy Elliot	\$0.76	12/31/2022
Saturday Night Live - Rosie O'Donnell / Whitney Houston	\$0.01	12/31/2022
Saturday Night Live - Rudy Giuliani / Sarah McLachlan	\$0.77	12/31/2022
Saturday Night Live - Samuel L. Jackson / Ben Folds Five	\$0.74	12/31/2022
Saturday Night Live - Sarah Michelle Gellar / Portishead	\$0.74	12/31/2022
Saturday Night Live - Scott Wolf / Natalie Imbruglia	\$0.77	12/31/2022
Saturday Night Live - Steve Buscemi / Third Eye Blind	\$0.74	12/31/2022
Saturday Night Live - Sting / Veruca Salt	\$0.01	12/31/2022
Saturday Night Live - Sylvester Stallone / Jamiroquai	\$0.78	12/31/2022
Saturday Night Live - Tom Hanks / Tom Petty & the Heartbreakers	\$0.01	12/31/2022
<b>Total Residual Gross Amount :</b>		<b>\$15.39</b>
<b>Number of Checks :</b>		<b>1</b>

ed payments will be available on-line in the myResiduals...

Figure 13. Tumblr Post 3

Author and screenwriter Neil Gaiman (2023) reblogged gingswagfreckles' post and reiterated her point by posting:

The last time I saw any real money from residuals in film and TV was in 2008, when I got a substantial cheque from the WGA (who administer residuals and such) for my share as cowriter of the Beowulf film on DVD. And then DVDs were over and done and became a niche market.

These days residuals are... well, something you can take a friend to dinner with. Not something you could pay a monthly mortgage or the rent with. (para 1-2).

While Gaiman (2023) notes that he's quite lucky to subsidize his film and TV work with his book and comics writing, he further illustrates the nosedive in residual payments by adding the following screenshot of his own residual statement from the WGA:

But I just got one even smaller than the one cent residuals...

SPE Corporate Services Inc.	Mirrormask	2023-01-30	66108980	2023-02-14	-\$0.01
Warner Bros. Television, a div of WB Studio Enterprises Inc.	Beowulf	2023-02-17	71189712	2023-03-06	\$16.52
Paramount Pictures Corporation	Beowulf	2023-02-24	4145313	2023-03-01	\$2.18

-\$0.01

Figure 14. [Tumblr Post 4](#)

Though it is unclear if Mr. Gaiman owes SPE Corporate Services, Inc. a single cent as the statement suggests, the overarching argument is clear: between truncated employment periods and vanishing residuals, it is more difficult than ever for screenwriters to make a living in Hollywood. At the same time as many posts and comments across the Internet were agreeing with the arguments set forth by Gaiman and gingerswagfreckles, others were pushing back against the concept of residuals. In response to a tweet citing the need for residuals, Francis Freeman (2023) countered,

Who cares.

No one has the right to be a writer. If not good enough to earn a living. Get another job.

This is nothing more than entitlement from some of the luckiest people.

Feckless and entitled. (Freeman [Francis36258734], 2023)

Freeman's sentiment was echoed on Reddit when Redditor adrefofadre (2023) posted, "I work in residential construction, also a gig worker. I build a bathroom, I don't get a residual every time someone uses the shower..." (para 1). The criticism seems fair, especially since workers throughout the workforce are struggling, but it does not consider copyright laws and the financial incentives it is meant to protect. As mentioned

previously, copyright law has expanded to protect an individual creator's work for the span of their life plus an additional 70 years, courtesy of the Sonny Bono Copyright Term Extension Act (Copyright Act, 1998). When selling a script to a studio or accepting a writing job, a screenwriter relinquishes their authorship rights, turning their work into works-for-hire (Fisk, 2016). Likewise, a writer hired to work in the writers' room of a TV show is also creating a work-for-hire. The copyright for works-for-hire lasts for 95 years after publication or 120 years after creation, meaning if a creator sells their script or is employed by a studio, then said studio is entitled to all of the profit from any reuse or derivative of their work. While there is never any guarantee that a film or TV show will make it big or profit (even if a creator were to keep their copyright), upfront payments (the weekly or per episode pay) and the residuals given in perpetuity are meant to compensate creators for the loss of their IP. As demonstrated above, studio executives, streaming companies, and larger media corporations are not holding up their end of the bargain. If creators need multiple writing jobs to stay afloat, how is it fair that a company can retain the copyright to the work they created for 120 years, potentially racking up 120 years in profits? Additionally, the shift to streaming has also affected other kinds of compensation – the ability to network and learn new skills not only from writers, but cast, crew, and producers. Prior to streaming, writing was something that happened throughout a season of television, starting in preproduction but having writers be on set to offer guidance and do rewrites with feedback from cast and crew. In their YouTube video titled, "How Streaming Caused the Writers' Strike", Vox (2023) used the following two graphics to illustrate change:

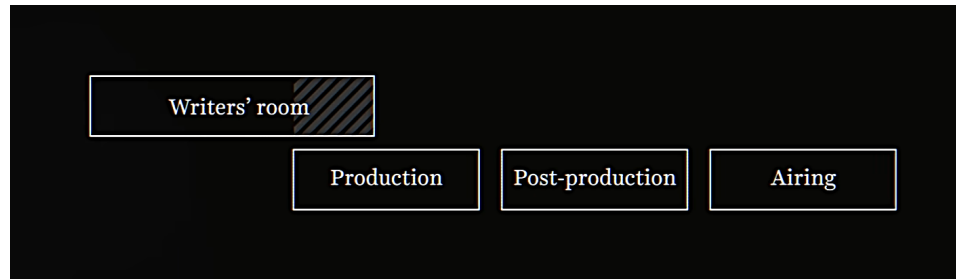


Figure 15. Production Process Prior to Streaming 1

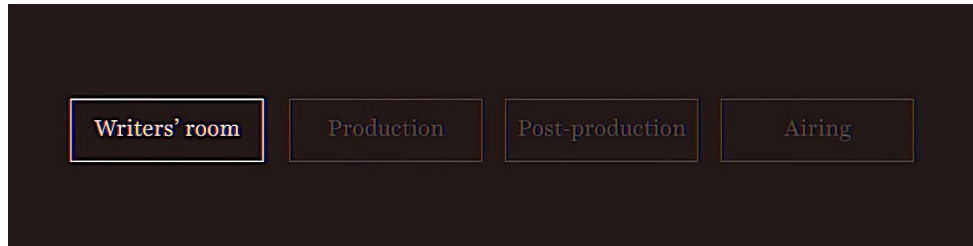


Figure 16. Production Process Post Streaming 1

As Redditor Prince\_Jellyfish (2023) noted,

[Prior to streaming] Generally writer pay was at least partially linked to delivering a written script; and producer level writer pay is entirely based on the number of episodes produced. But that isn't all of a writer's job: writers also write their episodes, then follow the episode on set/location for production, then (sic) the episode through post-production...

...Now, a cable show might be asked to write and deliver 8 episodes in 20 weeks, and then the lower level writers are let go and no longer have jobs for at least a year, maybe longer. Meanwhile, the upper level writers are expected to then shift to full-time producing, going to set, and then following the show through post production. (para. 4 and 7)

In the current landscape, entry level writers are barred from developing the skills to produce (which comes from being on set and interacting with other professionals in the industry) by being relegated strictly to pre-production work. Not only does this hamper upward mobility in the industry, but it also overworks mid-level and senior writers. The combination of weekly minimums being paid out over a short period of time, increasingly

tiny residuals, job insecurity and lack of upward mobility in the industry lead to higher barriers to entry for creators than ever before. In response to a post titled, “How do screenwriters pay the bills during the strike?”, many BadWolfCreative (2023) answered, “It’s not much different than any other dry spell...Tighten the belt, drive for Uber, move into parents’ basement. Everyone has a back-up plan”. If financial gain is meant to be a driver to create, to facilitate the progress of the “useful Arts” as put forth in the Constitution, then it is clear that the working conditions studios and media corporations have pushed with the advent of streaming misses that mark.

### **AI as Equalizer or Disrupter? The World May Never Know:**

Another key demand of the WGA during the 2023 Writers’ Strike included the impact of AI on job prospects of creators in Hollywood. Specifically, the WGA (and supporters of the strike) was worried that AI would be used to shift definitions of different positions in the writing job hierarchy or, in the long term, replace writers entirely. This bone of contention was eminent in posts on all three platforms, though it was debated hotly more so on Tumblr and Reddit, presumably because there are no word limit restrictions on those sites compared to Twitter. The AI debate gained extra traction on posts posted in the subreddits r/aiwars and r/singularity which are both dedicated to providing a space for Redditors to discuss the implications of AI on society. In a post titled “160 000 actors are going on strike due to AI” Ok-Judgement-1181(2023) invited those on the r/singularity subreddit to discuss the idea of AI taking over Hollywood in the next few years. This post gained 288 comments (with multiple replies to each comment). Similar Reddit posts concerning the Writers’ Strike and AI had high engagement with high numbers of comments (antonio\_ inverness, 2023; oldrocketscientist, 2023). On

Twitter/X, the WGA East (2023) posted a tweet/ X post spreading awareness that the U.S. Copyright Office was “asking for public comment on AI and copyright issues” (U.S. Copyright Office 2023). The tweet was retweeted 1.5k times (though it only had 26 comments). Tumblr user hashtagloveloves (2023) posted a screenshot of the tweet to Tumblr, which was reblogged 7, 408 times with the majority of Tumblr users leaving their commentary in the tags on their reblogs. The relatively high engagement on posts and comments referencing AI and its potential influence on copyright and the Hollywood labor market compared to general concerns confirms legal scholars’ arguments that AI will be (and is already) the intellectual property controversy of the century (Abbott, 2016; Ahuja, 2023).

The intellectual property and copyright components of the AI debate will be grappled with later in this chapter. For now, the focus will be on how the introduction of AI could be used by studio executives to topple the already fragile labor ecosystem of the media industry. As in other fields, there is a hierarchy of writing positions that goes along with the media production process. In the MBA, the WGA and AMPTP set the payment minimums for different types of writing: pilot episodes, back-up scripts, story, screenplay, etc. (WGA, 2023). The payments and definitions are complicated, but essentially, there are different upfront and residuals pay scales for writing something originally (higher pay scale) and for rewriting or ‘doctoring’ an already written script (lower pay scale) (MBA, 2020). In a neoliberal capitalist system that aims to boost the profits of corporations by keeping costs low, it makes sense that “what Producers want to do is use AI to generate basic scripts and then hire Writers to ‘punch it up’ (Tevesh\_CKP, 2023, para. 7). Like the push to streaming and the advent of mini rooms, using AI in this

way will further shorten the time spent on writing leading to creators facing what Tevish\_CKP (2023) called “the categorical extinction of their profession” (para. 13). It is with this fear in mind that the WGA and their supporters called for regulation of AI, both in terms of employment contracts and copyright legislation as a whole, to protect the interests of individual creators and the public. The above practices – shrinking the length of time devoted to writing, minimizing the number of writers employed, curtailing the ability of writers to network and upskill throughout production, and the devaluation of writers’ work with the use of AI – are practices that curtail creativity for creators. These factors all contribute to the apparent drop in writing quality that many social media users used as evidence that the media industry needed to “trim the fat” of overpaid and overvalued writers (deleted, 2023, para.1; gooseberryyfalls, 2023; @andy\_fields1, 2023; John-for-all, 2023).

**“You don’t need clout, as much as you need cash”: Gatekeeping and Intellectual Property:**

Throughout the posts centering the Writers’ Strike, intellectual property and copyright were hot topics, both explicitly and implicitly. In the previous section, I outlined how the financial incentive rhetoric behind copyright was applied by creators and their supporters to justify the demands of the WGA to their naysayers. However, fair compensation was not the only IP and copyright concerns that were brought up by the strikes. Posts and comments across Twitter, Tumblr, and Reddit debated questions of power vis a vis the enforcement of IP, questioned the appropriateness of IP expansion and the importance of the public domain, and grappled with the ramifications and uncertainty provided by the advent of AI. While the Writers’ Strike brought these issues

to the forefront of the zeitgeist, they have and will continue to reverberate into other fields and industries, suggesting that these issues are more important than ever to discuss.

In Chapter 1, I sketched out how power has flowed throughout the history of copyright's evolution from its roots in Europe to today. Copyright has always been a tool used to control the flow of information, with various actors lobbying governments for legislation that protects their interests. Today, this is especially apparent within the complex intellectual property sections in the attempted passage of the Trans-Pacific Partnership (TPP) in 2016. According to Hollis (2017), the IP chapter of the TPP would have been a "ratcheted-up version of US intellectual property law across member nations" had it passed, thereby expanding and protecting the interests of the 497 businesses and organizations in the United States that lobbied for its passage (p. 1). Though lobbyists assured that the treaty – particularly the IP chapter – would be beneficial to the everyday citizen and small business owner, the actual language of the treaty benefitted corporations over individual copyright holders and the public (Hollis, 2017). The TPP would have done so by expanding copyright protections within the biologics and pharmaceutical fields and extending minimum copyright terms from the author's life plus 50 years put forth in the Berne Convention to the author's life plus 70 years (Hollis, 2017). It is worth noting that at this point, U.S copyright terms were already at the author's life plus 70 years; the TPP would have brought all signatories in line with the U.S, which already goes above and beyond what is required by both the Berne Convention by virtue of the Sonny Bono Copyright Term Extension Act (Hollis, 2017; WTO, n.d; WIPO, n.d).

Though the TPP was not ratified, the fervor with which it was advocated for demonstrates the stake corporations have in IP. It would have further complicated current copyright law in a time when creators are already unsure of their rights and how to protect them. This confusion is evident in the myriad posts and comments pertaining to questions social media users had about copyright and IP. Discourses surrounding copyright and IP were centered around three areas: enforcement of copyright, the implications of AI, and the importance of the public domain. In terms of enforcement, social media users were primarily concerned with how copyright was enforced, what is protected under copyright law, how to comply with copyright law, and the lack of accessibility to copyright protection and enforcement that individuals have compared with media corporations. Confusion about what was protected under copyright law and how those protections were enforced often went hand in hand. For example, Redditor rulerofgeckos (2023) posed the question, “Do certain names fall under copyright laws?” in the r/writing subreddit, which is dedicated to helping aspiring writers improve their craft and navigate the publishing industry. Following their title question, rulerofgeckos mentioned that the name of one of the holidays in their fictional universe was called Soleday, which in real life is a trademarked term and brand owned by Nike. Many commentors mentioned that use of the word *should* be okay considering trademarks work differently than copyright, but that it would be prudent to consult with a lawyer to be sure (ZeroNot, 2023; EmphyreanFinch, 2023; d\_mscsw, 2023). In another post, omekoiks asked on the following on r/COPYRIGHT:

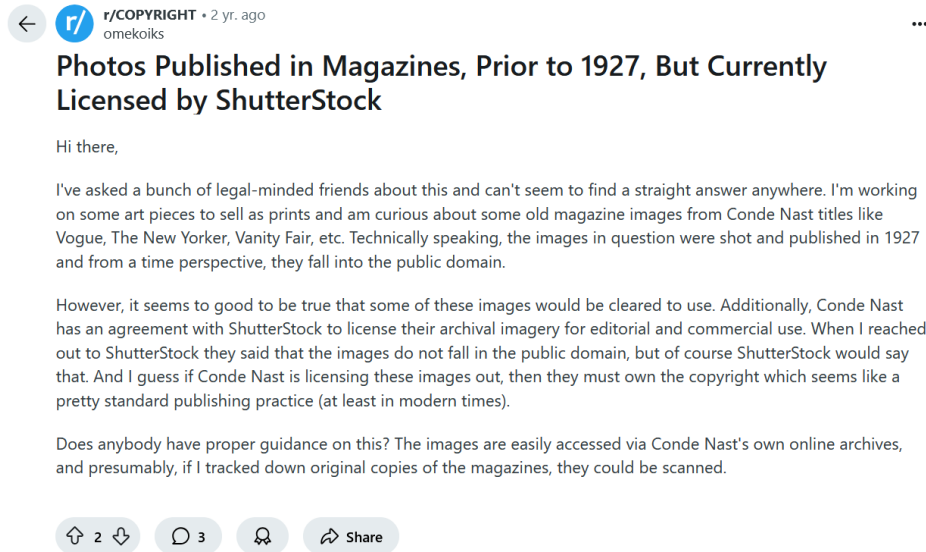


Figure 17. Reddit Post 2

In response, several commentors mentioned that the aforementioned photos should be in the public domain, barring significant touchups that would transform the works or licensing agreements the companies may have (pythonpoole, 2023; TaiwanAlix, 2023). Further, a commentor who has since deleted their account mentioned,

Scanning the originals would be the safest path to avoid the above potential issue, if you're concerned about that. That would also be sure to avoid any watermarks, visible or invisible, that a photo agency might embed into their photos for automatic detection on the Web and for subsequent inaccurate automated hassling for a license. (deleted, para. 7).

In these and other posts posing copyright questions, the key phrase has been *safe*. Under complicated copyright laws, the possibility of infringement looms, adds an additional roadblock for creators during the creative process, especially when it is unclear who owns a copyright. On the r/Filmmakers subreddit, SneakyOstrich69 (2023) demonstrates in the following post:



Figure 18. Reddit Post 3

SneakyOstrich69’s post highlights both the complexity of tracking down a copyright owner and the inequity of a system that requires a significant financial investment for entry. As one commentor said, “you don’t really need clout, as much as you need cash” (deleted, 2023, para. 3). On average, purchasing the rights to a film can range in price from anywhere to a couple thousand dollars to a percentage of the total production costs (Rosen, 2012). If a copyright is owned by a corporation, as might be the case for SneakyOstrich69 given the film in question is on Tubi, the price could be steep if they would even want to relinquish their IP. Additionally, the average cost to employ the services of an IP attorney hovers around \$500 to \$600 dollars an hour (Legal.IO, n.d.). Purchasing the rights and employing the services of an IP attorney to ensure copyright compliance is a difficult barrier to overcome, especially when most Americans are living paycheck to paycheck. Most creators do not have the funds to keep attorneys on retainers,

send endless cease and desist letters, or bring suit to potential copyright infringers. Though the law may apply to everyone, it does not do so equally. As a solution to SneakyOstrich69's problem, some commentors mentioned that they could likely write a script and sell it without obtaining the rights given it was transformative enough: "if you change enough of any story, you're not violating copyright" (deleted, 2023, para. 1). A transformative work is a subcategory covered by one of the four factors that go into determining fair use. A creative work may be considered transformative if it changes the preexisting work it is based upon by adding new expression, meaning, or insight, among other factors (Stim, 2022). This is an essential workaround for creators and one that works in tandem with the public domain to reinforce the public sphere and maintain a free culture.

As mentioned in Chapter 2, Crisp (2015) highlighted that IP ownership is just one of several gates that a cultural work will go through on the route from creator to audience. Based on the myriad of questions social media users had regarding IP, it seems that IP is often the first as well as the most complicated and intimidating gate for a work (and its creator) to go through. It is complicated in that definitions of copyright infringement are vague and intimidating because the consequences of infringement could be severe. No one wants to get on the wrong side of a media giant. Thus, as Taylor Swift (2020) says, "You know the greatest films of all time are never made".

### **The Future of Intellectual Property:**

In a post titled "Why Preservation of Intellectual Property Rights Matter", Redditor oldrocketscientist and 92 commentors discussed a range of range of issues

surrounding intellectual property, mostly centered around the fraught nature of AI. Oldrocketscientist began this discourse with the following assertions:

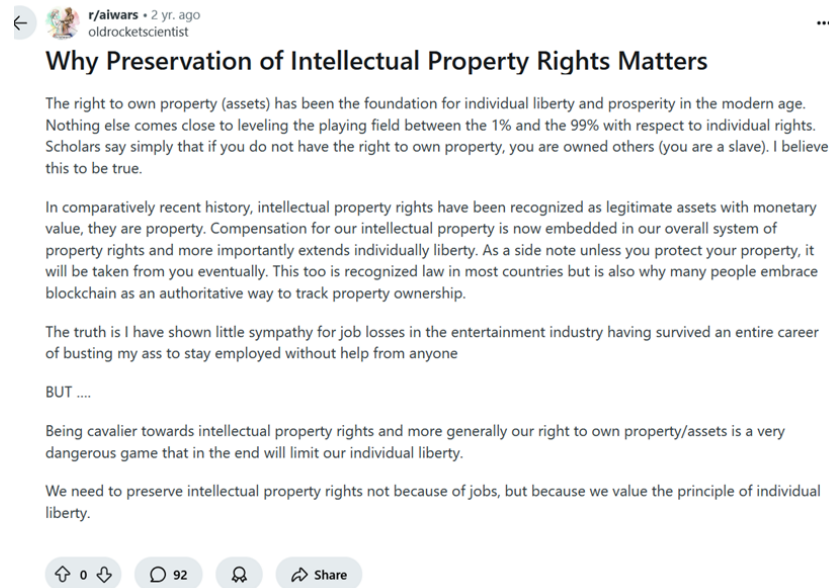


Figure 19. Reddit Post 4

In their post, oldrocketscientist (2023) acknowledged the ties ownership has to the utilitarian financial incentive model that copyright law is founded on and pushes it further by arguing that ownership of IP is necessary for the safeguarding of personal freedom. This thought process has been essential for proponents of strong and ever-expanding copyright legislation (Goss, 2017). Though oldrocketscientist (2023) did not explicitly mention AI, its threat to ownership is implied both by posting in the r/aiwars subreddit and the use of the phrase “I have shown little sympathy for the job losses in the entertainment industry” (para 3). Accordingly, all of the comments mention AI and copyright in one way or another. The arguments expressed in these comments echoed in posts on Tumblr and Twitter/X as well. Essentially, among posts pulled for analysis two

camps emerged: those who thought the use of AI was copyright infringement and those who did not.

For those who argued that AI was copyright infringement, many thought training AI on others' works without consent was tantamount to theft. On Twitter/X, David Slack (2023) outlines this argument with an analogy:

If you steal my car and then chop it up and put together with parts from millions of other cars you've stolen to make a "new" "original" car, then guess what?"

You still stole my fucking car (@slack2thefuture, para 1-2).

Twitter user BSmitty (2023) invoked Fair Use doctrine by rebutting,

If I steal your car, you no longer have use of it. If I use information you created to create something else, you still have your information. Copyright is still enforced, with fair use. (@bsmittyva, para 1).

Similar exchanges occurred on Tumblr, where commenters engaged in what amounted to textual sparring over whether or not the use of AI was theft:

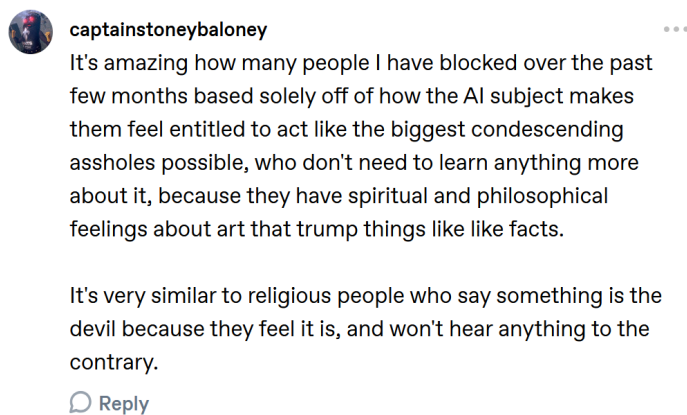


Figure 20. Tumblr Post 5



renard-dartigue



[@captainstoneyaloney](#) Okay I'll tell you why Ai sucks without coming off as a condescending asshole (its actually machine learning but they keep calling it ai cause it sounds cool) Ai is bad because in order to make them you must train them on living people. 90% of the time it is done without people's consent and when they do speak up about it, nothing is done to protect their work. And so I am opposed to Ai until safeguards are put in place to protect creators.

Reply

Figure 21. Tumblr Post 6

Fair use was a common refrain for those who supported the use of AI to create works. On oldrocketscientist's Reddit post pictured above, many argued that AI generated works should be protected under fair use since it is a type of research and learning, similar to what a human does when referencing others' art when developing new skills (Jarhyn, 2023; searcher1k, 2023). Others, like nybbleth (2023), argued on one comment that whether or not the AI learns or does not learn does not matter, so long as the end work is sufficiently transformative, i.e. "not a replica" (para. 1). In a separate comment, nybbleth (2023) notes that recognizing AI as fair use "limits it [IP law] from becoming draconian" (para. 1). In some ways, the discourses surrounding AI and copyright indicate that perhaps copyright is due for an overhaul: Bigger\_than\_cheese (2023) asserted that current copyright laws are over-expansive, referencing copyright striking as an example. Copyright striking is the term YouTube uses to describe the act of a video being taken down due to copyright infringement. YouTube and other Internet platforms are required to do so under the Digital Millenium Copyright Act (DMCA). Others agreed with this assessment, pushing back against the notion of copyright as an incentive:

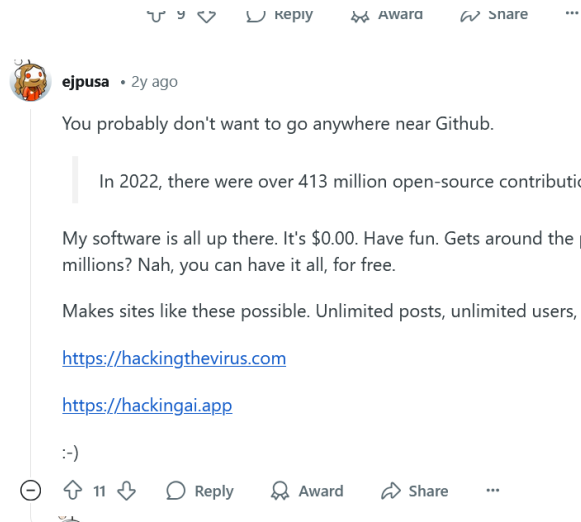


Figure 22. Reddit Post 5

These perspectives fall in line with scholars who maintain that the prevention of works flowing into the public domain curbs creation and creativity just as much as the lack of financial incentive does (Lessig, 2006; Cantatore, 2013; Samuelson, 2006). Additionally, social media users were concerned with the erosion of ownership as a consequence of copyright expansion and the hoarding of IP by media companies.

With the importance of the public domain in mind, many social media users argued that the proliferation of AI might bring about the end of copyright and IP. Interestingly, none of the commenters mentioned reducing term limits, as many opponents of copyright expansion typically advocate. Instead, these commentors pushed for the use of open-source licenses such as the General Public License (GPL) for software and Creative Commons licenses for creative works (epjusa, 2023; Bigger\_than\_cheese, 2023). These licenses are part of the ‘copyleft’ movement, which focuses on providing alternatives to copyright law for creators who may want to relinquish their copyright rights and have their works be freely available to the public (Lessig, 2006). Both the GPL

and Creative Commons licensing systems authorize derivative works as long as certain requirements are met (GNU Project, n.d.; Creative Commons, n.d). Superfluousbitches (2023) summarized the idea behind these initiatives best: “IP is the antithesis of culture” (para. 1).

Indeed, social media users expressed concerns that over-expansive IP and the hoarding thereof leads to erosion of a different kind of ownership: cultural ownership. On Tumblr, deadsprout (2023) highlighted the peril of allowing media companies and streaming services to decide what media is worth keeping accessible, pointing out that Netflix has consistently moved the goalposts when it came to distributing TV shows:

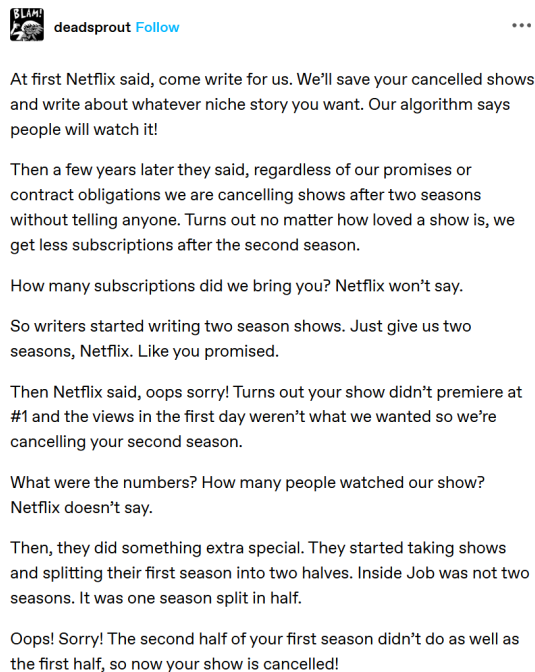


Figure 23. Tumblr Post 7

While deadsprout is specifically referencing a break in the social and financial contracts Netflix made with writers in their initial marketing and the lack of transparency curtailing residuals, a significant portion of replies argued that Netflix (and other streamers) have done the same with audiences by canceling shows and removing shows from their platforms even though they legally have the right to do so by virtue of copyright and licensing deals. In terms of the financial contract, many felt that the increase of subscription fees and crackdowns on account sharing was unfair in light of the impermanence of titles that brought them to the platform in the first place:



Figure 24. [Tumblr Post 8](#)

From the perspective outlined above, it could be argued that audiences are not getting what they are paying for, which is consistent access to TV shows and movies rather than a revolving door of titles that require subscribing to multiple streaming platforms.

In terms of the social contract, Netflix and other platforms are interfering with the creation and proliferation of culture. At the height of the Writers' Strike, Tumblr user

thoawayuntilfurthernotice(2023), posted a screenshot of a since deleted tweet in which Patrick McHale, creator of Cartoon Network series *Over the Garden Wall*, tweeted about the removal of his work from streaming platforms:

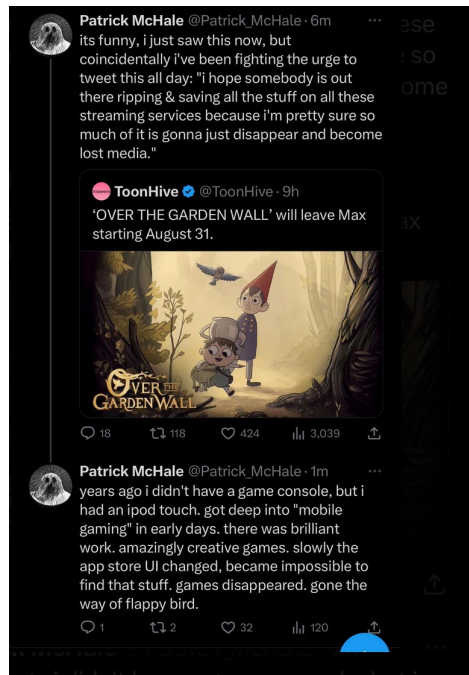


Figure 25. Tweet 2

Accompanying this screenshot thoawayuntilfurthernotice (2023) added, “Pirate all your favorite movies, shows, and games while you still have a chance.” (para. 1). The discourses on the original tweet thread are lost, however, commentators on the Tumblr post worried about the loss of media and ownership of that media due to licensing on streaming platforms. Though many commenters mentioned that *Over the Garden Wall* would be available on Hulu, others stressed the transient nature of titles remaining on a given streaming platform:

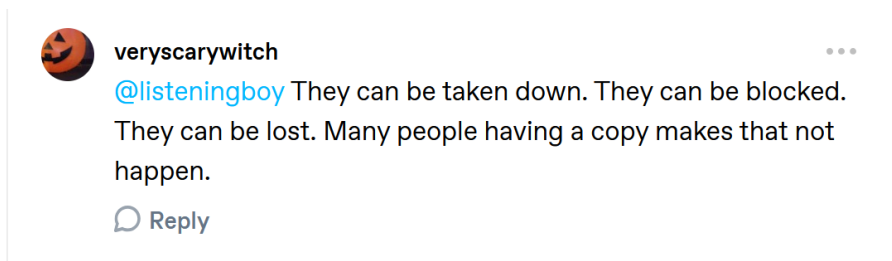


Figure 26. Tumblr Post 9

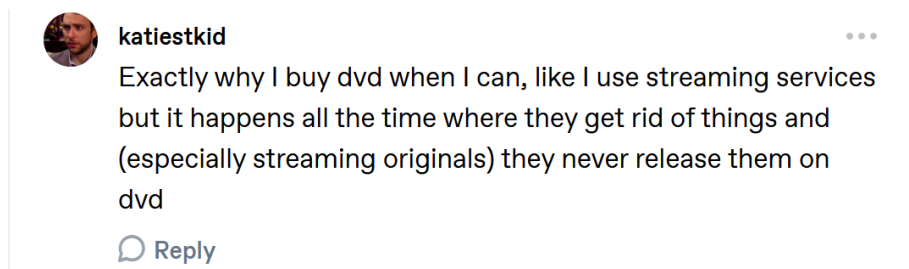


Figure 27. Tumblr Post 10

As katiestkid (2023) mentioned, the revolving door of titles going on and off streaming services has renewed interest in physical media such as DVDs. In an article titled “The Rise and Fall and Slight Rise of DVDs: A Statistical Analysis”, journalist Daniel Parris (2023) highlighted that online communities centered around physical media ownership, Google searches for DVDs on sale, and eBay sales of physical media have been steadily increasing in recent years. In addition to pushes for buying DVDs and other physical media, several commenters shared links to downloaded files of *Over the Garden Wall* and other titles unavailable on streaming platforms, doubling down on thowawayuntilfurthernotice’s call for piracy (multifandomsoup, 2023; raven1508, 2023; callmebruja, 2023, among others).

Despite the small revival of physical media, audiences still feel the weight of the potential for media to be forever lost:

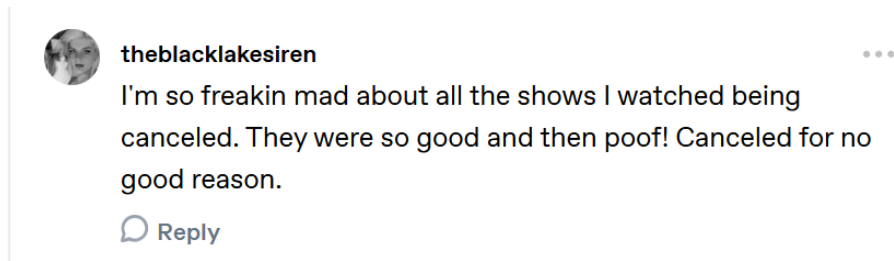


Figure 28. [Tumblr Post 11](#)

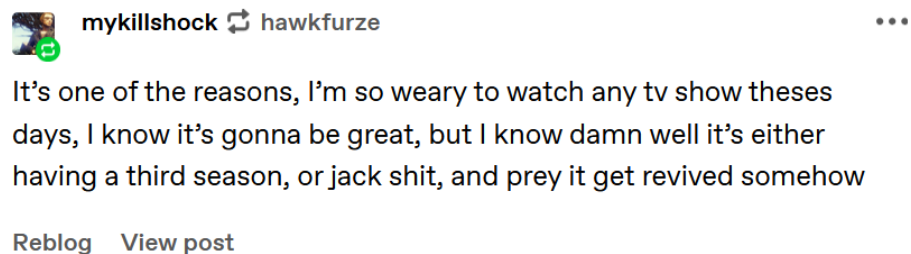


Figure 29. [Tumblr Post 12](#)

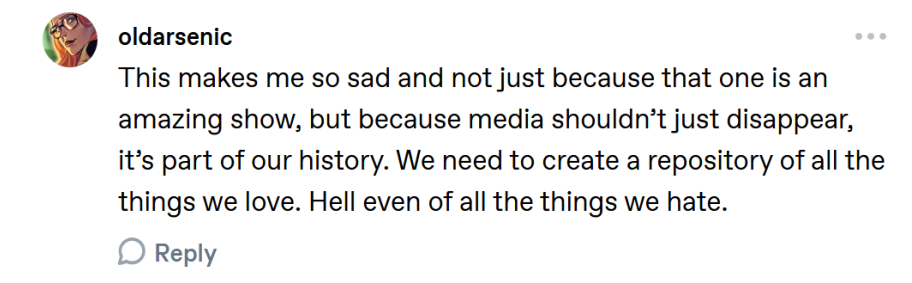


Figure 30. [Tumblr Post 13](#)

Here, oldarsenic (2023) makes an argument for considering TV shows and films to be cultural artifacts as they reflect our history. All creative works – whether they be books, films, tv shows, visual arts – are snapshots of time. They often reflect the experiences not only of the creator, but of the world around them. Thus, they require protection. Several Tumblr users – such as lethargy-lifestyle (2023) – reflected on the irony that breaking the law (piracy) was the only way in which these cultural artifacts could be saved: “I find it

funny that with time us pirates have become conservationists” (para 1.). Across Twitter, Tumblr, and Reddit, users emphasized the need to circumvent the constraint of current copyright and intellectual property laws. Though solutions varied: calling for alternatives to copyright via copyleft initiatives and the promotion of piracy, one thing is certain. Their sadness and anger of audiences over lost media and their efforts to legitimate and maintain ownership of these cultural artifacts indicate a betrayal in the overall goal of copyright law: serving the public interest (Dallon, 2003).

For the majority of time that IP has existed, copyright policy and legislation has tended to favor the financial aspects of creation and invention rather than the social aspects (Geiger, 2016). This becomes clear when looking at the ever-expanding works under copyright protection and the lengthening of copyright term limits. The flow of cultural works into the public domain has slowed to a trickle, and the discourses from audiences highlight that loss of access to cultural works is keenly felt. Cultural works are essential to building a strong public sphere: they provide the material that gets people talking about the world around them. The 2017 film *Get Out* stirred conversation about racism. In 2019, *Parasite* spurred similar debate about wealth inequality and capitalism. Conversations about our world are just as essential as creation and innovation when it comes to the notion of progress and public interest that copyright is meant to promote. Thus, it is imperative that the social aspect of copyright law be more centered in the future.

## CHAPTER 5

### CONCLUSIONS

Though the Writers' Strike of 2023 was initially meant to bring focus to the labor issues experienced by screenwriters in Hollywood, the discourses it inspired illuminated several areas where there was a breakdown in the intent behind copyright law and how it functioned in the media industry. Copyright is founded on ideals that appeal to personal liberty, fair compensation for labor, and the necessity of creation and innovation for societal progress (Birnhack, 2001; Lessig, 2006; Atkinson and Fitzgerald, 2014; Sinnreich, 2019). Despite these ideals, the influence of power has dogged the evolution of copyright as the needs of authors/creators, companies, and the public are constantly balanced. These conflicts are exceptionally apparent within the media industry, where intellectual property is currency that funds the entire industry. It is in this context that the WGA (2023) asserted that streamers and other media conglomerates use their wealth and influence to exert their power on the media industry, thereby functioning as "the new gatekeepers". Streamers do this in a few ways. Firstly, streamers and media conglomerates hoard intellectual property. These companies use their wealth to buy a massive amount of IP. In the last thirty years, Disney has purchased several media companies including ABC, Pixar, Marvel, Lucasfilm, and 21<sup>st</sup> Century Fox, among others to the tune of billions of dollars (WGA, 2023). Over the years, several other companies hopped on the vertical integration trend, leading to the majority of entertainment IP being in the hands of a few companies (Faro, 2021). With great IP comes great leverage. Thus, media conglomerates and the media companies they control are able to decide what makes it to the public and what gets shelved, all while owning the IP for long enough that those shelved works can't be used for others who might want to use them for inspiration,

such as SneakyOstrich69, who wanted to adapt an obscure 90s film and give it new life. Though creators creatively find workarounds through reliance on fair use and transformative works, media companies still ultimately call the shots when it comes to deciding which stories get told, how, and why. This is particularly true for those who create works-for-hire, such as writers hired to staff a writers' room.

Creators of works-for-hire are not considered authors when it comes to copyright law, therefore they have little control over the works they create aside from what studio executives allow (Fisk, 2016). Thus, the labor protections fought for by unions like the WGA are a proxy for the protection and leverage that copyright laws give authors and individual creators. In essence, the MBA negotiated by the WGA and the AMPTP establish standards of employment and compensation to writers for their intellectual property and the labor that goes into creating it. Still, those protections are hard-won and precarious considering the lengths media companies go to subvert previous labor negotiations. Media companies, like all for-profit companies, have a vested interest in keeping wages low. For example, Disney and Netflix are the first and second largest employers within the entertainment industry (WGA, 2023). According to their respective LinkedIn accounts, Disney Entertainment employs as many as 10,000 employees, while Netflix employees 17,000 (Disney Entertainment, n.d.; Netflix, n.d.). As preeminent employers in the industry, corporations like Disney and Netflix are able to set the standards for contracts for creatives that impact salaries, benefits, and working conditions despite the best efforts of unions like the WGA. This is evident in the discourses surrounding residuals and mini rooms. Media corporations skirted the compensation standards set forth in previous WGA negotiations by shifting focus to streaming. The

restructuring caused by streaming impacted compensation for creators in a few ways. The first is that less viewership on cable networks leads to fewer residuals, which are often a lifeline in the gig economy that is screenwriting. Streaming companies also obfuscated viewership data for streaming, which hindered negotiations on establishing fair minimums for SVOD residuals and weekly/ per episode wages (WGA, 2023; deadsprout, 2023). The switch to streaming also shortened the number of episodes in a season, leading to an overall reduction in salary and increased pressure on writers to maintain more writing jobs than in the years of network television. Writing jobs used to last for however long a show was airing on television; scriptwriting was a constant, dialogic process that included actors, crew, and producers in addition to other writers (Fisk, 2023). With the advent of streaming, the steady income, job security, and experience gained from being a part of the production process is slowly becoming a thing of the past as streaming companies and media corporations reached record profits (Fisk, 2023). The adoption of AI was also a concern; its use could restructure the labor needs of media companies and put many writers out of a job. Creators both on and off the picket line took to social media to discuss how detrimental these practices are to both their quality of life and the development of their craft. Though they are not technically authors under copyright law, the financial incentive rhetoric inherent in copyright still applies; they are still entitled to benefit from the fruits of their labor. In producing a work-for-hire, writers are trading in their copyright in exchange for employment. If a writer writes a script or screenplay for Netflix, for example, Netflix will own the IP. It can profit from that IP in any way they'd like for 90 to 120 years. As many creators and their supporters pointed out, the constant state of precarity via depressed wages and unpredictable employment

breaks the social contract that lies at heart of the work-for-hire concept even if Netflix or another streaming service is legally acting within the boundaries of their employment contracts.

The discourses surrounding the Writers' strike also highlighted ways in which the over-expansion of copyright law can be exploited by media corporations to limit the public domain and the proliferation of free culture. Firstly, social media users discussed the ways in which copyright is unequally enforced. Though any copyright holder can enforce their copyrights, large media companies can afford to hire legal teams that they use to enforce their copyrights, relying on the DMCA for legal justification. Smaller companies and independent creators are typically unable to afford to send out an infinite number of cease-and-desist letters nor do they have the time to trawl the internet in search of cases of infringement. The court costs in these cases are also prohibitive. The "is this copyright infringement?" type questions on Reddit and other social media sites indicate that this problem is twofold: it discourages creators from creating both original and transformative works out of fear of retribution. Furthermore, the shift to streaming, reliance on licensing, and the ever-shifting negotiations of licensing between media companies lead to the erosion of ownership. As creative works become primarily accessible via streaming and platforming, cultural media artifacts become increasingly vulnerable to being lost to time. This is particularly a concern for the video game industry, in which "87% of classic video games are critically endangered" (Lewin, 2023, p. 1). In discourses centered on lost media, social media users highlighted how difficult it was to track down the copyright holder of an obscure or orphaned work. Utilizing these works in various ways or even just archiving them can lead to unwitting copyright

infringement, leading many unwilling to take the risk. This, in addition to long term limits, prevents creative works from entering the public domain both in terms of legality and in practice, as many are unsure if/when works enter the public domain. The lack of ownership of cultural works turns into a lack of culture. If one cannot have tangible buy-in, then why invest in the creation of culture and cultural works? This argument was a common one among many on social media, as evidenced by those who stated they would cancel their streaming subscriptions and turn to physical media and piracy. In this sense collective ownership and conservation of media is intrinsically linked to the public domain. The public domain provides the discursive material necessary to maintain a robust public sphere which in turn is essential to fostering a free culture (Rose, 2003; Dallon, 2003; Lessig, 2006; Geiger, 2016)

Finally, the impact of AI within the Writers' Strike discourses cannot be understated. As mentioned previously, a majority of creators and their supporters expressed alarm at the potential of AI to upend the labor market and devalue the work of others. From an IP standpoint, many thought that the use of AI to generate new images and writing was essentially theft and advocated for the expansion of copyrightable works to include style. In contrast, those in support of AI argued that works generated with AI should count as transformative works and that copyrighting style would be "draconian"(nybbleth,2023). AI was also touted as a potential equalizer as it allows more people to create art, therefore having the potential to mitigate the gatekeeping power of studio executives and the media companies. Regardless of where social media users landed in terms of support of AI, it is clear that this is a technology that will have a significant influence on the future of intellectual property, as evidenced by the US

Copyright Office's (2023) reports on policy issues concerning AI and the copyrightability of AI.

The discourses by creators and audiences indicate that copyright as it stands now tends to benefit large media corporations rather than individuals. There are several initiatives and policy changes that could correct this imbalance. The first initiative is one creators and audiences are already familiar with: alternative licensing such as the GPL and Creative Commons, among others. These initiatives foster a sense of sharing, collaboration, and collective ownership among creators. At the moment, their greatest benefit lies in incrementally changing the entrenched rhetoric of property and wealth accrual in neoliberal capitalism that has and is currently shaping copyright policy. Abolishing copyright, as some people discussed, is not inherently necessary.

We need only to look toward other countries to how incorporating other aspects of copyright can be more effective in protecting the interests of creators. For example, though Japan is well known for its strict copyright laws, Japanese creators maintain moral rights to their works where their U.S counterparts do not. There are two types of moral rights that are integral to Japanese copyright law: the right of attribution and the right of integrity (Leiblr, 2015; Schendl, 2016). The right of attribution refers to the right of the author to be known as the author of any given work (Halbert and David, 2014). Even if a Japanese creator were to sign over the economic copyrights to their work, they could never be erased as the author/creator. The other type of moral right prominent in Japanese copyright law is the right to integrity. This right allows the author to prevent others from the undermining the spirit of their work, such as using it to promote hateful messages, etc. (Leibler, 2015). Like in France, another strong proponent of moral rights for authors,

the right to integrity is perpetual in Japan (Kwall, 2010). Moral rights are a requirement of the Berne Convention, so the U.S has adopted them, but only in an extremely limited context. Though some states have adopted moral rights for authors, the Visual Artist Rights Act (VARA) is the only legislation that explicitly refers to moral rights (U.S Copyright Law Office, n.d.). VARA only applies moral rights to visual artwork such as paintings, sculptures, and photographs, among others (Berton, 2020). It leaves literary works, film and TV scripts, and works-for-hire unprotected. Interestingly, the moral rights outlined in VARA expire upon the author's death, despite copyright lasting 70 years past the author's death. Adding substantial moral rights to current copyright legislation could tip the balance a little more in creators' favor. Several U.S based scholars such as David Troutt (2010) have also advocated for a robust moral rights framework within U.S copyright law. Though Troutt's (2010) work discussing race and music copyright lies outside the scope of this thesis, he has made suggestions such as reducing the cost of copyright enforcement and giving creators more control over messaging and/or distortion of their work are applicable creators of all media. Reinforcing perpetual, inalienable ownership rights having to do with recognition and maintaining the soul of a work is a type of compensation often ignored by U.S copyright law but could prove more of an incentive than financial and economic reward in the long run.

Another change in copyright legislation that could tip the balance in favor of creators comes from Article 20 of the EU Copyright Directive. This article allows for authors to "additional, appropriate, and fair remuneration" from those they have licensed or transferred their IP to if the initial compensation turns out to be too low compared to

profits the brought in by the adaptation of their works (EU Copyright Directive, Article 20, 2021). Essentially, if a writer were to sell a screenplay to a studio, but their initial fee was not adequately proportional to the profits drawn in by the movie based on that screenplay, the writer would be allowed to ask to renegotiate the terms of the license. Lastly, U.S copyright should strive to prevent the loss of access to media, which are integral to culture. Articles 5 and 14 of the EU Copyright Directive establish pathways to preserve digital cultural heritage, specifically in the context of lost media and orphan works (Dore and Turan, 2023). Though Dore and Turan (2023) admit that balancing the need for the preservation of digital cultural works is difficult to legislate given the differences in copyright law among EU member states, they note that defining digital media as cultural heritage is a step in the right direction.

As in the past, intellectual property and copyright law is currently fraught with conflict between a variety of actors whose needs are at times diametrically opposed. The discourses between creators and audiences on social media during the Writers' Strike of 2023 highlight these clashes. Tying these discourses to current intellectual property and copyright law and the neoliberal capitalist ideology that informs them reveals issues of power and equity that are here to stay unless there are substantial changes to legislation and social norms.

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