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Notice of Inquiry: Study on the Moral Rights of Attribution and Integrity (FR Doc. 2017–01294; Copyright Office Docket Number 2017-2)	)))))))	**REPLY COMMENTS OF THE NATIONAL WRITERS UNION**

National Writers Union

(UAW Local 1981, AFL-CIO)

<http://www.nwu.org>

May 15, 2017

The National Writers Union (UAW Local 1981, AFL-CIO) submits these reply comments in further response to the Notice of Inquiry by the U.S. Copyright Office, "Study on the Moral Rights of Attribution and Integrity," FR Doc. 017–01294, Copyright Office Docket Number 2017-2, 82 *Federal Register* 7870-7875 (January 23, 2017).[1]

The corpus of initial comments – even those initial comments overtly critical of protection for writers' moral rights to attribution and to the integrity of our work – reinforce the need for legislative and regulatory action to protect our moral rights as writers.

Many of the initial comments were patently self-contradictory, arguing simultaneously that writers' moral rights are already well-protected and generally respected, and that huge changes would be required if those rights were to be protected by any new statute or regulation.

These commenters can't have it both ways. If writers' moral rights were already well-protected and generally respected, enacting new laws, promulgating new regulations, or creating new enforcement mechanisms to guarantee those rights would be largely symbolic (even if significantly so, as a sign of U.S. respect for international treaty obligations). Those new laws, regulations, and enforcement mechanisms would rarely if ever be invoked, and having them on the books would have little practical impact on publishing or other business practices.

To the extent that protecting writers' moral rights would be a significant change, that is – and can only be – because those rights are currently unenforceable and widely disrespected.

In our initial comments, we addressed the specific questions raised in the Notice of Inquiry regarding whether certain specified mechanisms in current U.S. law provide adequately accessible, affordable, and effective redress for violations of writers' moral rights.

1 The initial comments of the NWU and the Science Fiction and Fantasy Writers of America, Inc., in response to this Notice of Inquiry are available at <https://www.regulations.gov/document?D=COLC-2017-0003-0039> and <https://nwu.org/wp-content/uploads/2017/04/NWU-SFWA-moral-rights-30MAR2017.pdf>.

Some commenters suggested that, regardless of those laws (and their deficiencies, which we discussed in detail in our initial comments), ethical or professional norms such as those of scholarship and journalism and against plagiarism provide adequate and widely respected protection against breaches of writers' moral rights of attribution and integrity.[2]

In response, we note first that ethics and professionalism are irrelevant to the activities of for-profit corporations. If unethical behavior is both legal and more profitable than ethical action, it is the legal duty of a for-profit corporation to be as evil as will maximize profits. If its directors forgo maximum return on investment to do more good, or to do less evil, shareholders are entitled to have them removed for breach of their fiduciary duty, and to have them replaced with directors who will do as much evil as will maximize profits, within the limits of lawful action.

It is the role of the law to ensure that evil is made unprofitable or simply illegal.

We wish that this could be dismissed as hyperbole, and it might be tempting to do so. But any claim that writers' moral rights of attribution and integrity are generally respected in the U.S. or that violations of ethical or professional norms against plagiarism are generally adequately "punished" or deterred by means other than legal sanctions is belied by the practices of some of the largest and most profitable re-publishers and distributors of written work: Internet-based search engines and social media platforms.

It is not the norm to provide attribution of both the author and the original publication, even when those are readily discernible, or to respect the integrity of the work, when "snippets" or other excerpts of works are distributed as part of search results or social media postings.

2 See e.g. Initial Comments of the Library Copyright Alliance, <https://www.regulations.gov/document?D=COLC-2017-0003-0023>: "In addition to the legal protections described in the Notice of Inquiry, an author's right of attribution is protected in the United States by the plagiarism policies of educational institutions, professional societies, and media organizations…. Although these plagiarism policies are not directly enforceable in a court of law, breach of these policies can result in punishments far more severe than the remedies for copyright infringement."

Typical search engine result pages include a URL (not necessarily the original URL or source) for each excerpt and sometimes, for some types of searches, the name of the publication (again, not necessarily the original publication), but only occasionally the name of the author.

Typical re-publication on social media includes only a hyperlink (again, not necessarily to the original source) and whatever attribution, if any, the "user" who uploaded or "shared" the excerpt chose to provide.

These are some of the most common formats for re-publication of written works, and they are formats in which attribution is a matter of happenstance, at best, rather than the norm.

Search engines could, but don't, include attribution (for example, from the copyright meta-data included in standardized machine-readable format in HTML headers) of the author and original publication of excerpts included in search results.

Social media platforms could, but don't, include required fields for each excerpt uploaded or "shared" by a user attributing the excerpt by author and original publication source, if known, and include the contents of those fields whenever the excerpt is displayed.

It is patent nonsense to suggest that these companies have been, or are likely to be without new enforcement mechanisms, "punished" in the marketplace or at the bank for their massive and systematic violations of these norms and of writers' moral rights.

Google makes billions of dollars a year from advertising included on search result pages which include excerpts from Web pages, the authorship of which is unattributed by Google.

Facebook makes billions of dollars a year from advertising on posts of uploaded and/or "shared" excerpts, the authorship of which Facebook does not require to be attributed.

Violations of writers' moral rights are central to these companies' profits.

Search engine and social media companies typically argue that writers should welcome uncompensated redistribution by them of excerpts from our work, because this gets us "exposure." But their failure to attribute authorship to writers, while making vast profits from their redistribution of unattributed excerpts from our work, makes a mockery of that claim. There is no benefit in "name recognition" if the authors of Web content are unnamed.

Some commenters argued, in their initial responses to the Notice of Inquiry, that writers' moral rights to attribution and to the integrity of our work should not be legally guaranteed.

Such comments are outside the scope of the Notice of Inquiry, which asked for comments on whether these rights (already recognized by, and binding on, the U.S. as a party to the Berne Convention) are adequately protected by existing U.S. law, not whether they should be.

The decision to recognize these rights and to commit to ensure the availability of adequate and effective remedies for violations of these rights was already made by the U.S. when we signed, ratified, and became a party to the Berne Convention and the WIPO Copyright Treaty.

In suggesting that the U.S. should not recognize or provide protection for these rights, other commenters are, in effect, arguing that the U.S. should withdraw from those treaties.

There are many reasons, we believe, why the U.S. should remain a party to those treaties. We need not go into all of those reasons here, since no such proposal has been made or is likely to be made.

The specific provisions of these treaties guaranteeing writers' rights of attribution and integrity are valuable not just, and not primarily, to writers and other creators of visual works.

As other commenters pointed out in their initial responses to the Notice of Inquiry,[3]

3 See the comments of the International Federation of Journalists, of which the NWU is one of the U.S. affiliates, at <https://www.regulations.gov/document?D=COLC-2017-0003-0027>, and the comments of the American Society of Journalists and Authors at <https://www.regulations.gov/document?D=COLC-2017-0003-0040>.

attribution and integrity of authorship and source are invaluable to the reading public and the voting polity as prerequisites for assessing the truth-value to be assigned to published works.

Distribution and redistribution of unattributed and out-of-context excerpts, and the consequential inability of readers to discern the source or evaluate the credibility of these works, are central to the creation and propagation of “fake news”, misinformation, and disinformation.

We reiterate our appeal to the Copyright Office and Congress to recognize the public interest and treaty-law imperative for new laws and regulations to protect the moral rights of authors and to provide adequate and effective means for us to enforce our rights as writers in the United States.

Respectfully submitted,

/s/

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