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Cut! . . . Out of Credit Arbitration The Case for Giving Hollywood Directors a Formalized Dispute Resolution Procedure for Conflicts of Attribution

Madeline Giles

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Cut! . . . Out of Credit Arbitration

The Case for Giving Hollywood Directors a Formalized Dispute Resolution Procedure for Conflicts of Attribution

BY MADELINE GILES*

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I. INTRODUCTION

The Writers Guild (“WGA”) and Directors Guild (“DGA”) of America formed in the early twentieth century to empower writers and directors in Hollywood.¹ These “craft unions” unified workers that belonged to the same craft rather than the same employer.² A common issue that these entertainment laborers faced at the hands of the major studios³ was the misappropriation of credit for their work on films.⁴ Before the WGA, studios would sometimes either give credit to the most favored writer or a significant other rather than the individuals that wrote a film (a common grievance of writers in the WGA)⁵ or give credit to multiple directors rather than one (a common grievance of directors in the DGA).⁶ Moreover, credits became extremely important to writers and directors not only for legacy and networking in the industry,⁷ but also to obtain residual payments from films.⁸ When a writer in the WGA does not initially receive credit when they believe they should, they may initiate a credit arbitration.⁹ The arbiters to this proceeding are a panel of three anonymous writers, and they determine whether the writer disputing credit has written enough to surpass a threshold to receive credit from the studio.¹⁰ The DGA does not share this system in common with the WGA; when there is a dispute of credits among directors, the studio must notify the DGA and negotiate the credit.¹¹ These director credit disputes do not arise often as the DGA is clear that only a single director or occasionally an approved two-director team is permitted to receive the credit of “director” in a given film.¹² However, as studios face complex directors’ credit issues (as in cases of public outrage over a director’s scandals, an unrecognized directing team, etc.) the informal negotiation in place for directors’ credit dispute may prove insufficient to address the complexities of a director’s attribution. In fact, the remedy to these issues in the past has been for a given director to outright leave the

1. VIRGINIA WRIGHT WEXMAN, *HOLLYWOOD’S ARTISTS: THE DIRECTORS GUILD OF AMERICA AND THE CONSTRUCTION OF AUTHORSHIP* 13-14 (2020) (ebook).

2. Michael L. Zimmer, *Taking on An Industry: Women and Directing in Hollywood*, 20 EMP. RTS. & EMP. POL’Y J. 229, 250 (2016).

3. While the term “studio” will be used throughout the paper, “studio” should be taken to mean “signatory Company” as the WGA designates in its collective bargaining agreement, and “Employer” in the DGA’s. Studio will represent the entity behind a film that collectively bargains with the craft unions.

4. See generally WEXMAN, *supra* note 1; CATHERINE L. FISK, *WRITING FOR HIRE: UNIONS, HOLLYWOOD, AND MADISON AVENUE* 4 (2016).

5. Interview with anonymous entertainment lawyer (Oct. 24, 2021) [hereinafter Oct. 24 Interview].

6. WEXMAN, *supra* note 1, at 14.

7. *Id.*

8. Catherine L. Fisk, *The Writer’s Share*, 50 SUFFOLK U. L. REV. 621, 621-22 (2017).

9. WRITERS GUILD OF AM. W., *IV. END OF PRODUCTION, E. How to initiate an arbitration*, CREDITS SURVIVAL GUIDE, <https://www.wga.org/contracts/credits/manuals/survival-guide>.

10. *Id.*

11. Oct. 24 Interview, *supra* note 5.

12. *Id.*

DGA.¹³ In light of the above circumstances, this paper will seek to answer these questions: (1) whether the DGA should adopt a more formalized system of disputing credit from the studio, (2) whether that formalized system should mimic the WGA arbitration process, and (3) if not a mimicry, whether there is a better formal alternate dispute resolution process that the DGA should strive for and how it should look. The focus will be on the film (or theatrical) industry.¹⁴

II. CREDIT ARBITRATION IN A NUTSHELL

In Hollywood, “credit” is what gets your name on the big screen. The phrases “Written By,” “Story By,” and “Directed By” are all forms of credits that demonstrate a person’s contribution to a film. The opening and ending credits are integral to a movie’s organization, and it would be strange to live in a cinematic world without them. What’s less known to the public is how these credits come to exist. These credits are crucial for members of craft unions because when a writer or director receives a credit, they also receive residuals on the film.¹⁵ Residuals are compensation for the “reuse of copyrighted materials.”¹⁶ The credit process begins with the studio that hired union members—for movies, this is generally a studio like Paramount Pictures and Warner Bros.¹⁷ At the end of the principal production of a film, the studio curates a list of workers that contributed to the film; for the WGA, this list is called the Notice of Tentative Writing Credits (“NTWC”).¹⁸ The NTWC triggers “complex credit rules,” and these codified rules for WGA members are “the most detailed statement in American law of the meaning of authorship.”¹⁹ Upon seeing the NTWC for a given film, a writer who is not included on the list but believes they should receive attribution has the option to initiate a credit arbitration.²⁰ In some cases, credit arbitration is automatically triggered when a production executive is proposed for writing credit and there are non-production executive participating writers on the project.²¹

13. Mark Harrison, *Whose Film is It Anyway? Unpicking Movies with Multiple Directors*, DEN OF GEEK (Nov. 1, 2018), <https://www.denofgeek.com/movies/whose-film-is-it-anyway-unpicking-movies-with-multiple-directors/>.

14. In television, directors frequently switch episode to episode, and the main creative vision comes from the “showrunner,” who is essentially an executive producer. See generally MasterClass staff, *What Is a Showrunner: Shonda Rhimes’s Advice for Showrunners*, MASTERCLASS (Sept. 10, 2021), <https://www.masterclass.com/articles/what-is-a-showrunner-shonda-rhimes-advice-for-showrunners>.

15. Fisk, *supra* note 8, at 622.

16. *Id.*

17. Interview with Lesley Mackey, Senior Director of Credits of the WGA (Nov. 3, 2021) [hereinafter Mackey Interview].

18. *Id.*

19. FISK, *supra* note 4.

20. WRITERS GUILD OF AM. W., *supra* note 9.

21. Mackey Interview, *supra* note 17.

A credit arbitration is an alternate dispute resolution mechanism by which a Hollywood guild member, typically a writer, protests the studio's decision to not credit the writer in the film and makes their case before a panel of arbiters.²² These rules are detailed in the WGA's collective bargaining agreement (the Minimum Basic Agreement or "MBA"), which are renegotiated every three years by the WGA and the Alliance of Motion Picture and Television Producers ("AMPTP"), and in related promulgated documents.²³

A. THE STEPS TO WGA CREDIT ARBITRATION

Upon the release of the studio's NTWC, the WGA Credits Department reviews the notice to make sure that the credits have been attributed properly (checking for incorrect spellings, improper crediting, incorrect form(s) of credits proposed, incorrect ordering of credits, etc.).²⁴ From there, the WGA sends the notice to its members. If a member wants to protest the tentative credits, they "must send a written protest to the Guild and to the [studio]."²⁵ The WGA then asks the studio to send all its materials it has with respect to the film's script; when the studio forwards these materials to the WGA, the clock starts to make a final determination of credits, and the WGA gets a total of 21 days to do so.²⁶

After any critical WGA investigations and pre-arbitration hearings, the writer must anonymize their materials to submit to the arbitrators and confirm their eligibility for the credit based on the percentage of the work the writer contributed to the film.²⁷ The writers then review a list of potential arbitrators and may strike names from the list to guarantee those arbiters will not oversee their case.²⁸ This ensures the writers will not be judged by someone they believe is already familiar with their writing style, consequently rendering the writer's anonymity moot.

The arbitrators themselves are what make this credit arbitration so unique. The WGA membership makes the rules for determining writing credit, including the process and the contributions required to receive credit, and they have decided that the question of who should receive credit should

22. See generally WRITERS GUILD OF AM. W., *supra* note 9.

23. Oct. 24 Interview, *supra* note 5; ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS, <https://www.amptp.org/> (last visited Nov. 15, 2021); see, e.g., WRITERS GUILD OF AM. W., WRITERS GUILD OF AM. 2017 THEATRICAL & TEL. BASIC AGREEMENT (2017).

24. Mackey Interview, *supra* note 17.

25. WRITERS GUILD OF AM. W., *supra* note 9.

26. Mackey Interview, *supra* note 17.

27. See WRITERS GUILD OF AM. W., APPENDIX A: CREDIT RULES FOR ORIGINAL SCREENPLAYS 1, https://www.wga.org/uploadedfiles/credits/Appendix_A.pdf (e.g., for a "sole screenplay credit, [Writer A must] have contributed more than 33% to any or all of the four screenplay elements and no other writer has contributed 50% . . . to any of the four screenplay elements").

28. WRITERS GUILD OF AM. W., VII. PREPARING FOR ARBITRATION, F. Deletions from the Arbiters List, CREDITS SURVIVAL GUIDE, <https://www.wga.org/contracts/credits/manuals/survival-guide>.

be decided by a writer.²⁹ In other words, unlike other arbitrations, credit arbiters are not lawyers, but screenwriters, as screenwriters can better understand and make judgments on another's contribution to plot, characters, setting, etc., of a film.³⁰

The WGA selects three arbiters to participate in the arbitration and sends those arbiters the anonymized packets of material (including scripts) to review.³¹ The arbiters must base their decision on the rules set forth in the Screen Credits Manual.³² Once the arbiters decide, they each call and send a written decision notice to the WGA.³³ The WGA notifies the writer of the decision.³⁴

If the writer is unsatisfied with the result, they may appeal within 24 hours of receiving notice of the decision.³⁵ The appellate panel for the WGA is the Policy Review Board ("PRB"), which is a committee made up of three members of the Guild, who serve on the Screen Credits Committee, which is a standing committee whose members determine issues prior to arbitration.³⁶ All the PRB may provide is a procedural review; the PRB cannot read the writers' material.³⁷ When the PRB makes its decision, one of the following may happen: if there is no valid ground for appeal, the decision of the Arbitration Committee is upheld (and notice is given to the studio); if there is a ground, the PRB can either order the arbitration sent back to the original Arbitration Committee with instructions or direct staff to empanel a new Arbitration Committee.³⁸

Of the two to three hundred NTWCs the WGA has received from studios for film credits this year, about 60 arbitrations have resulted (not including cases currently pending).³⁹ On a few occasions, writers have sued the WGA and the studio for the rights to a credit in court after a failed arbitration, but the writer never wins.⁴⁰ Courts generally do not want to intervene in creative decisions, and they usually determine that the WGA rationally decided the matter so they do not need to undo what the WGA has already done.⁴¹

29. Mackey Interview, *supra* note 17.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. WRITERS GUILD OF AM. W., *supra* note 9.

36. Mackey Interview, *supra* note 17.

37. *Id.*

38. *Id.*

39. *Id.*

40. Oct. 24 Interview, *supra* note 5; *see, e.g.,* Ferguson v. Writers Guild of Am., W., 226 Cal. App. 3d 1382 (1991); Marino v. Writers Guild of Am., 992 F.2d 1480 (9th Cir. 1994).

41. Oct. 24 Interview, *supra* note 5.

B. THE PRODUCERS GUILD (“PGA”) AND ITS APPROACH TO CREDIT

The PGA, while not a union and without a collectively bargained agreement like the WGA, follows certain credit rules that its members must follow if they wish to receive the “p.g.a.” mark and consequently be eligible to share in a Best Picture Oscar (as the Motion Picture Academy keys off of the p.g.a. mark).⁴² “[The p.g.a. mark] identifies those producers determined by the PGA to have performed a major portion of the producing work in a decision-making capacity on a particular motion picture.”⁴³ After a film’s production, the studio sends to the PGA a list of names of producers credited to the film, and the PGA will contact those members to ask if they want to apply for the p.g.a. credit.⁴⁴ Interested producers submit an eligibility form, and the PGA conducts interviews with other talent on the project, like the director and writers, to ascertain the producers’ contribution to the film.⁴⁵ Where a review of materials is required before deciding which producers get the p.g.a. credit (which isn’t always), the PGA assembles a panel of arbiters called the Producers Mark Determination Panel.⁴⁶ Like WGA credit arbitration, these arbiters are also producers.⁴⁷ The eligible producers’ materials do not contain the producers’ names, but when an arbiter can deduce the identity of a given producer the arbiter can either “proceed without bias or recuse her/himself from the Panel.”⁴⁸ The PGA recommends the panel give a percentage of weight to different stages of production,⁴⁹ but otherwise the panel is free to consider various aspects in coming to a decision, such as the producer’s contribution to diversity, equity and inclusion, the producer’s level of responsibility, feedback from interviewees who worked on the film with the producer, what work the producer contributed if the film was a sequel, whether they worked on a producing team, etc.⁵⁰ The panel then renders a decision that a producer may appeal; interestingly, the appellate arbiters are producers who can review all the evidence in full again, unlike the WGA’s PRB.⁵¹

III. THE DIRECTORS GUILD: THE INFORMAL ATTRIBUTION

42. *Id.*

43. PRODUCERS GUILD OF AM., RULES AND PROCEDURES FOR PRODUCERS MARK ELIGIBILITY – MOTION PICTURES 3 (2021).

44. *Id.* at 7.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 8.

49. *Id.* at 9.

50. *Id.* at 8-9.

51. *Id.* at 10-11.

PROCESS

A. THE ROLE OF DIRECTORS IN HOLLYWOOD

Film directors fit a unique niche in cinema. Unlike both writers and producers in their respective guilds, directors very rarely compete for credit among other directors. This is mostly due to the director's role as the glue that holds the entire film together through singular decision-making.⁵² The director is meant to be the everyman with a creative vision. They communicate to every department on set, like a conductor unifying the percussion, string, and wind sections of an orchestra.

While the public tends to view the director as a role for just one person, that wasn't always the case in Hollywood. In the early twentieth century, studios began splitting off director's duties, assigning a movie's scenes to different directors.⁵³ Directors despised this practice because it made movies unpleasantly disjointed in theme and style.⁵⁴ The DGA grew adamant that the only way to support the creative vision of a director was to make sure no multiple directors were assigned to a project.⁵⁵

In the mid-twentieth century, a group of French critics began a movement that put the director at the forefront of film.⁵⁶ Dubbed *auteurism*, this movement "championed directors, [giving] significant boost to the DGA's efforts to cast its members as creators in the high art tradition."⁵⁷ The director was portrayed as the major creative force of a motion picture.⁵⁸ While the WGA had to fight to get the proper names credited to a film in the first place, the DGA had no issue splashing its members' names prominently on posters for the world to see.⁵⁹

That's not the end of the story, however. In the age of directing teams like the Coen brothers, the fear of directors losing their creative authority to studios if they add a second name to the directing credit has become a less terrifying prospect since its heyday pre-World War II.⁶⁰ Auteur theory also ignores all the collaboration and labor that contribute to modern filmmaking.⁶¹ In fact, the empowerment of writers through the WGA's

52. VOICES OF LABOR: CREATIVITY, CRAFT, AND CONFLICT IN GLOBAL HOLLYWOOD 45-46 (Michael Curtin & Kevin Sanson eds., 2017) [hereinafter VOICES OF LABOR].

53. WEXMAN, *supra* note 1, at 15.

54. *Id.*

55. *Id.*

56. *Id.* at 33.

57. *Id.*

58. *Id.*

59. *Id.* at 35.

60. *Id.* at 15.

61. See generally Harrison, *supra* note 13; Luke Winkie, *Everything We Know (and Don't) About the Averted IATSE Strike*, VULTURE (Oct. 28, 2021), <https://www.vulture.com/article/iatse-strike-explained.html>; see, e.g., Stephanie Zacharek, *We Can't Talk About Bohemian Rhapsody Without Talking About Bryan Singer*, TIME (Jan. 7, 2019, 3:39 PM), <https://time.com/5495937/bohemian-rhapsody-bryan-singer-controversy/> (the critic's commentary on filmmaking: "I see a creation that works because

collective bargaining has changed the entertainment industry to be more writer-centric, if anything.⁶² Meanwhile, directors' attitudes towards the creative process have also shifted, clashing with the DGA's archaic auteur theoretical shield.⁶³ Directors recognize that they are not the ultimate authority in every component that goes into making a film; there are too many areas of expertise that one creative director could not possibly know everything about.⁶⁴ Directors will make decisions within these areas like supervisors, but the heads of each department are the ones that "realize those choices."⁶⁵ Directors themselves also have their own managerial team: this team usually consists of a unit production manager, first assistant director, second assistant director, and associate director, who all have administrative rather than creative duties.⁶⁶

Given this evolving view of directors and their role in cinema, there have been increasing instances where, like the other talent guilds, the directors face credit disputes. The changed status of the director and the subsequent doubts about credit merit a discussion about what directors and the DGA do when they dispute a credit from the studios, and whether the procedure in place should continue resolving those disputes.

B. THE DGA'S CURRENT CREDIT DISPUTE PROCEDURE

There are a few basic rules for directors as to how they are assigned to movies and what kind of credit they can receive. Strikingly, the DGA requires that only one director ever be assigned to a film, with the exception of directing teams and situations where having only one director would conflict with "foreign laws, regulations or subsidies;" a project requires a specialty director; or two directors apply for the same project "based on

a bunch of musicians and choreographers, of lighting technicians and camerapeople, of people working above and below the line—including, of course, actors—knew what they were doing and believed in it. You don't have to like the picture to accept that, like all big-budget movies, it bears the fingerprints of many hands, including that of its director. Film is alchemy. There's so much that can go wrong, and also a million and one nearly imperceptible elements that have to somehow go right.").

62. Oct. 24 Interview, *supra* note 5.

63. See, e.g., Paul Brownfield, *Thomas Kail's High-Wire Act*, DGA QUARTERLY (Summer 2019), <https://www.dga.org/Craft/DGAQ/All-Articles/1903-Summer-2019/Breakthrough-Thomas-Kail.aspx> ("The thing that's so fun about film and television is, you get to produce and support other directors. . . . That just doesn't happen in theater. There's one director."); see also WEXMAN, *supra* note 1, at 84 (commenting on the insistence of the DGA to give directors the "film by" credit, "[d]espite the DGA's aggressive stance on the issue of possessory credits, however, not all directors are convinced of its value. Steven Soderbergh has consistently refused it, as has Woody Allen, who called it 'pretentious and unnecessary.');" see generally *Who is a "Film by?" The Writers Guild vs The Directors Guild*, THE BLOG (Jan. 2, 2019), <https://blog.jpipel.law.nyu.edu/2019/01/who-is-a-film-by-the-writers-guild-vs-the-directors-guild/>.

64. VOICES OF LABOR, *supra* note 52, at 45.

65. *Id.* at 46.

66. DIRECTORS GUILD OF AM., DIRECTORS GUILD OF AM., INC. BASIC AGREEMENT OF 2017 14-20 (2017); DGA TRAINING PROGRAM, <https://www.dgatrainingprogram.org/> (last visited Feb. 9, 2022).

professional necessity.”⁶⁷ The default credit for the director per the DGA is “Directed by,” with specific designations on its positioning in the movie, on posters, and in advertisements.⁶⁸ Another credit is the possessive credit—the coveted “Film by” credit—which is permitted for a director if the film is not their first.⁶⁹ While a single director receives full residuals for the film, a directing team (like the Wachowskis) must share the residuals.⁷⁰

When more than one director works on a project without being part of an authorized directorial team, the studio notifies the DGA and those directors of the studio’s choice for the official directing credit.⁷¹ A dissatisfied director must “immediately appeal directly to the [DGA] and likewise notify the [studio] in writing that he or she is so doing.”⁷² The DGA by itself reaches a decision that is final; the studio only decides the credit if the DGA does not notify the studio of its decision within fourteen days.⁷³

The basic agreement does not go into detail about how the DGA determines credit.⁷⁴ In practice, the DGA negotiates informally with the directors and their representatives.⁷⁵ This sharply contrasts the lawyer-less credit dispute resolution within the WGA. When a director is replaced during production, and the studio decides that the second director should receive the credit, the first director with their attorney may argue to the DGA that the first director should receive sole credit for the film.⁷⁶ This negotiation typically happens only over phone call or email.⁷⁷ In these instances, for the first director to hire an attorney is especially helpful, if anything to assist in the negotiation process with the DGA.⁷⁸ With respect to animated films, the DGA is more flexible on the number of directors attributed to the film because of the “extra work entailed, [and] the larger timescale on which animation is produced allows for cleaner changes of director.”⁷⁹

There have been a couple occasions where credit determinations were considered through a likely informal arbitration, but very little is written about it.⁸⁰ No descriptions of the manner or procedure of the arbitration have

67. DIRECTORS GUILD OF AM., *supra* note 66, at 62.

68. *Id.* at 98, 100-06.

69. Oct. 24 Interview, *supra* note 5.

70. *Id.*

71. DIRECTORS GUILD OF AM., *supra* note 66, at 98.

72. *Id.*

73. *Id.*

74. *Id.*

75. Oct. 24 Interview, *supra* note 5.

76. *Id.*

77. *Id.*

78. See generally CARRIE J. MENKEL-MEADOW ET AL., DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 107 (3d ed. 2019).

79. Harrison, *supra* note 13.

80. See, e.g., *id.* (“[Arbitration]’s happened on a couple of Pixar films, including *Ratatouille* and *The Good Dinosaur*”); see also WEXMAN, *supra* note 1, at 76-77 (“When [*Death of a Gunfighter*’s] original director, Robert Totten, was fired after clashing with star Richard Widmark, Don Siegel was brought in

been documented for easy public access. These arbitrations likely occurred in absolute worst-case scenarios, and since a director credit dispute usually consists only of two to three contenders for the credit, it is improbable that the DGA in those instances precisely replicated the WGA's arbitration process.

C. THE CHARACTERISTICS OF DIRECTOR CREDIT DISPUTES

A director's contribution to a film is not as tangible as that of a writer.⁸¹ A director's job on a film is to realize their "vision" of a film, which is challenging to quantify.⁸² Should a credit dispute arise among directors, resolving it would inevitably be complicated: which vision of two competing directors dominated a film? Can two directors share that vision? Does the studio agree with that vision? Does the director dispute the vision forced upon them by the studio? If a director receives credit, presumably it is their vision on display on the big screen. The following will discuss conflicts that have arisen with respect to vision and credit in the last few decades.

1. *The D-team: who gets dual directing credit?*

While the DGA dictates there be only one director attributed to a film, there is an exception for *bona fide* directing teams.⁸³ To qualify as a directing team, a pair of directors must obtain a "specific waiver" from the DGA to codirect, as codified in the 1978 DGA Basic Agreement.⁸⁴ This kind of team is defined by the Western Directors Council "as teams who 'learned how to direct together, by actually doing, and have therefore demonstrated that they perform the director's duties as if they were actually one director.'"⁸⁵ The team must demonstrate a "history of cooperative activity."⁸⁶ Further, codirectors that "split up their duties rather than work[] in tandem" won't receive the DGA's blessing as a directing team.⁸⁷ Some examples of teams that successfully waived the one-director requirement are the Coen Brothers and the Wachowski sisters⁸⁸; notably, these directing team examples are pairs of siblings, which speaks to the likelihood that the "learned to direct together" requirement was satisfied for both. A non-sibling team example is

to finish the picture. Siegel, however, did not want to sign the film and appealed to DGA arbitration. The final credit on *Death of a Gunfighter* thus reads "'Directed by Allen Smithee.'").

81. VOICES OF LABOR, *supra* note 52, at 45.

82. Oct. 24 Interview, *supra* note 5.

83. DIRECTORS GUILD OF AM., *supra* note 66, at 62.

84. WEXMAN, *supra* note 1, at 74.

85. Dave McNary, *DGA Accused of Bias Against Female Directing Teams by 'Crazy Ex-Girlfriend' Director*, VARIETY (Oct. 19, 2018), <https://variety.com/2018/film/news/crazy-ex-girlfriend-director-dga-1202987025/> (quoting Ted Elrick, *Singularity of Vision*, DGA QUARTERLY (May 2004), <https://www.dga.org/Craft/DGAQ/All-Articles/0405-May-2004/Singularity-of-Vision.aspx>).

86. WEXMAN, *supra* note 1, at 76.

87. *Id.*

88. Harrison, *supra* note 13.

Phil Lord and Chris Miller, who met and started working together when they both attended Dartmouth College.⁸⁹

The above directing teams had to overcome a significant hurdle to be credited together. There are plenty of requests to the DGA from directors to waive the one-director policy, with minimal success.⁹⁰ One example of a team that failed to sway the DGA is Robert Rodriguez and Frank Miller [a comic book writer who wrote the source material of the movie “Sin City” which he “co-directed” with Rodriguez], and “guest director” Quentin Tarantino.⁹¹

Another time the DGA rejected a pair as an official directing team was in the case of Audrey Wauchope and Rachel Specter for the TV show “Crazy Ex-Girlfriend.”⁹² While the DGA had permitted Lasse Hallstrom and Joe Johnston to share the credit for *The Nutcracker and the Four Realms* when the directors had staggered their work on the film, the DGA rejected Wauchope and Specter’s waiver of the one-director-to-feature rule later that same year.⁹³ The two directors accused the DGA of sexism in making this decision, since the reason Wauchope and Specter did not have a sufficient history of a collaborative filmmaking was because they took time away from the industry to have children.⁹⁴

The DGA has faced more requests for waivers in recent years,⁹⁵ and with its strict guidelines in place the DGA may need to consider creating a more flexible standard to adjust to modern-day nuances and equity in filmmaking.

2. *A disturbance in the force: Lucasfilm’s struggles with the DGA*

George Lucas, creator of *Star Wars*, sparked trouble with the DGA when he refused to follow its order to change the location of the director credit for the movie *Empire Strikes Back*.⁹⁶ This disagreement was emblematic of the DGA’s position that the director, as the author of a film, should have their name displayed at the beginning rather than the end of the movie.⁹⁷

89. Phil Lord and Chris Miller, *Producers*, SONY PICTURES ANIMATION, <https://www.sonypicturesanimation.com/our-team/filmmakers/phil-lord-and-chris-miller> (last visited Nov. 15, 2021).

90. Ted Elrick, *Singularity of Vision*, DGA QUARTERLY (May 2004), <https://www.dga.org/Craft/DGAQ/All-Articles/0405-May-2004/Singularity-of-Vision.aspx>.

91. WEXMAN, *supra* note 1, at 75 (citing Daniel Engber, *Why Not Quit the Directors Guild?*, SLATE (Apr. 8, 2005), <https://slate.com/news-and-politics/2005/04/why-not-quit-the-directors-guild.html>).

92. Dave McNary, *DGA Accused of Bias Against Female Directing Teams by ‘Crazy Ex-Girlfriend’ Director*, VARIETY (Oct. 19, 2018), <https://variety.com/2018/film/news/crazy-ex-girlfriend-director-dga-1202987025/>.

93. *Id.*

94. *Id.*

95. WEXMAN, *supra* note 1, at 76 (citing Elrick, *supra* note 90).

96. *Id.* at 72.

97. *Id.*

Another interesting issue that arose from a *Star Wars* movie was the replacement of directors Phil Lord and Chris Miller by Ron Howard in the making of *Solo: A Star Wars Story*.⁹⁸ Mid-production, Lucasfilm president Kathleen Kennedy determined (allegedly) that Phil Lord and Chris Miller did not share the creative vision of Lucasfilm.⁹⁹ Kennedy managed to remove the duo before a DGA deadline, and Lord and Miller accepted executive producer credits.¹⁰⁰ Fascinatingly, Lucasfilm found a loophole to prevent the full creative rights going to the director, presumably on the basis of *creative differences*—a circumstance that the DGA supposedly rejects in its mission to liberate the director from the clutches of a major studio.

3. *In #Me2-D: removing problematic directors*

In the era of the #MeToo movement, powerful players in Hollywood have been exposed as harassers who take advantage of their authoritative positions to prey on others. A prime example is producer Harvey Weinstein, whose reign of terror opened the dialogue about harassment on social media. Many creative talents in Hollywood (directors, producers, and writers) have faced accusations, leading studios to cut ties and terminate all future projects with the accused talent, and the talent to resign from their respective guilds.¹⁰¹

Hollywood directors are not immune to this publicity. Among the laborers that work on a film, directors are some of the most influential on set and unfortunately, some use this angle for ill will. The DGA and studios have had to deal with the consequences of public outcry against a director condemned for sexual misconduct. This can lead (or should lead) to a changed credit when the director is exposed in the middle of filmmaking and has satisfied the minimum requirements for earning credit per the DGA basic agreement.

Where this potential change could manifest is in a situation like the one Bryan Singer faced in late 2017. A director most known for *Usual Suspects* and *X-Men*, Bryan Singer was criticized for alleged past sexual misconduct

98. *Han Solo: The DGA Rule That Explains Lord and Miller's Mid-Production Firing*, SCREEN RANT (July 29, 2017), <https://screenrant.com/han-solo-lord-miller-firing-dga-rule/2/>.

99. *Id.*

100. *Id.*

101. See, e.g., Ricardo Lopez, *Warner Bros. Cuts Final Ties with Brett Ratner, Won't Renew \$450-Million Co-Financing Deal*, VARIETY (Apr. 11, 2018), <https://variety.com/2018/film/news/brett-ratner-warner-cofinancing-deal-ends-1202750809/>; Gregg Kilday, *Harvey Weinstein Resigns from Producers Guild of America, Is Now Banned for Life*, HOLLYWOOD REPORTER (Oct. 30, 2017), <https://www.hollywoodreporter.com/movies/movie-news/harvey-weinstein-resigns-producers-guild-america-1050625/>; Phil McCausland, *Filmmaker Morgan Spurlock admits to history of sexual misconduct*, NBC NEWS (Dec. 13, 2017), <https://www.nbcnews.com/storyline/sexual-misconduct/filmmaker-morgan-spurlock-admits-history-sexual-misconduct-n829581>; Neil Vigdor, *Woody Allen and Amazon Settle Breach of Contract Lawsuit*, N.Y. TIMES (Nov. 10, 2019), <https://www.nytimes.com/2019/11/09/arts/woody-allen-amazon-lawsuit.html>.

(including an alleged rape of a minor) and flakiness on set during production of *Bohemian Rhapsody*.¹⁰² 20th Century Fox, the studio behind *Bohemian Rhapsody*, fired Singer and replaced him with director Dexter Fletcher who wrapped the movie.¹⁰³ The film won a couple Oscars, but those who were involved in *Bohemian Rhapsody*'s production never discussed the fact that Bryan Singer was attributed directing credit per the DGA's rules; that is, he claimed all the credit in spite of his poor behavior on set, his track record for sexual misconduct, and the additional director hired to clean up the mess he'd left behind.¹⁰⁴ The studio rightly responded to a director with bad press acting out on the job by firing him, but had no choice but to abide by the DGA's absolutist rules that provide no flexibility on a case-to-case basis. However, in the wake of this scandal, another movie Singer was directing was put on hold and ultimately never made.¹⁰⁵

IV. CREATING A FORMAL ATTRIBUTION PROCESS FOR THE DGA

The DGA's informal negotiation procedure starkly contrasts the formalized credit arbitration used by the WGA and to a certain degree that of the PGA. This makes some sense, since the guilds view credit differently; the DGA pursues the ideal of the sole director, but the WGA wants credit attributed to writers no matter the number. Importantly, modern-day directors do not universally ascribe to the auteur theory, and many find their pleas to the DGA to be free of the restrictions of this cinematic philosophy rejected. Paradoxically, the DGA's mission to keep creative choices out of the hands of the studios to rest solely with one director's artistic vision clashes with its own members' modern opinions on directing credits, which has fueled conflict among the individuals the DGA was intended to support.¹⁰⁶

Since the role of the director has evolved, and credit disputes up to this time have been decided based on rules that take up a mere paragraph in the DGA's basic agreement,¹⁰⁷ perhaps the time has come to rethink how the DGA resolves credit disputes. Can informal negotiation practice be changed to better accommodate present-day reality? In the past few decades, prominent credit issues that have arisen within the DGA concern (1) unrecognized directing teams and (2) public backlash of hiring and keeping "cancelled" directors. These problems present a nuance that throws the

102. Zacharek, *supra* note 61.

103. *Id.*

104. *Id.*

105. Oct. 24 Interview, *supra* note 5.

106. See, e.g., Dave McNary, *DGA Accused of Bias Against Female Directing Teams by 'Crazy Ex-Girlfriend' Director*, VARIETY (Oct. 19, 2018), <https://variety.com/2018/film/news/crazy-ex-girlfriend-director-dga-1202987025/>.

107. DIRECTORS GUILD OF AM., INC. BASIC AGREEMENT OF 2017 98, <https://www.dga.org/-/media/E912CA508ACF4446BA1C0DEB1B49ED89.pdf>.

standard “directors v. studios” dispute eschew in granting credits. Given that the WGA, a union like the DGA, already has arbitrations in place, the possibility of adopting the same system for the DGA should first be considered.

A. PURE MIMICRY OF THE WGA CREDIT ARBITRATION PROCESS

Copying the WGA’s credit arbitration would be the most convenient solution if only to not reinvent something special for directors. The WGA has undergone arbitrations for nearly a century with few changes.¹⁰⁸ Furthermore, a distinct advantage of WGA-style credit arbitration for the DGA is equity. The DGA historically has faced issues with accepting diverse members.¹⁰⁹ Entertainment industry aside, anonymity is an effective way to prevent an evaluator’s bias when they judge material.¹¹⁰ The WGA anonymizes the writers that go through arbitration for film credit.¹¹¹ With this in mind, the DGA could promote lesser-known directors through credit arbitrations. During informal negotiations, the disputing directors are known to all parties, and bias and greed may cloud the results of these negotiations.

There are unfortunately some problems with completely mimicking the WGA manner of arbitration for directors. First, there is room for improvement in the WGA arbitration process. For one, the selection of arbiters is not ideal. The WGA does not pay arbiters to review scripts of disputing writers.¹¹² WGA employees must call up arbiters, who are WGA members eligible to be on, and have been added to, the arbiters’ lists, and ask them to review scripts; often the WGA must depend on “repeat players” – arbiters who regularly volunteer to receive and review scripts.¹¹³ While there have been debates in the WGA about paying arbiters, such a policy is not in place at this time.¹¹⁴ Understandably, the DGA may resist a system in which they must beg other directors (acting as arbiters) to review a disputing director’s content without pay. Sadly, there is also no equivalent of a final shooting script in the director’s realm, so the materials that an arbiter for directors would review, and the cost of assembling them, is less certain: would the arbiters watch footage of the movie? Read scene directions? Transcripts of meetings with actors?

Second, the WGA’s credit arbitration takes many steps, and with its harsh deadlines, WGA employees must work quickly and effectively. As a

108. FISK, *supra* note 4, at 64-65.

109. EITHNE QUINN, A PIECE OF THE ACTION: RACE AND LABOR IN POST-CIVIL RIGHTS HOLLYWOOD 29 (2020).

110. BLINDING AS A SOLUTION TO BIAS: STRENGTHENING BIOMEDICAL SCIENCE, FORENSIC SCIENCE, AND LAW 254 (Christopher T. Robertson & Aaron S. Kesselheim eds., 2016).

111. Mackey Interview, *supra* note 17.

112. *Id.*

113. *Id.*

114. *Id.*

result, writers feel supported by the reliability of the WGA's credit arbitration process and take advantage of it when they are dissatisfied with the studio's attribution.¹¹⁵ The DGA, on the other hand, would likely not want to establish this system because directors may similarly take advantage of the system when they can. The DGA likely assumes that through informal negotiation, there is no due process issues that the WGA credit arbitration faces as a binding dispute resolution. Moreover, the DGA might see an installation of credit arbitration as potentially opening the flood gates to insignificant and perhaps petty disputes that do not currently go to negotiation.

The WGA formed a system that functioned best for the needs of its members, but that is no guarantee that the same system would mold well to director disputes. That is not to say, however, that a lesson cannot be learned here from the WGA's well-established alternate dispute resolution system. What the WGA accomplished, and the DGA has yet to execute, is a system in which the debate around credit received the attention of a neutral-third party. The WGA instituted a strong safeguard for writers when it created a process that was confidential, anonymous, bereft of financial gains to any party, and settled at the say-so of knowledgeable neutrals. This system ensured that credit was given to those who substantively deserved it.

B. FASHIONING A UNIQUE CREDIT DISPUTE PROCESS

1. *Unrecognized directors' teams*

The long road to equality among directors that have endured prejudice in Hollywood, like women and POC film directors, has made some progress in recent years.¹¹⁶ The DGA started as a difficult union to enter in the mid-twentieth century due to its admission that relied on paternity (i.e., if an applicant to the DGA's father had also been a director, the DGA favored that applicant), college education, etc., which caused a "near-total freeze-out" of minority directors.¹¹⁷ This inequality has been particularly evident in debates over what defines a "directing team."¹¹⁸ These debates have arisen more frequently since the turn of the century, and the years following have shown that several directors will voluntarily sign on to projects with other directors.¹¹⁹ Whatever the reason may be, a lot of directors want co-

115. *Id.*

116. See generally EITHNE QUINN, A PIECE OF THE ACTION: RACE AND LABOR IN POST-CIVIL RIGHTS HOLLYWOOD (2020); Zimmer, *supra* note 2, at 229.

117. EITHNE QUINN, A PIECE OF THE ACTION: RACE AND LABOR IN POST-CIVIL RIGHTS HOLLYWOOD 98-99 (2020).

118. Dave McNary, *DGA Accused of Bias Against Female Directing Teams by 'Crazy Ex-Girlfriend' Director*, VARIETY (Oct. 19, 2018), <https://variety.com/2018/film/news/crazy-ex-girlfriend-director-dga-1202987025/>.

119. Ted Elrick, *Singularity of Vision*, DGA QUARTERLY (May 2004), <https://www.dga.org/Craft/DGAQ/All-Articles/0405-May-2004/Singularity-of-Vision.aspx> ("There has

authorship, in defiance of auteur theory, but quite often do not have the blessing of the DGA to make that a reality. As previously discussed, in determining whether a directing team is *bona fide*, the DGA looks to the two directors' long-standing history of cooperation in filmmaking. Because of societal obstacles for directors that do not fit squarely into the cis-straight-white-male paradigm, arguing their case before the DGA can prove to be an insurmountable task.¹²⁰ When the DGA scrutinizes directing teams under these restrictive standards, a director that worked alongside another director will unjustly go without credit.

One solution would be for the DGA, directors, and studios to renegotiate the meaning of the term "*bona fide* directing team." The stringent yet subjective requirement of a long history of cooperation between the directors under the current definition leaves out many co-directors that would otherwise qualify because of their singular vision.¹²¹ If the DGA were to modify its criteria for directing teams so that they recognize the barriers many artists face because of their gender, race, sexuality, etc., the DGA will do good on its word to better represent diversity in their membership and at the movies.¹²² Some ways to approach this is by having the criteria (1) place less emphasis on the two directors having been educated together, (2) reduce the number of occasions of cooperation required to be considered a team, and (3) consider the similarities between each director's style and how the styles complement each other to form one unique style.

Additionally, studios likely have few qualms about the number of directors attributed to a film; in fact, it was the ease with which they hired multiple directors at a time that so scandalized industry directors in the early twentieth century.¹²³ The one-director rule was meant to prevent the studios from doing this, so if directors decide themselves to have more than one director, the studios are unlikely to protest.

Another solution, perhaps in concert with the first, is to establish an alternate dispute resolution process that allows a third-party neutral to oversee the merits of the case for the waiver of the DGA's one-director rule. One possibility would be to have an arbitration process similar to that of the PGA for producers that want to receive the "p.g.a." mark. Parallel to the producers' submission of an eligibility form, directors already submit

been a substantial increase in co-directing waiver requests to the WDC. There were 15 requests (10 granted) between 1979 and 1989; 19 requests (11 granted) from 1990 to 1999. However in the 39-month period since the new millennium there have been 22 requests for co-directing waivers of which 12 waivers were granted").

120. McNary, *supra* note 118.

121. *Id.*

122. Zimmer, *supra* note 2, at 229; *Farewell Letter from President Thomas Schlamme*, DGA GUILD NEWS, https://www.dga.org/News/Guild-News/2021/September2021/Schlamme_Farewell_Letter.aspx (last visited Nov. 15, 2021).

123. WEXMAN, *supra* note 1.

requests to the DGA to waive the one-director rule.¹²⁴ Importantly, the PGA's system has a provision that allows for the PGA to come to a decision on its own, without the need for producer arbiters to convene to review materials.¹²⁵ Where directing teams are concerned, pairs of directors may initiate a PGA-style proceeding by simply requesting the DGA waiver for their given reasons. Under the PGA system, if those reasons fall under the criteria for a directing team (whether those criteria are the same or more accommodating after a renegotiation), the DGA could have the option not to convene a panel of arbiters to review the materials and instead come to a decision on its own. This way, the directing team credit dispute process would avoid the WGA's challenges of having to constantly call and ask writers to volunteer their time to be arbiters. If the DGA automatically agrees with the directing team, no official arbitration would be necessary, which saves time.

Unfortunately, the above is already more or less what practically happens in the DGA when qualifying directing teams.¹²⁶ To ensure a fair procedure, the directors should have an option to request an arbitration if they are unsatisfied with the DGA's response. If the DGA openly admits that it is uncertain whether the directing team meets the criteria, it should then be obligated to convene a panel of three arbiters. Like in the PGA, these panelists should be directors who can review the directing team's materials to determine whether the qualifications have been met. Ideally, the directing team should have the chance to strike names from a list of potential arbiters.

With respect to the "materials" submitted by a director to the DGA, producers share the same intangibility in their work product as directors. Unlike writers, whose work can be read, producers and directors are employed mostly as decision-makers, and much of their contribution to a film, and the reason they deserve the "p.g.a." or "Directed by" credit, is their investment in helping the production run smoothly and seamlessly.¹²⁷ The more fluid PGA standards that ask arbiters to observe a producer's time working on a film, their general message, their interactions with staff, etc., lend themselves better to a guideline for a directing team's waiver determination. The arbiters can review interviews from other staffers on the set who witnessed the team working together, documents detailing the various decisions of the team to demonstrate the unique vision they shared, etc. The arbiters may also be looking for some mitigating factors such as

124. Elrick, *supra* note 119.

125. PRODUCERS GUILD OF AM., RULES AND PROCEDURES FOR PRODUCERS MARK ELIGIBILITY – MOTION PICTURES 7 (2021), https://www.producersguildawards.com/Content/documents/PM_Master_Rules_Documentary_Motion_Pictures.pdf.

126. McNary, *supra* note 121; Elrick, *supra* note 124.

127. *See generally* PRODUCERS GUILD OF AM., *supra* note 125; *see also* VOICES OF LABOR, *supra* note 52, at 45-46.

social obstacles that prevented the team from satisfying a specific criterion for directing teams. From the materials, the arbiters may assess whether there was any undue influence of one director over another, in which case the arbiters will likely find that the directors did not act as a cohesive pair. Directors that are aware of this problematic image and find it misleading to the arbiters may choose to include explanations for the choices made to demonstrate that they were in fact decided in tandem. So long as the arbiters are knowledgeable of the craft, they should be able to evaluate the veracity of the documents before them.

Like striking the names of arbiters off a list, the anonymity of the petitioning writers and producers to arbitration is another aspect of credit arbitration that makes the process fairer to the parties. The arbiters decide blindly, and when they cannot, they must promise to remain unbiased or recuse themselves.¹²⁸ The director arbiters should review the materials under the same rules. As it is always best for writers to decide whether credit should be given to a writer,¹²⁹ so too should a director decide whether a team of directors properly worked as a team to get dual directing credit.

Once the director arbitration panel decides, the directors may accept the result or request an appeal as is possible in both the WGA and the PGA. Like with the PGA, the directors should be able to have their appellate panel be other directors that review the materials a second time.

The exasperation that proposed directing teams currently feel when the DGA dismisses their desire to be a credited team can be resolved by having other, neutral eyes weigh in. Additionally, by maintaining a set of criteria but having anonymous directors apply facts to those criteria on a case-by-case basis for the benefit of other directors will still protect the DGA members from the risk of studios overstuffing the director's chair.¹³⁰

2. *The "cancelled" director*

Whatever one's opinion on "cancel culture" may be, the fact remains that it exists and it's not going away any time soon, due in large part to the messages of recent movements like Black Lives Matter and #MeToo. The definition of "canceling" divides Americans, as some folks define it as holding public figures accountable for their actions, and others as unjust punishment and censorship.¹³¹ How large corporations respond to public backlash is critical: does a company make an empty statement about equality

128. PRODUCERS GUILD OF AM., *supra* note 127 at 8.

129. Mackey Interview, *supra* note 17.

130. WEXMAN, *supra* note 1.

131. See *Americans and 'Cancel Culture': Where Some See Calls for Accountability, Others See Censorship, Punishment*, PEW RSCH. CTR. (May 19, 2021), <https://www.pewresearch.org/internet/2021/05/19/americans-and-cancel-culture-where-some-see-calls-for-accountability-others-see-censorship-punishment/>.

and diversity, or does it change its operations to its potential economic detriment for the sake of equality and diversity?¹³²

The entertainment industry must now contend with a reality in which any decision made within its previously impervious walls is open to public comment and criticism.¹³³ Major film studios like Warner Bros. and Paramount Pictures rely on box office sales to make a profit; if people refuse to see movies because they disagree with a director assigned to the picture, the studio will lose money at the box office, notwithstanding COVID-19. The act of “cancelling” in these instances can spell financial trouble for studios. At odds with this economic motivation to remove bad eggs from cinema is the guilds’ take on accountability for misconduct in the industry; that is, the guilds have different approaches to how to treat an accused individual.¹³⁴ This treatment inevitably affects whether accused individuals receive credit.

After the havoc the Hollywood blacklist caused to writers during the Cold War, the WGA will not revoke membership from a writer for sexual misconduct or a criminal conviction.¹³⁵ The Screen Actors Guild – American Federation of Television and Radio Artists (“SAG-AFTRA”) and the Animation Guild meanwhile hold a proceeding in which one member can accuse another member of misconduct, and the union will investigate and potentially discipline, and even eject, that member.¹³⁶ The DGA in turn has been less vocal on this issue, but its leadership has recognized that it continues to work on protecting its members from harassment.¹³⁷ It is possible that the DGA shares the WGA’s sentiment about terminating

132. See Helen Lewis, *How Capitalism Drives Cancel Culture*, THE ATLANTIC (July 14, 2020), <https://www.theatlantic.com/international/archive/2020/07/cancel-culture-and-problem-woke-capitalism/614086/>.

133. Oct. 24 Interview, *supra* note 5.

134. Jonathan Handel, *#MeToo: Hollywood Guilds Grapple with How to Represent the Accuser and the Accused*, HOLLYWOOD REPORTER (Feb. 15, 2018, 5:39 AM), <https://www.hollywoodreporter.com/business/business-news/guilds-grapple-how-represent-accuser-accused-1084439/>.

135. *Id.*; see also GLENN FRANKEL, HIGH NOON: THE HOLLYWOOD BLACKLIST AND THE MAKING OF AN AMERICAN CLASSIC 311 (2017) (written remarks of Michael Wilson, blacklisted Hollywood writer, read by his widow when he was posthumously awarded an Oscar: “I trust that you younger men and women will shelter the mavericks and dissenters in your ranks and protect their right to work The Guild will have need of rebels and heretics if it is to survive as a union of free writers. The nation will need of them if it is to survive as an open society”); Oct. 24 Interview, *supra* note 5.

136. Oct. 24 Interview, *supra* note 5; Ariane Lange, “‘I’m Sorry’ Is Not Enough”: Inside The Union Trial Of An Alleged Sexual Harasser, BUZZFEED NEWS (June 6, 2018), <https://www.buzzfeednews.com/article/arianelange/chris-savino-animation-guild-metoo-allegations-nickelodeon#:~:text=Nickelodeon%20had%20fired%20Savino%20in,the%20allegations%20to%20be%20forgotten.>

137. Oct. 24 Interview, *supra* note 5; *DGA Procedures for Handling Sexual Harassment Complaints*, <https://www.dga.org/News/Guild-News/2018/Mar2018/DGA-Procedures-for-Handling-Sexual-Harassment-Complaints.aspx> (last visited Nov. 15, 2021); see also *Farewell Letter from President Thomas Schlamme*, DGA GUILD NEWS, https://www.dga.org/News/Guild-News/2021/September2021/Schlamme_Farewell_Letter.aspx (last visited Nov. 15, 2021).

membership, as the Bryan Singer scandal seems to indicate, but it is in no way certain, given the guild's honorable origins.¹³⁸

Studios would likely be more receptive to the sway of public opinion when deciding to keep or boot a director.¹³⁹ Where this becomes a real problem is where a director is fired, another replaces that director, and there is a dispute about which of the two directors must get credit per the one-director rule. The DGA explicitly grants full creative rights to the director that has completed ninety percent of a film's production except for instances where the director went over budget, or the replacing director had to do more than ten percent of directing.¹⁴⁰ When the replacement happens midway through production, it's anyone's guess who gets the directing credit. In these circumstances, there is a mixture of interests at play, such as the needs of (a) the studio to have a good reputation and garner public support, (b) the director to receive just credit for a project they worked on, and (c) the public to hold the malcontent accountable for wrongdoing. Among these interests is the consideration of the second director that took over after the removal of the problematic director. The newer director would presumably not take kindly to the original director taking full credit, as the DGA would likely propose. The studio in turn would likely side with the newer director, as the studio hired the new director in hopes of the public not associating the film with a "cancelled" director.

Perhaps the simplest way to organize this cluster of interests is by dividing the conflict into a binary structure: Studio + New Director v. Old Director + DGA. This separation operates under the following assumptions: the studio wants the new director in place so it doesn't receive bad publicity and the DGA follows its strict one-director rule with its standard default that the first director be the only director. Moreover, this restructuring of the dispute changes the perspective of the current negotiation procedures utilized by the DGA, as it explicitly pits the DGA against the studio. However, since the DGA has not outright stated its opinion on how to approach membership of "cancelled" directors and how much it would side with such a director for

138. WEXMAN, *supra* note 1, at 11, on the DGA's origins as likened to an artisanal guild from Middle Ages: guilds . . . established standards that governed the activities of all members of the organization. In America, the Jeffersonian principle of the independent citizen linked the guild ethos to democratic ideals so that the medieval standard of mutual support was joined with a republican notion of citizenship that carried with it associations of personal responsibility and pride. Within this framework, labor unions in the nineteenth-century America fostered ethical standards that valued both fellowship and worker autonomy.

139. Helen Lewis, *How Capitalism Drives Cancel Culture*, THE ATLANTIC (July 14, 2020), <https://www.theatlantic.com/international/archive/2020/07/cancel-culture-and-problem-woke-capitalism/614086/>, When you look at the economic incentives, almost always, the capitalist imperative is to yield to activist pressure. Just a bit. Enough to get them off your back They want to do something, anything, to appear as if they are taking the problem seriously—until the spotlight moves on.

140. See DIRECTORS GUILD OF AM. CREATIVE RIGHTS HANDBOOK §7-503 (2017-2020 55).

the sake of the one-director rule, there's no guarantee that the DGA would definitively defend the first director under these circumstances.¹⁴¹

Assuming the proposed dynamic best suits the overall disputes of directors amid sexual misconduct and other cancel culture scandals, the directors' interests may vary in the dispute. Why does each director want credit? One director might want credit purely for the residuals, and not as their "signature" to a work of art.¹⁴² Perhaps one director wants the credit because the director desires exposure to the film's specific genre (e.g., science fiction), but the opposing director does not care about that exposure.

Among the solutions that would recognize the disparate interests of the directors is changing the meaning of the credits available to DGA members. For example, as with directing teams, the DGA could modify its definition of the "First Assistant Director" to mean the secondary creative director of a film, in addition to or in lieu of the role's managerial duties already codified in the DGA Basic Agreement.¹⁴³ Moreover, this new version of the first assistant director can represent a specific creative element of filmmaking (character development, storyline, expertise in adaptation from stage to film, etc.). This way a director receives recognition for their creative contribution, and this opens the door to all kinds of specialty attributions for directors. Perhaps in these circumstances a disputing director would not mind receiving the credit of the first assistant director instead.

Overall, these credit questions merit thorough discussion. The current DGA negotiation is very one-sided, and leaves room only for the DGA to make decisions based on what it hears from the opposing parties directly. In recent years, directors have acted flexibly when approaching a problem that, if escalated, would require the DGA to make a hard and fast decision. Some directors, for example, Phil Lord, Chris Miller, and Ron Howard in the making of *Solo*, came to a decision about credit on their own, without the need for DGA intervention pursuant to its employment contract.¹⁴⁴

With this background, it is this author's opinion that mediation would work best in deciding the credit disputes between directors after public outcry over the original director and their past scandals. Parties in a joint mediation would have the opportunity to discuss the reason for their demand of screen credit, and where there is room for compromise. The DGA may

141. DIRECTORS GUILD OF AM., DGA PROCEDURES FOR HANDLING SEXUAL HARASSMENT COMPLAINTS, <https://www.dga.org/News/Guild-News/2018/Mar2018/DGA-Procedures-for-Handling-Sexual-Harassment-Complaints.aspx> (last visited Nov. 15, 2021) ("If an allegation of sexual harassment has been made against [a DGA member], and [their] employer wishes to interview [them], the Guild can also represent [them]. Whether [they] need or have the right to representation depends on the facts of the case").

142. WEXMAN, *supra* note 1, at 76.

143. DIRECTORS GUILD OF AM., INC. BASIC AGREEMENT OF 2017, art.16 (2017), <https://www.dga.org/-/media/E912CA508ACF4446BA1C0DEB1B49ED89.pdf>.

144. *Id.* at 98; *Han Solo: The DGA Rule That Explains Lord and Miller's Mid-Production Firing*, SCREEN RANT (July 29, 2017), <https://screenrant.com/han-solo-lord-miller-firing-dga-rule/2/>.

balk at the idea of holding such a collaborative meeting; but, at the risk of sounding corny, “get[ting] [the] parties out of an adversarial contest and into the exercise of creating a better future” in fact awards directors with the creative *autonomy* they fought for all those years ago when the DGA was formed.¹⁴⁵ The DGA modeled itself after medieval artisan guilds so fellowship could flourish among its members.¹⁴⁶ In this setting, the directors here are not necessarily enemies of each other, but fellows of the same organization that are facing a problem that goes to reputation and finances; these problems do not automatically upend the overall “vision” of the film. That said, should there be a dispute about vision, both parties in the mediation should discuss their respective intentions with the film, the similarities of those intentions, and how to move forward given the differences.

The ability to craft a unique resolution to a dispute does not only benefit the directors. The studio, for example, would likely propose to the fired director that they publicly apologize for the misdeeds that led to the bad press surrounding the movie.¹⁴⁷ That way, the studio can save face by showing that the director they initially hired is at least remorseful, and the studio can offer something in return to the fired director. Other examples of results from such a mediation would be changing the credits and their meanings after renegotiating the DGA’s basic agreement. Like in the movie *Solo*’s credit dispute, one product of a mediation could be that one director gets a different credit that would be less noticeable to audiences.

The various interests connote a potentially long but comprehensive mediation where all four parties are in attendance with the mediator, or productive and shorter two rounds of mediation with the parties separated. The problem with the latter setup is that faulty communication between the two mediations could lead the parties to make incompatible decisions that may require a third mediation. Therefore, the following discussion will assume there is one mediation in which all four parties participate. However, there should be some negotiated time constraints to the mediation that recognizes the imminency of the film release date among other contractual obligations.

One key component of this new form of mediation between directors is the mediator themselves. Would this person be a director, in parallel with the writer arbiters in WGA credit arbitrations? A producer? Some other craft guild member with knowledge of directing, or a complete outsider? This is a tricky question, and it does not help that directors are some of the most well-known Hollywood elites in the world. Even though a mediator does not have to be an expert within the field they mediate, having knowledge can

145. MENKEL-MEADOW, *supra* note 78, at 189.

146. WEXMAN, *supra* note 1, at 11.

147. MENKEL-MEADOW, *supra* note 78.

assist the mediator in moving the conversation along, and perhaps controversially, notifying the parties of the rights they have.¹⁴⁸ One option is to have retired foreign directors mediate disputes. If the mediator has retired from the industry, they have no stakes in how the case goes. If the mediator is from and made movies in a different country, they would potentially have no close connection with the directors in dispute. For the studio and DGA, a retired foreign director may not be familiar with their contracts and general mode of operations. That said, there are some needs that are so universal that even a retired foreign director would understand them (e.g., the need to have a good reputation and financing).

One downside of the mediation is the inability to multitask. What the process gains in clearing up communication and molding a creative solution between disputing parties it loses in the time that directors, DGA employees, and the studios have now between phone calls and emails in the DGA's casual negotiation procedure. The perfect mediation between directors, the studios, and the DGA might not be within reach anytime soon, but a discussion of the alternate dispute resolutions in these instances of scandal could help develop the proper tools for future disputes like this.

For the sake of preserving both the integrity of the director, the interests of competing directors, and the public at-large, it would be worthwhile to experiment with these more formal alternate dispute resolutions to develop a more just system in determining director credits.

V. CONCLUSION

Although credit disputes among directors are few and far between, their growing complexities and ramifications indicate that a new procedure is proper for disputes among DGA directors. For the DGA to remain unmoved by changing times in the industry is ill-advised, detrimental to members and others in the industry, and causes public backlash. By learning from successful alternate dispute resolution methods utilized by other Hollywood guilds and modifying those methods to meet the unique needs of directors, the DGA may better address debates over credit going forward.

148. *Id.* at 227.

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