

ERIC HUGHES
[Address deleted]

Los Angeles Superior Court
Central Civil West Courthouse
Department 311
600 South Commonwealth Avenue
Los Angeles, CA 90005

Re: Richert v. Writers Guild of America, West
Case No. BC339972

OBJECTIONS AND REQUEST TO INTERVENE

Dear Judge West,

I am writing to object to the settlement agreement in the Richert case and to ask that I be granted permission to intervene in the case to fully participate as a class representative. I am a life time member of WGAW and have several written projects for which I have or should receive Foreign Levies, including: Against All Odds (1984), Raise the Titanic (1980) and White Nights (1985). I have spent untold hours in the last five years investigating Foreign Levy problems with WGAW.

I have many reasons to object. I am familiar with the objections filed by Art Eisenson and Stefan Avalos and I join in all the objections that they have made.

I am writing separately in order to bring some additional very serious concerns about the Settlement to your attention.

First, the settlement does not deal at all with the fact that we, as writers, are entitled to 100% of our Foreign Levy earnings, and the production companies are not entitled to any part of them, despite the fact that our union has entered into agreements with the production companies giving away half of our royalties. And second, the settlement assumes that WGAW is a legitimate collecting society with the legal right to collect money for union and non-union writers, but this is simply untrue. Third, the settlement should not be approved

until the Court is satisfied that it has all the information available concerning WGAW's recordkeeping; and as I explain below, one witness, Teri Mial, testified that WGAW shred Foreign Levy documents.

Our rights to 100% of the Foreign Levies, which cannot be taken from us, is established in the Berne Convention. WGAW has never publicized these Berne Convention rights to the membership, and if the court approves the settlement agreement it will allow WGAW to continue to conceal these rights (known as "national treatment rights"), effectively extinguishing the national treatment rights under the Berne Convention of all U.S. authors of audiovisual works, without most writers ever having known that they existed.

The signing of the Berne Convention Implementation Act of 1988 by the United States created "national treatment rights" for all United States authors, be it print, audiovisual and otherwise.

Pursuant to this International treaty, United States authors must receive the same treatment as domestic authors receive in foreign countries which are themselves signatories to the Berne Convention. This means that if a motion picture writer in France is entitled under French law to receive all his or her Video Levy and Video Rental Levy royalties, then an American writer of a U.S.-originated motion picture that receives levy royalties for French video reproduction or rental is entitled to the same treatment – that is, he or she is entitled to 100% of the levies.

The WGAW is colluding with an alliance of corporate entertainment "employers" as defined by the Writers Guild of America-Alliance of Motion Picture & Television Producers Theatrical and Television Basic Agreement, the collectively bargained agreement covering the terms and conditions of employment of WGAW members, by concealing from its members, and heirs of members, the very existence of their national treatment rights, and their entitlement to the benefits thereof.

In United States District Court on 2.05.07, in a hearing on the Plaintiff's motion to remand, Emma Leheny, counsel for the Writers Guild, states on the record:

"First, your Honor, I'd just like to refocus the discussion on the background, the factual background of this case. This dispute arose between a group of employers and labor unions. Although

the rights are originally created under foreign copyright laws, the monies generated for authors were going 100% to companies who have a collective bargaining relationship with these two labor unions. That's where the money was when this dispute began."

That is not true. The monies generated were not going 100% to the Companies at that time because the Companies under the laws of those foreign countries are not allowed to access even one percent of the Authors Share. The foreign collecting societies did not have the right to pay the money to the companies; they only had the right to pay the money to writers (and directors).

Although the 1990 Foreign Levy Agreement concerns the directive issued by the Council of the European Communities in Brussels on the private copy and rental levies and the right of authors to remuneration, that directive - COUNCIL DIRECTIVE 92/100/EEC - was not issued until November of 1992 and did not go into force until July 1, 1994.

In 1990, these rights were on the table in Brussels, the U.S. audiovisual export business to Europe now amounted to \$4 billion a year, and the recent Berne Convention Implementation Act of 1988 had created national treatment rights for U.S. Authors of audiovisual works and thus access to the monies that would be collected for individual writers and directors under the looming EC directive.

In a speech at the 2003 ALAI (Association littéraire et artistique internationale) Copyright Congress in Budapest, Robert Hadl, who as General Counsel of MCA Universal in 1990 was the architect of the foreign levies scheme and now here in 2003 is representing the Writers Guild and Directors Guild, stated the following:

At that time, I tried to suggest, very delicately, or so I thought, that many EU countries were not **honoring their national treatment obligations under the Berne Convention with regard to payment of those levies to US authors.**

That is not what I am about to do. In fact, as a sort of footnote to that speech ten years ago and looking at the 12 European Community countries that have private copy levies, we can report now that **American authors, writers and directors**, are compensated in eight of these countries and

that as regards the remaining four, in two of those countries, negotiations are taking place.

Further, with respect to the Eastern European countries that will become members of the Community next year, we can also report that US authors are currently receiving levy payments on three of them.

Hadl is unambiguous in his definition of U.S. Authors as writers and directors.

And, incredibly, Hadl makes no reference to the Companies as Authors.

Although the Guild has told members that we aren't covered by the Berne Convention, Hadl, of all people, disputes that.

If it appears odd that Hadl is pleased that many EU countries are honoring our national treatment rights consider that the monies flowing from those rights are mostly flowing to the Companies.

In United States District Court on 2.05.07, Emma Leheny:

"These labor unions stepped in in the late 1980s and negotiated as part of a collective bargaining relationship to have a portion of these monies go to writers and directors as it properly should have."

Daniel Scott Schecter, counsel for the Directors Guild of America, Inc. in U.S. District Court on 2.05.07:

"But for the DGA's successful efforts to negotiate agreements with the employer Companies who originally were claiming, and collecting, the entirety of the 'author's share' of foreign levies, no director today would be receiving any compensation from the monies collected."

What the labor unions did in 1990 was agree to access monies flowing from the national treatment rights of U.S. Authors of audiovisual works and arrange to have 85% of those monies diverted to the employers of its own members.

The entire settlement is premised on an assumption that the WGAW is a legitimate collecting society. Not so. The WGAW falsely presents itself as a collecting society to such *actual* societies resident in foreign countries in order to access the monies which flow from the national treatment rights of United States authors, and to divert most of such monies to the Motion Picture Association ("MPA"), formerly the Motion Picture Export Association ("MPEA"). The MPA is the foreign counterpart of the Motion Picture Association of America ("MPAA"), the trade association representing companies employing WGAW members.

The conduct of the WGAW in abrogating the rights of its constituent members under the Berne Convention Implementation Act of 1988 is illegal under any number of international laws and treaties, not to mention violative of the union's fiduciary duties.

As an integral part of this illegal effort, the WGAW falsely represents to foreign collecting societies that it, and the WGAW's companion organization, the Writers Guild of America, East ("WGAE"), "lawfully" operate as "an alliance" of two collecting societies administrating copyright law in accordance with international law."

From the AGREEMENT OF RECIPROCAL REPRESENTATION between WGAW, acting on behalf of itself and WRITERS GUILD EAST jointly referred to as WGA, and SOCIETY ARTISJUS HUNGARIAN BUREAU for the PROTECTION of AUTHORS' RIGHTS:

" WGA hereby represents that it lawfully **operates as a Guild of literary authors** and qualifies as **an alliance of two societies of collective administration of copyright** the statutes of which are in accordance with the Statutes of CISAC."

Nonetheless, the WGAW is not a U.S. rights administration body.

The WGAW not only does **not** administer copyright, The WGAW informs its members that **it has no expertise in copyright**.

An example of a U.S. rights administration body is the American Society of Composers, Authors & Publishers.

ASCAP was established in 1913 by U.S. composers and publishers as an unincorporated membership association under New York law. It

distributes royalties on behalf of composers, songwriters, lyricists, and music publishers.

It operates on the basis of contracts with its members who authorize it to collect and distribute royalties on their behalf.

European collecting societies look after the interests of creative talent in their respective countries, serving as financial 'guardian angels', making sure that fair remuneration is paid to audiovisual writers, directors, performers, set designers (considered by law as co-authors of a film in Austria and Switzerland), directors of photography, and all the other professions involved in the making of an audiovisual work.

In these foreign countries, legal recognition coupled with economic blessings is a key issue for all creative contributors to audiovisual works.

Since at least 1990, the WGAW has been collecting monies due authors from various foreign countries, titularly on behalf of WGAW members (and nonmembers), without disclosing that it is so acting, and without remitting to its rightful recipients the full monies thus collected.

I believe that the court is unaware that members of the union never agreed to the so-called Foreign Levy Agreement, and, even more astonishingly, have never, in nearly 20 years time, been provided with a copy of the original or any one of the subsequent renegotiated agreements.

Under TITLE I of the Labor-Management Reporting and Disclosure Act of 1959, As Amended (LMRDA), Right to Copies of Collective Bargaining Agreements

SEC. 104. It shall be the duty of the secretary or corresponding principal officer of each labor organization, ...in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement.

Since the unauthorized Agreement was first signed in 1990 - and as fantastical as it sounds - it truly *is* a secret agreement. WGAW has never posted it on its website or disclosed the contents of the agreement to members (let alone to non-union writers for whom it is also collecting money). I posted a copy of the Foreign Levy Agreement on my website in 2008 and I think that was the first time the document was ever made public (although writers would typically go to the WGAW website, not mine, to learn about their rights).

To make things worse, throughout the motion picture industry, individual contracts the Companies have negotiated with writers require that the Writer not only **waive** his/her "claim(s) to foreign levies." but that the Writer **assign** his/her *right* to Foreign Levies to the Companies.

Members of the union must file our individual contracts with the union in order for the union to monitor the contract.

But for nearly two decades, the WGA has failed to enforce the so-called Foreign Levy Agreement, allowing the Companies to violate the non-derogation clause in which the Companies agree "not to propose or include in any contract" a waiver of foreign levies.

The resultant financial harm to members has been devastating.

Approval of the settlement agreement allows this harm to continue because, incredibly, there is no requirement in the settlement agreement that the union, after nearly 20 years, at last provide the Foreign Levy Agreement to the membership.

I filed a complaint with the U.S. Department of Labor against the union regarding so-called foreign levies.

Now retired Estates/Trusts Manager Teri Mial (who used to work for WGAW) revealed in her testimony to OLMS investigators that in violation of the LMRDA (29 U.S.C. 436, Sec. 206), it was the policy of the union to shred the records of these monies every six months.

Despite the union's policy, Ms. Mial did not shred records of so-called foreign levies and when I informed Ms. Mial of the DOL's open and active criminal investigation, she assisted the investigators by

delivering to the Los Angeles office of the OLMS what the union believed had been shredded.

On October 3, 2009, in the Daily Journal Staff Writer Jean-Luc Renault writes that Neville L. Johnson "said the deposition of Teri Mial, a former WGA employee who said she was ordered by a union supervisor to shred checks intended for writers, was probably an impetus for the guild to settle".

I ask that the settlement agreement not be approved because, as the Defendant and the Class Counsel are well aware, the WGAW has had a policy of shredding the records of so-called foreign levies every six months and the only surviving documents, the documents Ms. Mial did not shred, are in the custody of the U.S. Department of Labor Office of Labor Racketeering and Fraud Investigations.

I attach three documents that should be of interest to the Court.

Eric Hughes