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Hollywood Blackout: Impact of New Architectural Copyright Laws on the Filming Industry

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I. Introduction

Imagine a world where every movie has a black background instead of the beautiful scenery and architecture that is customary. Now imagine a world where every picture taken and posted on social media for friends to see has that same black screen. Unfortunately, these scenarios are starting to become a reality. Several countries have started to enforce laws such as these on many of their national monuments through monuments copyright protections.[1]

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1. Hugh Morris, *Freedom of Panorama: EU Proposal Could Mean Holiday Snaps Breach Copyright*, Telegraph (June 24, 2015, 11:59 AM), http://www.telegraph.co.uk/travel/travelnews/11695345/Freedom-of-panorama-EU-proposal-could-mean-holiday-snaps-breach-copyright.html.

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Though national monument copyright protections have rarely been enforced in the past,[2] with the influx of social media use in the past decade and the increasing importance of the filming industry, many countries are now seeking remedies for these unlawful uses. For many artists, copyrights are just as important as their real and personal property.[3] In addition to income, copyrights provide protection and control over the viewing and production of their work.[4]

While most industries, including Hollywood, have traditionally relied heavily upon the Freedom of Panorama laws,[5] new architectural copyright laws hope to change that. If successful, Hollywood will find itself forced to pay insane amounts of money to provide audiences with context and familiarities within their film. Authenticity is becoming discouraged in Hollywood in favor of deeper pockets, which has turned many filmmakers off from pursuing future projects.

This Article will focus on particular emerging copyright laws and their effect on the film industry. Section II will begin with a brief overview of the film industry as well as a brief discussion of the reasons people watch films. The Section will then proceed with a discussion on the importance of filming locations, as well as how the industry has changed in its perception of filming locations. Section III will detail what the current copyright law is, as well as exceptions the courts have used in determining copyright infringement. Section IV will then describe the Freedom of Panorama laws that many countries have enacted to help filmmakers and other industries avoid copyright infringement. The Section will also detail the new copyright laws discussed around the world in addition to what these new laws mean for Hollywood and independent filmmakers. Finally, Section V will propose a solution to these new copyright laws that will be equally beneficial to both the copyright owners and the film industry. The solution calls for a heightened and more descriptive *de minimis* requirement that creates a more element-based approach as opposed to the factor-based approach used now.

II. Overview of the Film Industry

One of America's favorite pastimes is sitting with family and friends and enjoying the latest blockbuster, in either the theater or the comfort of their own home.[6] At least 68% of Americans[7]go see at least

2. Pablo Balaña, *Do You Need a Property Release? Short Answer . . . The World is Complicated*, Nimia (June 12, 2014), https://nimia.com/need-property-release-short-answer-world-complicated/.

3. Amy Oraefo, *Artist Education: Understanding the Importance of Copyright Ownership*, Huffington Post Bus. (July 28, 2014), http://www.huffingtonpost.com/amy-oraefo/artist-education-understa_b_5627760.html.

4. *Id.*

5. *See infra* Section IV.

6. *See* Ivan Daniel, *Infographic: What are Americans' Favorite Pastimes?*, Get .com (Oct. 27, 2015), https://get.com/blog/infographic-what-are-americans-favorite-

one movie in the theater each year. With that said, 95% of Americans watch television, i.e., television shows or movies, each day.[8] The film and television industries have become so prominent in society that their influence is insurmountable.

Looking back on the 2015 Academy Awards ("Oscars")[9] nominees,[10] all of the Best Picture nominees touched upon a major issue facing society today. From gay rights issues (*The Imitation Game*),[11] to the War in Iraq (*American Sniper*),[12] to growing up and maturing in a broken home (*Boyhood*),[13] to finding oneself after subsequent career moves (*Birdman or (The Unexpected Virtue of Ignorance)*).[14] Thus, Hollywood claims to portray society as a whole.[15] However, many people do not go to the movies in order to experience societal issues. In fact, most people watch movies in order to escape from society.[16] Movies allow audiences to travel to places they have never been and see perspectives completely different from their own. Movies offer a glimpse into a wider world, expanding their minds and opening doors to new wonders.[17]

Even though Hollywood claims to portray society, all society really wants is to escape, and they show it at the box office. Out of the top

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pastimes/. Internationally, the percentage of moviegoers is growing even faster. Phil Hoad, *The Rise of the International Box Office*, GUARDIAN (Aug. 11, 2011), http://www.theguardian.com/film/filmblog/2011/aug/11/hollywood-international-box-office.

7. Ivan Daniel, *supra* note 6.

8. Amy Oraefo, s*upra* note 3.

9. *See This Day in History – First Academy Awards Ceremony*, HISTORY, http://www.history.com/this-day-in-history/first-academy-awards-ceremony (last visited Mar. 3, 2016) The Academy Awards recognizes the advancement and the improvement of the film industry. The first Oscar given was on May 16, 1929. *Id.* The Academy of Motion Picture Arts and Sciences first began using the nickname Oscar in 1939. *Id.* An Academy Award is the most prestigious award given to those in the film industry. *Id.*

10. *See generally Oscar Nominations 2015: Full List*, VARIETY (Jan 15, 2015), http://variety.com/2015/film/news/oscar-nominations-2015-full-list-academy-award-nominees-1201405517/.

11. THE IMITATION GAME (The Weinstein Company 2014) (The true story of mathematicians, Alan Turing and his team of code-breakers, who decoded messages from the Nazi Party during World War II.).

12. AMERICAN SNIPER (Warner Bros. Pictures 2014) (The true story of Navy S.E.A.L. Chris Kyle during the War in Iraq. It details his incredible accuracy that saved numerous lives overseas as well as in America.).

13. BOYHOOD (IFC Films 2014) (A movie twelve-years-in-the-making, details the story of a young who as he ages from his early childhood to his arrival at college.).

14. BIRDMAN OR (THE UNEXPECTED VIRTUE OF IGNORANCE) (Fox Searchlight Pictures 2014) (A look into the life of an actor who tries to revitalize his career through means of a Broadway play after his life did not turn out as he thought it would.).

15. *Film as Social and Cultural History*, HISTORY MATTERS, http://historymatters.gmu.edu/mse/film/socialhist.html (last visited Jan. 10, 2016).

16. *See* Brett McCracken, *Why Do We Watch Movies?*, RELEVANT MAG. (Mar. 4, 2010), http://www.relevantmagazine.com/culture/film/why-do-we-watch-movies.

17. *Id.*

ten all-time domestic box-office[18] grossers, only one film (*Titanic*)[19] on that list is based on a true story, while the other nine films take place in other worlds, countries, or exotic places. In fact, the next film on that list that resembles part of history or a societal issue is number thirty,[20] *The Passion of the Christ*.[21] Furthermore, out of the top 100 all-time domestic box-office grossers, only five films resemble a part of society, while the other ninety-five allow audiences to escape and forget society's problems.[22]

Hollywood's embracing of this trend is evident in its upcoming slate of films. In fact, almost all films set to come out this year are either based on a book or comic book; are animated; or are based somewhere other than a town in America.[23] With this increasing desire to escape and forget about life's problems, it is increasingly important to make a film that audiences want to see. This process can be rigorous and very demanding.[24] The process begins with an idea, which undergoes rewrite after rewrite to become a script; after which, the filmmakers must secure financing for their film.[25] Only then is the film casted, locations picked, and ready for production. After shooting, the film undergoes editing before being distributed in hopes that it will find an audience.[26]

While the final film product can be a masterpiece, the process behind it is the true work of art. Each step of the process is what truly makes the film come together; however, with trying to appease the audience and their desire to escape into the film's world, it has become ever so important to find the perfect locations audiences can

18. *See All Time Box Office*, BOX OFF. MOJO, http://www.boxofficemojo.com/alltime/domestic.htm (last updated Nov. 6, 2016). Note this source is a constantly updated ranking of the all-time grosses but as this Article was written, my assertion in the text above accurately reflected the rankings.

19. TITANIC (Paramount Pictures 1997) (A seventeen-year-old socialite falls in love with a poor, young artist while traveling to New York on the maiden voyage of the R.M.S. Titanic.).

20. *See All Time Box Office*, *supra* note 18. Once again, due to the constant source updating, the rank of this particular film changed positions three times during the writing of this Article. Each time, *The Passion of the Christ* was pushed lower on the list—a film based on historical and societal elements ranking lower than more and more fictionally-based films

21. THE PASSION OF THE CHRIST (Newmarket Films 2004) (Depiction of the final days of the life of Jesus of Nazareth and his crucifixion.).

22. *See All Time Box Office*, *supra* note 18. At the time of writing, the five films were *Titanic*, *The Passion of the Christ*, *The Blind Side*, *American Sniper*, and *Saving Private Ryan*.

23. *See Release Schedule*, BOX OFFICE MOJO, https://perma.cc/79Y5-4FK2 (last visited Nov. 11, 2016).

24. *See generally The Movie Making Process: From Development Hell to the Shark Pool of Distribution,* LAVIDEOFILMMAKER.COM, http://www.lavideofilmmaker.com/filmmaking/movie-making.html (last visited June 9, 2016).

25. *Id.*

26. *Id.*

escape to. Consequently, finding such places has become increasingly difficult for filmmakers.

A. *Importance of Filming Locations*

Of all the essential things that help give a film its life, the setting it takes place in is one of the most important. As mentioned above, this is because the filmmakers want to provide the audience with the sense of escape they are expecting to experience at the movies.[27] Even before the new audience escapism came into play, however, finding the perfect filming location has always been essential to the creation of the masterpiece. Two of the biggest reasons for the importance of finding the perfect filming location are: (1) the cost-effectiveness it brings to the film and (2) the higher quality of the film produced.

1. Cost-Effectiveness

Filming at an actual location instead of in a studio or through computer animation is much more cost-effective[28] and given the rise of technology, even the most novice of films use some sort of computer-related effect in their final product.[29] Nevertheless, films that rely heavily on computer-related effects have much higher costs due to the expensive nature of computer-generated effects.[30] For example, in 2013 the most expensive films to make (i.e., *The Hobbit: The Desolation of Smaug*,[31] *Man of Steel*,[32] *The Lone Ranger*,[33] *Monsters University*,[34] and *Iron Man 3*[35]) had production budgets of at least $200 million each, and all of them relied heavily on computer-generated effects.[36] Compare this with some of the cheapest films of 2013[37] (i.e.,

27. McCracken, s*upra* note 16.

28. Clara B., *The Importance of Film Location*, EZINE ARTICLES (Dec. 7, 2010), http://ezinearticles.com/?The-Importance-of-Film-Location&id=5508278.

29. Misix, *Special Effects Aren't Cheap: The Cost of CGI*, MISIX (Mar. 10, 2014), https://misix.com/movie-quality-index-mar-7-mar-9-2014.

30. *Id.*

31. *Id.* ($250 million); *see also* THE HOBBIT: THE DESOLATION OF SMAUG (Warner Bros. Pictures 2013) (The second installment in the trilogy; Bilbo Baggins and his crew come face to face with the horrific dragon, Smaug).

32. Misix, *supra* note 29 ($225 million); *see also* MAN OF STEEL, (Warner Bros. Pictures 2013) (Clark Kent, Superman, must finally reveal his identity when Earth is threatened by survivors of his home planet).

33. Misix, *supra* note 29 ($215 million); *see also* THE LONE RANGER (Walt Disney Pictures 2013) (The story of a transformation into a justice-seeking outlaw of John Reid, told by his friend Tonto).

34. Misix, *supra* note 29 ($200 million); *see also* MONSTERS UNIVERSITY (Walt Disney Pictures 2013) (The story of how monsters Mike and Sully became friends while in college).

35. Misix, *supra* note 29 ($200 million); *see also* IRON MAN 3 (Walt Disney Pictures 2013) (Tony Stark, Iron Man, faces his most formidable enemy yet in the terrorist Mandarin).

36. Misix, *supra* note 29.

Identity Thief,[38] *The Purge*,[39] *The Conjuring*,[40] *Riddick*,[41] and *Bad Grandpa*[42]) that took relatively simple concepts involving actual locations with no need of extensive use of CGI and received some of the year's highest returns.[43]

With that extra money, filmmakers could hire more experienced actors and crewmembers that bring along their expertise to film. This extra money is crucial for many independent filmmakers who already start with a limited budget.[44] Notwithstanding a larger budget, it can be especially helpful if the actors or crewmembers find an emotional connection to the film project. For example, Academy Award winner Matthew McConaughey won his only Oscar for his work in *Dallas Buyers Club*.[45] However, what people do not know is that McConaughey turned down a $15 million payout on another film project to work on *Dallas Buyers Club* for a measly (compared to Hollywood standards) $200,000.[46] For some independent filmmakers, one actor's salary at $200,000 may still seem unattainable seeing as how the average cost of an independent film is $750,000,[47] but it should give filmmakers hope that if they rely on actual filming locations as opposed to computer-generated effects, and possibly an appeal to emotion in story-writing, they can attract mainstream actors to their films.

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37. Steve Symington, *5 Highest Grossing Movies (with Little Budgets) of 2013)*, THE MOTLEY FOOL (Oct. 31, 2013) http://www.fool.com/investing/general/2013/10/31/5-highest-grossing-movies-with-little-budgets.aspx.

38. *Id.* ($35 million); *see also* IDENTITY THIEF (Universal Studios 2013) (A successful businessman travels across the country in order to take into custody the woman who stole his identity).

39. Steve Symington, *supra* note 37 ($3 million); *see also* THE PURGE (Universal Studios 2013) (A wealthy family is held hostage in their home during the Purge, a twelve hour period where all crime is legalized).

40. Steve Symington, *supra* note 37 ($20 million); *see also* THE CONJURING (Warner Bros. Pictures 2013) (The true story of paranormal investigators helping a family escape from a dark entity in the family's home.).

41. Steve Symington, *supra* note 37 ($38 million); *see also* RIDDICK (Universal Studios 2013) (After being stranded and left for dead, Riddick finds himself up against an alien race of predators).

42. Steve Symington, *supra* note 37 ($15 million); *see also* BAD GRANDPA (Paramount Pictures 2013) (An 86-year old grandpa is charged with taking his 8-year old grandson across country to meet his real father).

43. Steve Symington, *supra* note 37.

44. *See* Clara B., s*upra* note 28.

45. Samantha Highfill, *Oscars 2014: Matthew McConaughey Wins Best Actor*, ENT. WKLY. (Mar. 3, 2014) http://www.ew.com/article/2014/03/03/oscars-2014-matthew-mcconaughey-best-actor; *see also* DALLAS BUYERS CLUB (Focus Features 2013) (The true story of Ron Woodroof, who helped people get the medication they needed for AIDS after he was diagnosed with the disease.).

46. Olly Richards, *15 Surprisingly Low Actors' Salaries*, TELEGRAPH (Mar. 9, 2015), http://www.telegraph.co.uk/culture/film/11449841/hollywood-actor-low-salary.html.

47. Adam Leipzig, *Sundance Infographic 2014: Are Indies the 8th Studio?*, CULTURAL WKLY. (Jan. 22, 2014), http://www.culturalweekly.com/sundance-infographic-2014/.

This can be great for independent filmmakers because, in general, independent producers finance entire films from their own pockets.[48] This can be very difficult on them, but their burden is somewhat lifted when they rely upon different, actual filming locations instead of working in a studio lot or set. With one part of the financial burden lifted from these young and talented filmmakers, audience members everywhere are able to experience incredible achievements in filmmaking.

2. Higher Quality

The next reason why the filming location is important is that it provides a higher quality of film because of its believability.[49] Hollywood awards season is a perfect example of this importance. Generally, many films in the best picture of the year category tend to be independent films.[50] In fact, at 2015's Academy Awards, the only mainstream film nominated for Best Picture that had any commercial success was *American Sniper*.[51] The other seven Best Picture contenders were very much independent films.[52] For example, the 2015 Best Picture winner, *Birdman or (The Unexpected Virtue of Ignorance)*, was made for a mediocre—for Hollywood that is—$18 million.[53] Compare that to one of the worst reviewed films of 2014, *Transformers: Age of Extinction* ("*Transformers 4*"),[54] which cost a reported $215 million.[55] This budget-result discrepancy goes to show that even though a filmmaker has an unimaginably larger budget, there is no guarantee of quality of the film.

However, just because more realistic films tend to have higher quality, that does not mean those films not nominated for Academy

48. *The Difference in Funding for Hollywood vs Independent*, EDICTIVE, http://edictive.com/blog/the-difference-in-funding-for-hollywood-vs-independent/ (last visited Jan. 10, 2016).

49. Sandy Hoffman, *Choosing the Right Film Location for On-Screen Believability*, AIDY REVS. (June 2, 2011), http://aidyreviews.net/choosing-the-right-film-location/.

50. *See generally* Tom Long, *Indie Films Dominate Nominations at Academy Awards*, DETROIT NEWS (Jan. 15, 2015), http://www.detroitnews.com/story/entertainment/movies/2015/01/15/indie-films-dominate-nominations-academy-awards/21825819/k

51. Saba Hamedy, *Oscars 2015: How Best Picture Nominees Rank at the Box Office*, L.A. TIMES (Feb. 16, 2015), http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-oscars-2015-best-picture-nominees-box-office-20150215-story.html.

52. Long, s*upra* note 50.

53. Pamela McClintock, *Making of 'Birdman'*, Hollywood Rep. (Jan. 8, 2015), http://www.hollywoodreporter.com/news/making-birdman-alejandro-g-inarritu-761407.

54. Sasha Bronner, *The 19 Worst Movies Of 2014, According To Rotten Tomatoes*, HUFFINGTON POST (Dec. 11, 2014), http://www.huffingtonpost.com/2014/12/11/worst-movies-2014-rotten-tomatoes_n_6303658.html; *see also* TRANSFORMERS: AGE OF EXTINCTION (Paramount Pictures 2014) (The Autobots must escape from a bounty hunter who has taken over humanity.).

55. *Transformers: Age of Extinction*, BOX OFF. MOJO, http://www.boxofficemojo.com/movies/?id=transformers4.htm (last updated June 9, 2016).

Awards fail to offer the audience an escape. For instance, though *Transformers 4* was one of the worst reviewed films of 2014, it still made over $1.1 billion worldwide.[56] Something in the final product made the audience want to escape. In actuality, most of the settings in the film are actual locations, which attribute to its believability. Michael Bay then added unrealistic elements, such as Optimus Prime,[57] Bumblebee,[58] and some of the explosions, later. For example, *Transformers 4* filmed in Texas, Illinois, Utah, Michigan, China, and Iceland.[59] Therefore, even though the film has fantasy elements, Michael Bay and Paramount Pictures still put a focus on filming locations and believability.[60]

With that said, *Transformers 4* is not the only film production that has tried to combine fantasy elements with real life locations. Take the Harry Potter series for example, a young boy finds out he is a wizard and then goes to school to learn magic he will ultimately use to save all of humanity.[61] For most people, there does not seem to be an ounce of realism in the film; however, that has not stopped people from wanting to enroll in Hogwarts School of Witchcraft and Wizardry.[62] In fact, at the release of the first film, director Chris Columbus stated that he "wanted kids to feel that if they actually took that train, Hogwarts would be waiting for them."[63] For most of its early production, many directors—including the renowned Steven Spielberg—wanted to bring the world of Harry Potter to the big screen through computer-animated technology, but Columbus wanted to do something different.[64] By using real life locations such as Piccadilly Circus, Glencoe, Bracknell, Christ Church College, and the London Zoo,[65] as well as incorporating sets and computer-animation,

56. *Id.*

57. *Optimus Prime (Movie)*, TRANSFORMERS WIKI, http://tfwiki.net/wiki/Optimus_Prime_(Movie) (last visited Mar. 3, 2016) ("the leader of the Autobots").

58. *Bumblebee (Movie)*, TRANSFORMERS WIKI, http://tfwiki.net/wiki/Bumblebee_(Movie) (last visited Mar. 3, 2016) ("one of Optimus Prime's most trusted lieutenants").

59. *Transformers: Age of Extinction film locations*, WORLDWIDE GUIDE TO MOVIE LOCATIONS, http://www.movie-locations.com/movies/t/Transformers-Age-Of-Extinction.html#.VrkZKPkrKM8 (last visited Feb. 14, 2016).

60. *See id.*

61. *Harry Potter: About the Series*, SCHOLASTIC, http://harrypotter.scholastic.com/series_information/ (last visited Feb. 14, 2016).

62. *See generally* Duncan Lindsay, *27 Reasons We All Wanted to Attend Harry Potter's Hogwarts School of Witchcraft and Wizardry*, METRO (Mar. 5, 2015), http://metro.co.uk/2015/03/05/27-reasons-we-all-wanted-to-attend-hogwarts-school-of-witchcraft-and-wizardry-5089893/.

63. Jess Cagle, *Cinema: The First Look at Harry*, TIME (Nov. 1, 2001), http://content.time.com/time/specials/packages/article/0,28804,1961973_1961978_1962028,00.html.

64. *Id.*

65. Gene Openshaw, *Where was 'Harry Potter' Filmed?*, RICK STEVES' EUROPE, https://www.ricksteves.com/watch-read-listen/read/articles/harry-potter-sites (last visited Nov. 08, 2016).

Columbus was able to create something realistic that allowed the audience to escape.[66] This escapism experienced by the audience provided a magical getaway, which would not have been possible without real landscapes and landmarks for the filmmakers to fall back on. However, though the Harry Potter franchise made over $7.7 billion at the worldwide box office,[67] none of the Harry Potter films received nominations for Academy Awards.

This trend of the Academy of Motion Picture Arts and Sciences favoring independent films over big budget affairs has been going on for quite some time,[68] but has become even more prevalent with the rise of the Computer Generated Imagery ("CGI").[69] However, Hollywood never quite understood the appeal of CGI until James Cameron brought it to life in 1991's *Terminator 2: Judgment Day*.[70] It was through this film that people were able to see CGI's usefulness in bringing things to life. At first, people perceived CGI as a good way to bring non-human characters to real life, and this perception of usefulness enhanced when people saw Steven Spielberg's 1993 classic *Jurassic Park*.[71] For many people, *Jurassic Park* was a perfect film filled with stunning imagery and they praised Spielberg's CGI use. However, in typical Hollywood fashion, it thought it had found its new cash-grab and started exploiting CGI's use. Hollywood filmmakers began using CGI in any way imaginable because they felt CGI is what would bring in the audience.[72] However, Hollywood only received backlash from its increasing use of CGI when it was not necessary. At least from a character standpoint, probably the biggest backlash that Hollywood has received from its use of CGI would be the character of Jar Jar Binks in *Star Wars Episode I: The Phantom Menace*.[73]

After CGI characters started to become annoying and uninteresting to audiences, Hollywood tried to use CGI for backgrounds and sets. It became more convenient for filmmakers to use a computer to fit the

66. Cagle, s*upra* note 63.

67. *Box Office History for Harry Potter Movies*, NUMBERS, http://www.the-numbers.com/movies/franchise/Harry-Potter#tab=summary (last visited Feb. 14, 2016).

68. *See generally* KC Wright, *14 Oscar-Winning Films Made on Surprisingly Small Budgets*, BACKSTAGE (Mar. 17, 2015), http://www.backstage.com/news/14-oscar-winning-films-made-surprisingly-small-budgets/. (highlighting fourteen Academy Award winning films from the last sixty years).

69. *See generally* Long, s*upra* note 50.

70. Lee Allen, *The Rise of CGI*, MULLING OVER MOVIES (Oct. 12, 2014), https://mullingovermovies.wordpress.com/2014/10/12/the-rise-of-cgi/; *see also* TERMINATOR 2: JUDGMENT DAY (TriStar Pictures 1991) (A cyborg must protect a young boy from a more dangerous cyborg.).

71. *See* Allen, *supra* note 70; *see also* JURASSIC PARK (Universal Pictures 1993).

72. *See* Allen, *supra* note 70.

73. Ed Cumming, *Meesa-Understood: The Tragedy of Jar Jar Binks*, TELEGRAPH (May 13, 2015), http://www.telegraph.co.uk/film/star-wars-episode-i—the-phantom-menace/why-we-hate-jar-jar-binks/; *see also* STAR WARS: EPISODE I – THE PHANTOM MENACE (20th Century Fox 1999) (Two Jedi Knights encounter a young boy who they believe will bring balance to the force.).

background they wanted rather than scout out a perfect filming location. This method made it easier for filmmakers to create a new fantasy world from their own imagination instead of having to restrict themselves due to a lack of supplies, time, and labor.[74] It also became a great asset for animated films starting with Pixar's *Toy Story*.[75] Some of the best examples of this CGI use are *Titanic*, *Gladiator*,[76] *The Lord of the Rings* Trilogy,[77] and *King Kong*.[78]

Though some of the most popular movies benefited from the extended use of CGI, many filmmakers and actors have come out against the use of CGI and its effects on the quality of the film. These anti-CGI enthusiasts' position highlights the importance of filming location and the resulting higher quality of film they are able to produce. Christopher Nolan, the acclaimed director of *The Dark Knight*[79] and *Inception*,[80] stated:

> The thing with computer-generated imagery is that it's an incredibly powerful tool for making better visual effects. But I believe in an absolute difference between animation and photography. However sophisticated your computer-generated imagery is, if it has been created from no physical elements and you have not shot anything, it is going to feel like animation.[81]

Another filmmaker, James Wan, the creator of horror movies such has *The Conjuring*,[82] *Insidious*,[83] and *Saw*,[84] also stated, "You can get greedy, and what I've learned is that CGI never replaces the real thing."[85] Finally, Tom Cruise, from the *Mission Impossible* franchise,

74. *See* Wilson Tai Kai Chung, *The Importance of CGI in Film Today*, PREZI (Oct. 23, 2013), https://prezi.com/fexocq1xlqr_/the-importance-of-cgi-in-film-today/.

75. *See id.*; *see also* TOY STORY (Walt Disney Pictures 1995) (A toy cowboy feels threatened after his owner receives a toy space ranger for his birthday.).

76. GLADIATOR (DreamWorks Pictures 2000) (A Roman general seeks revenge as a gladiator after being betrayed.).

77. THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING (New Line Cinema 2001) (A Hobbit and his companions set out on a journey to destroy the all-powerful Ring.).

78. *See* Joe Utichi, *20 CGI Classics*, ROTTEN TOMATOES (Aug. 11, 2008), http://editorial.rottentomatoes.com/article/20-cgi-classics-from-t2-to-batman-begins-to-walle/; *see also* KING KONG (Universal Pictures 2005) (A giant ape falls in love with an actress that visits the island he lives on.).

79. THE DARK KNIGHT (Warner Bros. Pictures 2008) (Batman must face his psychological fears as he faces his nemesis, the Joker.).

80. INCEPTION (Warner Bros. Pictures 2010) (A thief uses dream-sharing technology to implant an idea into a CEO's mind.).

81. George Merchan, *Christopher Nolan Talks Film vs. Digital, His Take on CGI. . .*, JOBLO (Apr. 15, 2012), http://www.joblo.com/movie-news/christopher-nolan-discusses-why-he-prefers-film-to-digital-his-approach-to-cgi-and-much-more.

82. THE CONJURING *supra* note 40.

83. INSIDIOUS (FilmDistrict 2011) (A family fights for their son's life after he becomes comatose after traveling too far into a place called "The Further.").

84. SAW (Lionsgate Films 2004) (Two strangers must play a deadly game after being taken by a serial killer.).

85. *See* Chung, s*upra* note 74.

is probably one of the most in direct opposition to CGI. He made headlines when information was released detailing that he actually hung outside of a moving airplane for his role in *Mission Impossible: Rogue Nation*.[86] In fact, he has continually put off the long awaited sequel to *Top Gun*[87] because he does not want to work with CGI.[88] Though there may be other undisclosed personal reasons for him refusing to use CGI, he has repeatedly insisted on doing his own stunts.[89]

Physical filming locations have always been important when it comes to making films. Not only is it cheaper for filmmakers to use physical locations,[90] but according to some of Hollywood's biggest directors and actors, it also provides a higher quality film.[91] These physical filming locations provide an easier pathway for the audience to escape because the scenes and places are more authentic.[92] This essential characteristic of physical locations in filmmaking creates a primary reason why audiences go to the movies—without them, the audience may not be afforded the escape they seek. This is especially true if filmmakers are not capable of acquiring permission to film at desired, copyrighted locations.

III. Overview of Copyright Law

To help encourage innovators to bring art into the world, copyright laws are put in place to help protect their skilled creations.[93] These pieces of art can include film, music, paintings, and architecture.[94] While protecting art pieces has always been priority, architects have had the most difficult time trying to protect their structures from tourists and other industries. In order to help with protection, many nations have adopted their own set of Freedom of Panorama laws.[95]

A. *Copyrights in General*

Throughout the world, countries and citizens alike have relied upon laws to protect and maintain order. While most laws protect the per-

86. Michael Zhang, *No CGI: Tom Cruise Actually Rode the Outside of an Airplane Taking Off*, PetaPixel (July 14, 2015), http://petapixel.com/2015/07/14/no-cgi-tom-cruise-actually-rode-the-outside-of-an-airplane-taking-off/; *see also* Mission Impossible – Rogue Nation (Paramount Pictures 2015) (Ethan and his team must face the Syndicate, a highly trained organization created to destroy them.).

87. Top Gun (Paramount Pictures 1986) (A group of students in the United States Navy compete to be the best in their class.).

88. *See* Benjamin Lee, *Tom Cruise: I'll do Top Gun 2 if there's 'no CGI on the jets'*, Guardian (July 27, 2015, 5:08 AM), http://www.theguardian.com/film/2015/jul/27/tom-cruise-ill-do-top-gun-2-if-theres-no-cgi-on-the-jets.

89. *See id.*

90. Clara B., *supra* note 28.

91. *See* Chung, s*upra* note 74.

92. Clara B., *supra* note 28.

93. U.S. Const. art. I, § 8.

94. 17 U.S.C. § 102.

95. Balaña, s*upra* note 2.

son, copyright laws protect the "works of authorship."[96] Works of authorship include but are not limited to, books, music compositions, plays, choreography, pictures, graphics, sculptures, movies, sound recordings, and architecture.[97] These works must be tangible in nature because copyrights do not protect any kind of idea or concept.[98] Congress drafted these laws in order to protect the author's legacy as well as to provide incentives for the creation of more original works of authorship.[99]

After creating a qualifying work of authorship, there is an automatic copyright protection placed on the work.[100] This copyright protection lasts for the entire lifetime of the author plus seventy years after the author's death.[101] After the copyright expires, the work moves into public domain. Once the work enters the public domain, the protections cease on the work and the work is free for the public to use.[102] Some of the most well-known properties that are in the public domain[103] are *Wuthering Heights*, *Les Miserables*, *The Adventures of Huckleberry Finn*, and *Pride and Prejudice*.[104]

While works of authorship have protections, the creators have many remedies to rely upon if there is a copyright infringement on their work. A copyright infringement happens when the work is used in contrary to any of the exclusive rights afforded to the author of the work.[105] Some of these exclusive rights include the reproduction or copying of the work, the right to perform the work, or the distribution or display of the work.[106] If the author experiences any of these infringements, they can seek an injunction against the person infringing on their rights and possibly receive damages (including any profits) from the infringement.[107] These remedies ensure that the author is protected through their hard work and left without worry about their legacy following death. With the author's legacy and the encouragement of new ideas in mind, there have still been some difficulties in trying to enforce infringement policies against the public at large.

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96. § 102.

97. *Id.*

98. *Id.*

99. Tom Chmielewski, *Why Are Copyright Laws Important?*, AZCENTRAL, http://yourbusiness.azcentral.com/copyright-laws-important-2674.html (last visited Jan. 10, 2016).

100. 17 U.S.C. § 302.

101. *Id.*

102. Lolly Gasaway, *When U.S. Works Pass into the Public Domain*, U. NORTH CAROLINA, http://www.unc.edu/~unclng/public-d.htm (last updated Nov. 04, 2003).

103. Trent Hamm, *28 Great Books You Can Read for Free*, SIMPLE DOLLAR (Sept. 03, 2015), http://www.thesimpledollar.com/28-great-books-you-can-read-for-free/.

104. *Id.*

105. 17 U.S.C. § 501.

106. 17 U.S.C. § 106.

107. 17 U.S.C. §§ 502–504.

B. *Architecture and Copyrights*

Architectural designs have a long history of being difficult to protect. In fact, it was not until 1990 that any architect was able to get a copyright for their work and designs.[108] 17 U.S.C. section 101 provides that an architectural work is:

> The design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.[109]

What this means is that architects can receive copyright protections on their buildings, their drawings, and their architectural plans.[110] With that said, architects must apply for each copyright separately.[111] These protections are only given to buildings meant for humans and exclude designs for bridges, boats, walkways, mobile homes, and staple building components.[112]

The protections afforded to architects protect them only if their work is original. Subsequently, the only ways architects can claim copyright infringements are (1) if someone photographs or paints their work that is not in a public place; (2) if someone photographs or paints their work by entering private property without permission; or (3) if someone begins to construct a building that is substantially similar to their designs and architectural plans.[113] However, these protections do not allow architects to have full protection of their copyrighted works. For example, as long as their work is in a public place, these architects have no protection from people that take pictures or photographs of it. This also means that for filmmakers, as long as they film buildings that are located in a public space, they are free from any copyright infringement suits against them. Unfortunately, these architectural copyright laws are not equal around the world. There are many countries, including France, that have asked film producers to pay architectural copyright fees.[114] With the increasing importance of the film industry,[115] trying to protect copyrighted

108. *Copyright Claims in Architectural Works*, U.S. COPYRIGHT OFF., http://copyright.gov/circs/circ41.pdf (last visited Mar. 4, 2016).

109. 17 U.S.C. § 101.

110. *Intellectual Property Rights: What Architects Need to Know*, PSMJ RESOURCES, INC., http://go.psmj.com/blog/what-architects-need-to-know-about-trademarks-and-copyrights (last visited Jun. 10, 2016).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Film France FAQ's*, FRENCH FILM COMMISSION, http://www.filmfrance.net/v2/gb/home.cfm?choixmenu=FAQ (last visited Mar. 4, 2016).

115. *See generally* Cari Beauchamp, *Hollywood and Society: A Question of Influence*, L.A. TIMES (Aug. 15, 2000), http://articles.latimes.com/2000/aug/15/news/cl-4359.

architecture and images has almost become impossible, leaving courts to come up with a solution known as *de minimis*.

C. *De Minimis Solution and Its Problems*

In copyright law, many courts have taken into account *de minimis non-curat lex*, or "the law does concern itself with trifles,"[116] when faced with potential infringement. Essentially, this means that if the copying is so "trivial" or so small, then the copyright holder has no actionable copyright infringement.[117] In *Gottlieb Development LLC. v. Paramount Pictures Corp.*, the court used several factors to determine whether a copyrighted pinball machine seen in the background of the film *What Women Want*[118] overcame the *de minimis* analysis. The factors used were: (1) whether the audience was able to recognize the copyrighted work in the background; (2) how many other backgrounds there were; and (3) how long the copyrighted object was in the film.[119] Though, the problem that most courts have is that none of these factors are set in stone and they are up to the discretion of the court.[120]

What this means is that what one court decides may be completely different from what another court would decide. This discretion is apparent when comparing *Gottlieb* with *Ringgold v. Black Entertainment Television, Inc.* As mentioned above, in *Gottlieb*, the court decided that the use of a copyrighted pinball machine in the background of the film *What Women Want* to be *de minimis*.[121] Their reasoning was that (1) the scene that the pinball machine was in only lasted three-and-a-half minutes; (2) it was always in the background; and (3) it was fully visible for only a few seconds.[122] Now, compare that with *Ringgold* where the court concluded that the use of a poster with Faith Ringgold's "Church Picnic" in the background was not *de minimis*.[123] The *Ringgold* court held against *de minimis* because: (1) the poster appeared multiple times throughout the scene accumulating a duration of 26.75 seconds; (2) the poster was fully visible for at least four to five seconds; and (3) the poster was observable in the background.[124] Thus, *Gottlieb* and *Ringgold* demonstrate the different perspectives a court can have for the *de minimis* standard.

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116. Gottlieb Dev. LLC v. Paramount Pictures Corp., 590 F. Supp. 2d 625, 632 (S.D.N.Y. 2008).

117. *Id.*

118. WHAT WOMEN WANT (Paramount Pictures 2000) (A man gains the ability to hear what women are thinking after being involved in an accident.).

119. *Gottlieb*, 590 F. Supp. 2d at 632–34.

120. *See id.* at 631–32.

121. *Id.* at 634.

122. *Id.* at 632.

123. Ringgold v. Black Entm't Television, Inc., 126 F.3d 70, 77 (2d Cir. 1997).

124. *Id.* at 76.

These different perspectives cause major problems because both filmmakers and copyright holders do not know what factors the court will weigh more heavily, making it harder for both to know whether they have a case or not. The difficulty in determining whether filmmakers need the rights in the first place, make it essential for filmmakers to stray on the side of caution and always get permission.

D. *How Do Filmmakers Normally Go About Obtaining the Rights to Film Certain Monuments?*

The importance of filming locations as to the finances and quality of the film has led filmmakers to obtain the rights to film certain monuments and locations around the world.[125] Though the *de minimis* exception has helped filmmakers in some regards, it is still difficult to determine exactly what qualifies as *de minimis*. With that said, obtaining the rights can be a very easy thing to do, and failure to do so may result in the consequences discussed below.[126]

1. Obtaining the Rights

The first thing filmmakers always want to do when they start shooting a film is make sure they acquire the rights to film at the respective location, specifically outlining what may appear on camera.[127] For the most part, many states and countries have their own methods of determination in granting filming rights to filmmakers.[128] However, the process is simple for filmmakers willing to do it.[129]

No matter where a filmmaker wants to film, the first thing they need to do is answer the following questions: What is being filmed?; Does the property owner know what will be filmed?; Why is it being filmed?; When is it being filmed?; and How long will the filmmakers have the footage rights?[130] These questions are very important because they allow the property owner to know exactly what the filmmaker is doing.

After the property owner agrees with the filmmaker's vision, the filmmaker and property owner must sign Location Release Forms.[131] For private locations, these forms provide the property owner with the comfort of knowing exactly what will happen on their property, as

125. *See generally* Openshaw, *supra* note 59 (explaining the various locations at which the Harry Potter movies were filmed).

126. Chase Jarvis, *You'd Better Have Permission to Shoot*, CHASEJARVIS, http://www.chasejarvis.com/blog/how-to-permit-photo-video-shoots/ (last visited Mar. 4, 2016).

127. *Id.*

128. *Id.*

129. *Id.*

130. Elliot Weaver & Zander Weaver, *5 Things You Should Know About Filming on Location*, REEL DEAL FILM SCH., https://reeldealfilmschool.wordpress.com/2014/04/15/5-things-you-need-to-know-about-filming-permits/ (last visited Jan. 10, 2016).

131. *Id.*

well as knowing what will happen should damage occur.[132] As for public locations, local governments and councils provide filming permits detailing specific uses and restrictions of the filming location.[133] Finally, whether it is a private or a public location, filmmakers must pay a small fee determined by the landmark's owner.[134]

To distinguish between filming requirements of states and countries, one can review the differences between two of the most popular filming locations in the world, London, England, and Monument Valley, Utah.[135] In London, filmmakers can receive a different permit depending on what they want to shoot.[136] For example, if a filmmaker films in a public space, he or she contacts the Borough Film Service associated with the borough the public space is located in.[137] In order to film buildings, generally the Freedom of Panorama laws (discussed below) cover the exterior. But to film the interior, the filmmaker will need to contact the building's owner.[138] However, no matter where they film, whether it is public or private, the filmmakers must provide notice of when they plan on filming.[139]

In Utah, a filmmaker must seek a permit depending on the city they plan to film in.[140] Monument Valley is the one of the most sought after filming locations in the world. Some of the films filmed there are *Stagecoach*,[141] *Forrest Gump*,[142] *2001: A Space Odyssey*,[143] and *National Lampoon's Vacation*.[144] To film at Monument Valley, filmmakers must obtain permission from the Navajo Office of Broadcast

132. *See id.*

133. *See id.*

134. *Filming Fees*, U.S. DEP'T INTERIOR BUREAU LAND MGMT., http://www.blm.gov/wo/st/en/prog/more/lands/filming/filming_fees.html (last visited Jan. 10, 2016).

135. *See generally* Guy Lodge, *The 10 Best Film Locations*, GUARDIAN (Apr. 24, 2015), http://www.theguardian.com/culture/2015/apr/24/the-10-best-film-locations.

136. *Filming in London: Get Permission*, FILM LONDON, http://filmlondon.org.uk/get-permission-film (last visited Jan. 10, 2016).

137. *Id.*

138. *Id.*

139. *Id.*

140. *Permitting*, UTAH FILM COMMISSION, http://film.utah.gov/permitting/ (last visited Jan. 10, 2016).

141. STAGECOACH (United Artists 1939) (The adventures of a group of people traveling on a stagecoach.).

142. FORREST GUMP (Paramount Pictures 1994) (The story of the non-intelligent Forrest Gump as he travels through life trying to win the love of his life.).

143. 2001: A SPACE ODYSSEY (Metro-Goldwyn-Mayer 1968) (A great race between computer and mankind ensues once another monolith is found on the Moon's surface.).

144. *12 Movies Shot in Monument Valley on the Navajo Nation*, INDIAN COUNTRY TODAY MEDIA NETWORK (Sept. 28, 2013), http://indiancountrytodaymedianetwork.com/2013/09/28/12-movies-shot-monument-valley-navajo-nation-151484; *see also* NATIONAL LAMPOON'S VACATION (Warner Bros. 1983) (The Griswold family learns a lot about each other during their road-trip adventures to Walley World.).

Services.[145] Additionally, because Monument Valley is a Native American Reservation, there are special guidelines that filmmakers must follow to film there.[146] There are also multiple fees depending on how many people are there and how much equipment the film crew brings.[147]

Overall, obtaining the rights can be a simple but important task. It is important that filmmakers understand the different requirements each state and country has for obtaining these rights.[148] In addition to staying clear of copyright and property infringement laws, filming permits save filmmakers from the lengthy court proceedings that come with infringements.[149]

2. Examples of Problems if Rights are Not Obtained

Despite the obtainability of filming permits, it is amazing to see how many filmmakers do not get the requisite permission for their films. There are several copyright infringement cases brought to courts involving movies and movie studios. Below are just a few examples of the types of copyright infringement cases that filmmakers face when it comes to architectural copyrights.

The most recent lawsuit at the time of writing this Article was filed in Grand Rapids, Michigan, in February 2015.[150] It deals with a very small film, titled *Grands Rule*. According to the lawsuit, the filmmakers failed to obtain permission from a private owner of an apartment complex to film the facilities.[151] In addition, the owner has claimed that the film portrays the apartment complex in a negative light.[152] Now, the owner is requesting that all of the scenes involving the apartment complex be removed from the film and an injunction to be placed upon the film until the lawsuit is settled.[153]

The *Grands Rule* lawsuit could have been avoided had the filmmakers just asked permission. According to the filmmakers, they received permission from an employee of the apartments, but the

145. *See Commercial Filming & Photography on Tribal Park Land*, NAVAJO NATION PARKS & RECREATION, http://www.navajonationparks.org/htm/film.htm (last visited Jan. 10, 2016).

146. *See id.*

147. *See id.*

148. *See generally* Weaver & Weaver, *supra* note 130.

149. *Filming Without a Permit Could Really Cost You*, FILM L.A. (Dec. 19, 2011), http://enews.filmla.com/?p=1132.

150. John Serba, *Apartment Complex Files Lawsuit Against Local Movie, Saying it Makes Property Look Like 'Haven' of Violence*, MICHIGAN LIVE (Feb. 26, 2015), http://www.mlive.com/entertainment/grand-rapids/index.ssf/2015/02/oakwood_apartments_files_lawsu.html.

151. *Id.*

152. *Id.*

153. *Id.*

apartment complex's owner had no knowledge of it.[154] So, not only is it important to get permission, but it is important to get permission from the right person. If filmmakers are careless and obtain permission from the wrong person, they could be subjected to legal ramifications. This lawsuit also emphasizes that even if a filmmaker receives permission, the filmmaker must explain to the owner exactly how the property will be used in the film. If there is no explanation and the filmmaker portrays the property in a way that the property owner does not approve of, they can also face legal action. The *Grands Rule* case is very important because it shows how a simple mistake can cost a filmmaker's dream.

The next lawsuit comes from Rio de Janeiro, Brazil.[155] In 2010, the *Archdiocese of Rio de Janeiro* sued Columbia Pictures for their unpermitted use of the statue of Christ the Redeemer, located in Rio de Janeiro, in its blockbuster *2012*.[156] According to the lawsuit, Columbia Pictures asked permission to use the statue; however, the Archdiocese did not grant permission because it did not like the portrayal of the statue in the film. Instead of taking no for an answer, Columbia Pictures asked permission from the statue's architect who granted the filmmaker's request.[157] The Archdiocese claimed to have had the copyright on the statue for many years because the architect worked for the Archdiocese when he sculpted it. Now, the Archdiocese is requesting unspecified damages as well as interest on all earnings of the film.[158]

Once again, this lawsuit should have never happened. Before filming, Columbia Pictures did its research and knew that the Archdiocese had the copyright of Christ the Redeemer. Therefore, when the Archdiocese refused to grant permission, Columbia Pictures should have just found a different landmark to use for its film. In fact, the film shows multiple landmarks destroyed, so not using this particular landmark would not have changed the outcome of the film. Columbia Pictures became arrogant, believing it could not be touched. Unfortunately, Columbia Pictures was wrong and now has the possibility of punishment for its arrogance. This is important for filmmakers because it shows that sometimes they will not be able to get the copy-

154. Angie Jackson, *Local Movie to Premiere Despite Efforts by Apartment Complex to Stop Showings*, MICHIGAN LIVE (Feb. 27, 2015, 6:19 PM), http://www.mlive.com/news/grand-rapids/index.ssf/2015/02/local_movie_to_premiere_despit.html.

155. Andres Guadamuz, *Copyright in Landmarks*, TECHNOLLAMA (Mar. 13, 2010), http://www.technollama.co.uk/copyright-in-landmarks.

156. *Id.*; *see generally* 2012 (Columbia Pictures 2009).

157. Guadamuz, *supra* note 155.

158. *Catholic Church Suing Columbia Pictures over Use of Christ Statue in Apocalypse Movie 2012*, DOCTORE (Feb. 26, 2010), https://doctore0.wordpress.com/2010/02/26/catholic-church-suing-columbia-pictures-over-use-of-christ-statue-in-apocalypse-movie-2012/.

rights for everything they want; they have to learn to adapt and not be too set on one thing or another.

As detailed, these few cases are examples of circumstances that have caught up with filmmakers for not obtaining the rights to film at certain locations. Though these lawsuits are still too frequent, the Freedom of Panorama laws have saved filmmakers from a lot more trouble.

IV. Freedom of Panorama Laws

A. *Freedom of Panorama Laws in General*

Freedom of Panorama laws have been put into place in many countries to provide guidelines on how tourists and different industries can use different structural monuments for private and public use. These laws apply predominately to monuments and sculptures permanently fixed in public space, which are under copyright protection.[159] These laws act as an exception to the architecture's copyright protection—which has made things easier—because now people do not need to get authorization to use the architecture or image from the creator.[160]

Though Freedom of Panorama laws have made things easier when it comes to protecting against copyright infringement, these laws differ from country to country and are nonexistent in others.[161] In general, these laws focus on commercial use, buildings, 3D artwork, 2D artwork, text, and public interiors.[162] For example, the United States' Freedom of Panorama law gives free use for only commercial use, buildings, and public interiors.[163] This means there are still many landmarks not useable for filming in the United States. Some of these landmarks include the Pikes Place in Seattle, Washington; Disneyland in Anaheim, California, and the Empire State Building in New York City, New York.[164] Luckily, the copyrights of the mentioned landmarks are only infringed upon when used for commercial use.[165] Contrast the United States' law with the Freedom of Panorama law in Spain, which allows for commercial use, buildings, 3D artwork, 2D artwork, and text.[166] These laws provide some ease when it comes to filming, as well as for tourism, which has been very helpful for all parties.

159. *See generally* Bryce Clayton Newell, *Freedom of Panorama: A Comparative Look at International Restrictions on Public Photography*, 44 Creighton L. Rev. 405 (2010).

160. Pablo Balaña, *Do You Need a Property Release? Short Answer . . . The World is Complicated*, Nimia (June 12, 2014), https://nimia.com/need-property-release-short-answer-world-complicated/.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

Even though these laws have been very helpful to many industries throughout the world, particularly tourism, many countries have now started to wonder how effective these laws are at providing protection for the creators. Therefore, many countries have started to implement laws to put more focus on the copyright protections of the creators than the industries (e.g., Hollywood) the Freedom of Panorama laws try to protect.

B. *What are the New Laws in Consideration?*

Many countries are attempting to revoke the Freedom of Panorama laws in favor of a new type of law that would greatly affect both public and private users of structural monuments. Though this new type of law helps to better protect the innovator, it has become extremely detrimental to both tourists and other industries. These laws have become very prominent in most European countries, but have not reached the United States yet.[167] Some of the countries that have already implemented these laws are France, Belgium, and Italy.[168]

The passing of these new types of laws puts pressure on other European countries to follow suit. This is mainly because the European Union would like to have a sense of unity amongst its countries in this aspect.[169] With that said, the most recent European country to face this pressure was the United Kingdom. This was the big story talked about during the summer of 2015.[170] For the United Kingdom, this meant a complete change in its copyright law. Before the introduction of these new laws, the copyright protections afforded to architects in the United Kingdom were very similar to those afforded in the United States.[171] The United Kingdom provides protections on architecture and designs because they are artistic works.[172] An architect's work is protected from being copied in substantially similar ways, as discussed above. However, due to the Freedom of Panorama laws, an architect is not protected from his or her buildings being used for photography or filming use.[173] With that said, the new laws introduced would make it actionable copyright infringement to photograph and film certain buildings, causing locals to worry. In fact, many petitioned to vote

167. Morris, s*upra* note 1.
168. *Id.*
169. *Id.*
170. *Id.*
171. *Compare UK Copyright Law*, UK COPYRIGHT SERV., https://www.copyrightservice.co.uk/copyright/p01_uk_copyright_law (last visited Jun. 10, 2016) *with Copyright Basics*, U.S. COPYRIGHT OFF., http://www.copyright.gov/circs/circ01.pdf (last visited Jun. 10, 2016).
172. *UK Copyright Law*, *supra* note 171.
173. *See generally Architectural Plans and Buildings*, DACS, https://www.dacs.org.uk/knowledge-base/factsheets/architectural-plans-and-buildings#buildings (last visited Nov. 4, 2016); *see also* Council Directive 2001/29, art. 5(3)(h), 2001 O.J. (L 167) 17 (EU).

down the new law and instead, merely amend the Freedom of Panorama law stating that only commercial use would be unlawful.[174] Those opposed worried tourism might falter because the new laws would put copyright protections on landmarks such as the Angel of the North, the London Eye, Trafalgar Square's Fourth Plinth, and Liverpool's Superlambananas.[175] Fortunately for tourists, industries, and residents, this new law failed and seemed to reinforce the importance that the United Kingdom puts on its Freedom of Panorama law.[176] Nevertheless, even though the United Kingdom's landmarks are safe for public and private use, the one thing that the United Kingdom will never allow access to is its Queen.[177]

Though the United Kingdom decided not to revoke its Freedom of Panorama law in favor of these new creator-friendly laws, other countries have acted differently.[178] Where these new laws passed, many world famous landmarks are now completely off-limits for both commercial and private use. Some off-limits landmarks include the Louvre, Cahtédrale Notre Dame, Sydney Opera House, Ayers Rock, and the Eiffel Tower.[179] However, the Eiffel Tower comes with the exception that it is fine to take a photo of it during the day, but at night, photography is off-limits.[180] This nighttime ban is because in 2003 lights were added to the Eiffel Tower; consequently, the lights retain their copyright protection even though the copyright on the Eiffel Tower itself has expired.[181]

With the strong conviction of protecting the creator, these new laws have truly been spreading around the world. Though there are some reservations along the way, only the future knows how far these laws will spread. Now, the film industry faces this provocative question of the extent of protection where new laws are in place—especially independent filmmakers.

C. *Effect of New Laws on the Film Industry*

As discussed above, even though Freedom of Panorama laws are in place, many filmmakers still face court proceedings related to infringements. With that said, if these new laws pass around the world

174. Morris, s*upra* note 1.
175. *Id.*
176. Lizzie Porter, *Holiday Snaps Saved as UK Retains Freedom of Panorama*, TELEGRAPH (July 15, 2015, 12:19 PM), http://www.telegraph.co.uk/travel/destinations/europe/uk/11729754/Holiday-snaps-saved-as-UK-retains-Freedom-of-Panorama.html.
177. JP Danko, *10 Famous Landmarks You're Not Allowed to Photograph for Commercial Use*, DIY PHOTOGRAPHY (Nov. 13, 2014), http://www.diyphotography.net/10-famous-landmarks-youre-allowed-photograph-commercial-use/.
178. Morris, *supra* note 1.
179. JP Danko, *supra* note 177.
180. *Id.*
181. *Id.*

then there would only be more legal issues facing filmmakers. These new laws are a complete detriment to the film industry and will destroy everything that the film industry has done to satisfy audiences across the world. The film industry faces many issues with these new laws—particularly, tougher enforcement and higher prices.

1. Tougher Enforcement

Enforcement of these new laws has translated into increased enforcement of copyrighted buildings and landmarks across the world. On the outside, this appears to be exactly what proponents of the new laws want to accomplish, but this problem goes much deeper for the film industry. This tougher enforcement of copyrights takes away the key reason of why audience members want to see movies: to escape.

The majority of audience members go to the movies to escape. They love seeing new worlds and locations. For some, it is the only way for them to see the world. This objective of escapism will be lost with increased enforcement of certain copyrights. This is due to one of two reasons: (1) trying to obtain permission; or (2) figuring out what to do if permission is not obtained.

With world leaders wanting to increase enforcement and protection of the copyrights of buildings and landmarks in their country, it definitely begs the question as to whether those holding the copyrights will grant filmmakers the necessary permissions. If the governments owning copyrights want filmmakers to use their buildings, they would not be passing these laws in the first place. The Freedom of Panorama laws have given filmmakers a sort of freedom and if those that own the copyrights want to restrict that freedom, it is very hard to imagine that they will freely give permission to these filmmakers.

The effect of not being able to obtain permission to film important buildings and landmarks is insurmountable. For one thing, it destroys production plans and wastes vast amounts of time and money. Most filmmakers have a vision of what they want their film to look like and part of that has to do with the fact that they would be able to use certain backdrops and landscapes. If they were not allowed permission, they would have to rework their entire vision. With that said, many filmmakers will have to result to using props and CGI effects for their films instead of actual backgrounds. The Author suggests the result is simple: movies will not make it to the big screen and audiences everywhere will slowly lose their opportunities to escape.

As mentioned above, where not provided permission, filmmakers will need to rework their plan for film backgrounds. Again, filmmakers could rely on CGI enhancements, or they could even film other buildings and landmarks that they can get permission to use. However, as seen in the *Columbia Pictures* case, sometimes studios decide to film even when permission is denied. However, with the new laws, this broad filming is possible to do. But in order to refrain from

legal action, filmmakers would have to black out the copyrighted images in the background.[182] As a result, audiences still would not be able to experience the escape provided by movies because (1) they would not know where they were escaping to and (2) they would not want to escape into a black background.

Thus, with the tougher enforcement that these laws will bring, the reason for audience viewing will be lost. The new laws would greatly deter audience viewing, and the film industry will lose insurmountable wages.

2. Higher Prices

If countries decide to pass these new laws, the film industry hurts because the result is a rise in prices for its films, due to the need to obtain more permission than filmmakers normally would. Staying within budget is very important for filmmakers, although it can be a difficult task.[183] Without the Freedom of Panorama laws, this will be an even more difficult feat to accomplish. This would be the case in one of two ways: (1) compensating copyright owners and (2) more frequent legal battles.

Without Freedom of Panorama laws in place, instead of relying on filming certain landmarks and backgrounds freely, filmmakers will have to pay higher fees in order to compensate the copyright owners for the use. Though not everything is covered under the Freedom of Panorama laws, filmmakers have relied upon these laws in order to help them stay within their budget needs.[184] Without any such laws to rely on, filmmakers can expect an impact to the film budget. While this may not be a huge inconvenience to Hollywood studios since many of its films have high returns,[185] the problem will arise when independent filmmakers want to use copyrighted works they cannot afford. One of the biggest challenges already for independent filmmakers is raising money for their projects.[186] Independent filmmakers having to come up with even more money to pay for these copyrights under the new laws could be daunting when faced with the uncertainty their film will be distributed or be profitable.

Though the new laws will greatly benefit the copyright owners, it is not only the filmmakers but also the public that will suffer. With a

182. Morris, s*upra* note 1.

183. Jason Brubaker, *Who Else Wants A Film Production Checklist?*, FILMMAKING STUFF (Nov. 17, 2015), http://www.filmmakingstuff.com/the-official-65-step-film-production-checklist/.

184. Balaña, s*upra* note 2.

185. Catherine Rampell, *Hollywood's Biggest Bang for its Buck*, ECONOMIX (Aug. 9, 2013), http://economix.blogs.nytimes.com/2013/08/09/hollywoods-biggest-bang-for-its-buck/?_r=0.

186. Jason Brubaker, *How to Overcome Your Indie Filmmaking Challenges*, FILMMAKING STUFF (Apr. 4, 2014), http://www.filmmakingstuff.com/biggest-filmmaking-challenge/.

higher budget required of many filmmakers, there would most likely not be as many movies made in a given year, resulting in fewer opportunities for audiences to escape. Therefore, with the few opportunities for audiences to escape, filmmakers would not be able to make as much profit on their films as currently and there would be less incentive to make films. As a result, filmmaking would not be a profitable enterprise, which would lead to the film industry's downfall, causing much distress amongst the public.

The next way prices would increase due to the new laws is the spike in legal disputes that would occur. Looking back on the *Columbia Pictures* lawsuit, there are likely other studios that will use a background and landmark even if they do not have permission. This is happening with the Freedom of Panorama laws in place. With these new laws, it is safe to assume that more filmmakers will continue to use backgrounds and landmarks in their films without permission. Therefore, if the copyright owners decide to sue the filmmakers and studios, legal fees; settlements; and verdicts will have to be paid. This affects the film industry in a broader sense because there could be injunctions on films during court proceedings, which would cause films to be less profitable since audiences would not see them. In addition, audiences will not have many opportunities for their escapism and courts will be full of frivolous and unnecessary lawsuits.

V. Solution

As illustrated above, if these new laws pass, many issues will come to light for both the public and the film industry. Though the United Kingdom has tried to provide other alternatives to these laws,[187] the alternatives proposed would only benefit the public in regards to social media, but would not help either the film industry or the public in regards to their desire to escape. The alternatives mentioned above only cover non-commercial use of buildings and landmarks.[188] This would not help the film industry because the film industry makes its money off the commercial use of its products. Though at first glance it appears there is no way to please everyone, one possible solution exists that may benefit all involved.

The solution proposed is more of a modified Freedom of Panorama law. Taking from the alternative measures of the United Kingdom and the legal maxim *de minimis*, establishing a more detailed law may help both the independent filmmakers and copyright owners. Therefore, the solution proposed by this Article involves using the same factors and providing actual bright-line rules for the courts to use in determining what is *de minimis*. If all courts had bright-line rules to decide whether something is *de minimis*, it would provide copyright owners

187. Morris, s*upra* note 1.
188. *Id.*

with a sense of security, knowing that their work will not be used without their consent. In addition, it provides Hollywood, and especially independent filmmakers, the opportunity to use certain landscapes and architectures in their film without the extra cost of the copyrights so long as filmmakers keep within the specific guidelines determined by Congress. This would not only help save filmmakers money, but also keep copyright holders happy since they will still be able to have a say in how their work is used.

So, what should the bright-line rules be? Bright-line rules should be based upon the same factors used in both *Gottlieb* and *Ringgold*. Specifically: (1) whether the audience was able to recognize the copyrighted work in the background; (2) how many other backgrounds there were; and (3) how long the copyrighted object was featured in the film.[189] Bright-line rules based on these factors would make filmmaking and court proceedings more efficient because filmmakers will already know the standards they need to meet. In addition, with these bright-line rules being set as elements proving an infringement on an owner's copyright, it would make more sense to filmmakers than the current factors.

The first element is based on whether the audience can recognize the copyrighted work in the background. One of the biggest differences between *Gottlieb* and *Ringgold* was that one of the copyright works was blurred and never fully seen, while the other one showed the entire copyrighted work.[190] Looking at what courts have determined in the past, the bright-line rule proposed is that if the copyrighted material is in full view and is not blurred, then it is not considered *de minimis*. With that said, if the copyrighted material is not fully visible or is blurred, then it is *de minimis*.

The second element is based on what else is in the background of the film. The solution proposed for this element is that copyrighted material that is the focal point of the background is a copyright infringement. This means that if the copyrighted material is in the center of the shot and there are no other materials in the background, that would satisfy this second element; however, if the copyrighted material is partially covered or is not otherwise noticeable, then it is considered *de minimis*.

Finally, the third element is based upon how long the copyrighted material is present within the film. This is probably the biggest factor that causes courts to disagree. The proposed solution is that if the copyright material is in a movie that is over ninety minutes long, and has a total screen time of over seven minutes while being shown for more than fifteen seconds at a time, then it is copyright infringement. Next,

189. Gottlieb Dev. LLC v. Paramount Pictures Corp., 590 F. Supp. 2d 625, 632–34 (S.D.N.Y. 2008).

190. *Id.*; Ringgold v. Black Entm't Television, Inc., 126 F.3d 70, 76 (2d Cir. 1997).

if the copyright material is in a television show that lasts for one hour, and has a total screen time of over five minutes while being shown for more than fifteen seconds at a time, then it is copyright infringement. Finally, if the copyright material is in a television show that lasts for thirty minutes, and has a total screen time of over three minutes while being shown for more than fifteen seconds at a time, then it is copyright infringement.

With these three proposed elements, filmmakers will know exactly what to do in order to avoid copyright infringement. Overall, even though this is not the perfect plan, it benefits all parties involved. It allows the government to protect the copyrights that it feels most strongly about, as well as allow the film industry to better prepare for its films in regards to location and budget. Lastly, it will allow the public to continue to pursue their desires to escape within the films they watch.

Since the United Kingdom and other nations may be voting on new laws, it is realistic to assume that the United States could follow suit. As mentioned above, architectural copyright law has differed around the world, but if these new laws are effective abroad, the United States may see a change in its laws. The United States already follows the *de minimis* rule in its factor form, but, like everywhere else, there is no real bright-line rule. Though it may seem like a stretch to have the same *de minimis* standard throughout the world, it makes the most sense for both copyright owners and filmmakers. This is unlikely to occur anytime soon, but it is not outside the realm of possibility.

VI. Conclusion

In conclusion, the enactment of these new laws concerning copyright protections on filming locations will become a detriment to all parties involved. The public will not be happy, the government's approval ratings will begin to decrease, and the film industry will no longer be able to make as much profit. These new laws will do more harm than good. The Freedom of Panorama laws provide a happy medium for all parties concerning copyright infringement lawsuits. However, if there is a desire to change the Freedom of Panorama laws, merely modifying them is the best solution for the film industry, the public, and copyright owners around the world. The world does not need more darkness in their lives, and if these new laws are passed, some of the best sources of entertainment will become darker than ever, taking away our escape.