

“Independence,” Industrial Authorship, and Professional Entrepreneurship: Representing and Reorganizing Television Writing in the FCC Media Ownership Reviews

by JOSH HEUMAN

Abstract: In recent Federal Communications Commission reviews of media ownership rules, television writers unsuccessfully campaigned for a prime-time set-aside for “independent” programs. This article approaches the campaign as a structured negotiation of writers’ industrial authorship, which exploited institutional contradictions across the field while also betraying instabilities in the concept of independence itself.

“When I use a word,” Humpty Dumpty said to Alice after she had gone through the looking glass, “it means just what I choose it to mean—neither more nor less.” Her reply was to ask, “whether you can make words mean so many different things.” Alice’s desire for words to mean what they mean is our desire.

—Writers Guild of America, West¹

In their submissions to the Federal Communication Commission’s (FCC) periodic reviews of its media ownership rules, the Writers Guild and its allies appealed to the commission to redress a perceived crisis in independent television production. They argued, ultimately without success, that vertical (re)integration had raised improper barriers against independent producers’ entry to prime-time network schedules and called for a mandate that networks reserve a quarter of those schedules for valuable independently produced programs. In presenting the problem of independent production and the solution of the

1 WGA, MBO2-277. 2. Citations for initial comments in FCC proceedings refer to author and docket number, with any supplementary comments in the same docket further identified by title.

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independent set-aside, they constructed a narrow understanding of “independence” in the television industry. Against networks’ and studios’ more expansive constructions that included co-productions in which they owned part or all of program copyrights, set-aside supporters argued for full program ownership by production companies and for their thorough financial and creative separation from networks and studios. Industry forms hold no obvious meaning or value, however; talk of a “desire for words to mean what they mean” obscures how words are made to mean. Notwithstanding their considerable merits, arguments for a set-aside raise larger questions about how “independence” becomes sayable, meaningful, or consequential.

In playing on presumed sympathies with Alice in Wonderland, the guild evades such questions; Pierre Bourdieu raises them indirectly but pointedly: “Certain notions which have become as banal and as obvious as the notion of artist or of ‘creator,’ as well as the words which designate and constitute them are the product of a slow and long historical process.”² This article approaches the 2002–2010 set-aside campaign as a brief episode within this process, reading arguments in FCC ownership proceedings as competing discourses about the new, vertically integrated organization of television production and the writer’s place within it. My interest in the campaign develops within a broader project concerned with writers’ professional entrepreneurship in the arenas of contract, organization, and law and policy, in which they try to advance and enact particular constructions of writing and its industrial context—and in particular, how they claim different forms of ownership over their works. Within that framework, I emphasize two themes: the complex, formal organization of the field in which writers’ industrial authorship is structured and practiced and the problem of independence, as the key term for negotiating their role within that field.

First, I hope to contribute to a more developed understanding of the organizational contexts and relations in which industrial authorships are formed and transformed. Despite the intricacy of Bourdieu’s investigations in the fields of art and letters, he acknowledges their relative lack of formal organization—at least obliquely marking the salience of the dense relations and contexts in which industrial authorships are structured and practiced.³ Television is produced, distributed, and exhibited within much more elaborate supply chains than art or literature, within a complex industry organized by formal corporate and regulatory structures. Borrowing from institutional sociologies of culture, work, and organization, I hope to pursue closer conversations between authorship studies and industry studies. I conceptualize authorship very broadly, as a multidimensional relation of authority between creative workers and “their” creative works and work—from economic and creative rights to control over working conditions. Conversely, I understand industrial authorship as an often-problematized corporate arrogation of such authority. Although Catherine Fisk and Matt Stahl have rightly emphasized the salience of nonproprietary dimensions of authorship in industrial contexts (like attribution and the experience of autonomy), the

2 Pierre Bourdieu, cited in Virginia Wexman, “Film as Art and Filmmakers as Artists,” *Arachne* 2, no. 2 (1995): 265.

3 Pierre Bourdieu, *The Rules of Art: Genesis and Structure of the Literary Field*, trans. Susan Emanuel (Stanford, CA: Stanford University Press, 1996), 231. On Bourdieu’s neglect of mass-mediated production, see David Hesmondhalgh, “Bourdieu, the Media and Cultural Production,” *Media, Culture & Society* 28, no. 2 (2006): 211–231.

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set-aside campaign reached for a stronger connection between writers and their work.⁴ While seldom explicit (set-aside supporters understandably avoided any appearance of self-interest), *independence* referred most directly to the writer-producer-creator's ownership of program copyright. Indirectly, however, it also promised privileges linked with the authority of ownership, like creative freedom. Here, then, I approach the set-aside campaign as part of much broader institutional negotiations of authorship, comprising not only copyright but also other stakes of ownership, creative rights, and working conditions.⁵

In contextualizing authorship within the industry, this approach shifts focus from the work and works of individual auteurs toward collective projects of professional entrepreneurship, like the set-aside campaign. Collective entrepreneurship by groups like the Writers Guild traces important but also fraught connections with problems of cultural labor. First, while acknowledging the specificity of media work, Stahl emphasizes its continuity with other kinds of work.⁶ The ruse of "art" rarefies not only writers' work but also their struggles for control over it as specific (but not exceptional) labor-management relations. As a kind of labor policy mediating among state, management, and labor, the FCC ownership proceedings problematize the governance of writers' work and allow writers a voice in that governance.⁷ But second, the campaign also complicates figures of cultural labor. In line with Bernard Miège's intuition that talent organizations best serve the interests of occupational elites, the campaign's primary ambition for copyright ownership benefits only the small stratum of writer-producer-creators (notably, such managed managers have long troubled labor-management delineations, from the Producers Guild's decertification as a collective bargaining unit to writer-producers' uneasy straddle across the 2007–2008 strike picket lines).⁸ Indeed, one ingenuity of "independence" lies in smoothing over professional stratifications and in connecting with the aspirations and anxieties of noncreating or nonproducing writers. In more critical formulations, *labor* carries a normative edge that risks presuming the worker's authority, just as *art* presumes the artist's. Arguments over the set-aside raised questions of whether writers should capture the surplus value of their labor but also of the extent to which the gap between their remuneration and network profit reflects value surplus to their labor or value added by the networks. Without closing down the first question, I want to leave the second more open than labor-centered models might allow. Thus, while the campaign implicates intricate entanglements of art and commerce, I approach such entanglements as problems of professional

4 Catherine Fisk, "The Modern Author at Work on Madison Avenue," in *Modernism and Copyright*, ed. Paul Saint-Amour (New York: Oxford University Press, 2010), 173–194; Matt Stahl, "Nonproprietary Authorship and the Uses of Autonomy: Artistic Labor in American Film Animation, 1900–2004," *Labor* 2, no. 4 (2005): 87–105.

5 For an insightful survey of some of these negotiations, see Matt Stahl, "Privilege and Distinction in Production Worlds: Copyright, Collective Bargaining, and Working Conditions in Media Making," in *Production Studies: Cultural Studies of Media Industries*, ed. Vicki Mayer, John Caldwell, and Miranda Banks (New York: Routledge, 2009), 54–67.

6 Stahl, "Nonproprietary Authorship," 104.

7 Thanks to *Cinema Journal's* anonymous reviewers for their reminders and elegant formulations of these points.

8 Bernard Miège, *The Capitalization of Cultural Production* (New York: International General, 1989), 28–29; on writer-producer hyphenates in labor law, see National Labor Relations Board dockets 31-RC-5453 and 31-CB-12062/3.

legitimacy and authority over supply-chain organization rather than as problems of artistic (or labor) autonomy. I understand the organization of television supply chains as profoundly contingent and contested, underdetermined by efficiency and art or labor alike. The set-aside campaign suggests the contingency not only of relatively plastic terms like *independence* but also of seemingly more solid terms like *vertical integration* and the role of the writer itself. Ultimately, I hope to arrive at a more contextualized and symmetric view of how writers negotiate their role within supply-chain relations, and especially of how their negotiations follow patterns of institutional contradiction across the television industry.

The set-aside campaign exploited such contradictions through various mobilizations of independence. Even while independence allowed points of entry into such contradictions, however, its own meaning and value betrayed instabilities. In broad characterizations, independent production is financed and distributed independently of majors, guided by professional or craft rather than commercial or bureaucratic strategies, and achieved in products valued as oppositional, diverse, or innovative. But as Michael Newman notes, "[a]t different times in film history [independence] has described varied and heterogeneous industrial and textual practices," not always neatly aligned; independent production might not deliver innovative product.⁹ If no bright lines delineate independence, the prominence of the independent question in film studies and popular music studies has carved deep and well-recognized economic demarcations, in support of an analytics of independence akin to what Michel Foucault calls an "economics of untruth," concerned with demystifying an ideology of artistic autonomy belied by commercial heteronomy.¹⁰ In film and music, such a realist approach slows the slippage from ambiguity to incoherence. In television, however, independence holds no firm foundation, lacking currency in industry, popular, and scholarly discussion, and lacking some sense in a system in which networks finance and distribute programming. Here, then, my analysis follows a more nominalist politics of truth. While emphasizing the instabilities of independence in the set-aside campaign, and often questioning the accuracy of claims that follow from its mobilizations, my primary aim is not to demystify those claims, but to show how they participate in a particular discourse of professional legitimacy and authority. The instability of independence reflects an inevitable contingency rather than any simple weakness against countervailing values. As a programmatic point, however, I want to take a symmetric view that suspends (well-motivated) sympathies for the campaign.

Two brief opening sections develop these themes of organization and independence further. The first tries to synthesize an institutionalist orientation to industrial authorship, emphasizing the contingent and contradictory ways that authors and (regulated) industries are organized together. The second reviews a regulatory history of independence in television production, tracing a prehistory of the set-aside campaign

9 Michael Newman, *Indie: An American Film Culture* (New York: Columbia University Press, 2011), 3.

10 On "economics of untruth" and "politics of truth," see Michel Foucault, "Power and Sex," in *Politics, Philosophy, Culture: Interviews and Other Writings 1977–1984* (New York: Routledge, 1990), 118. For one insightful example of this demystificatory approach, see Alisa Perren, "A Big Fat Indie Success Story? Press Discourses Surrounding the Making and Marketing of a 'Hollywood' Movie," *Journal of Film and Video* 56, no. 2 (2004): 18–31.

and antecedents to some of its instabilities. The main section explores these mobilizations more closely, across a range of cultural, public-interest, and even economic values in contradiction with a devalued vertical integration. Finally, a conclusion follows new constructions of independence mobilized in FCC proceedings on the Comcast-NBC Universal (NBCU) merger and network neutrality.

Organizing Authors and Industries. For Janet Staiger, poststructuralist theories of authorship lack viable models of agency, and humanist theories lack viable models of structure. In approaching television writing as a continually renegotiated institutional role, this article looks for an alternative to structuralist narratives of a submersion of authentic creativity in industrial production and humanist counternarratives of authentic creativity's persistence or even resurgence.¹¹ If work within both narratives has advanced understandings of television writing as industrial authorship, those understandings hold similar limitations. Whether industrialization overcomes authentic forms of authorship or is overcome by authentic authors, industries and authors are reified as self-present terms, figured in relationships of exteriority, most often ones in which industries constrain authors. Here I want to emphasize their common contingency and plasticity, their mutual constitution, and how industrial contexts enable as well as constrain practices of authorship.

Institutionalist sociologies of economy challenge the apparent obduracy of economic forms. For Neil Fligstein, "the constitution of property rights is a continuous and contestable political process, not the outcome of an efficient process"; notably close to my interests here, Fligstein cites intellectual property as an exemplary formation of property rights (as well as profit sharing without ownership, as in looser relations between creative workers and works like residuals and profit participation).¹² This process is fundamental to supply-chain organization in any industry; property rights and supply-chain organizations become even more indeterminate in cultural industries, where distinctive demand uncertainties pose special difficulties for valuing inputs and outputs.¹³ Industry forms like independence and vertical integration hold no fixed meaning or value; the history and prehistory of the set-aside campaign shows how economic and cultural frameworks give no noncontingent resolution to problems of whether producers or distributors should own programs. Even allowing for real efficiency gains in vertical integration, Fligstein demonstrates that firm strategy and structure are not simple expressions of some organic economic rationality but are, instead, only ever constituted within a regulatory environment.¹⁴ Adding another layer of contingency to industry forms, then, Rudolph Peritz's history of US competition

- 11 Janet Staiger, "Authorship Approaches," in *Authorship and Film*, ed. David Gerstner and Janet Staiger (New York: Routledge, 2003), 27–57.
- 12 Neil Fligstein, *The Architecture of Markets: An Economic Sociology of Twenty-First-Century Capitalist Societies* (Princeton, NJ: Princeton University Press, 2001), 33.
- 13 Richard Caves, *Creative Industries: Contracts between Art and Commerce* (Cambridge, MA: Harvard University Press, 2003), 2–3.
- 14 Neil Fligstein, *The Transformation of Corporate Control* (Cambridge, MA: Harvard University Press, 1993).

policy reveals regulating "visions of 'the free market' as contestable social and political choices" rather than as reflections of any objective freedom.¹⁵

Within the industry, writers are not self-present economic or artistic actors; they act within and upon often heterogeneous "institutional logics," patterns of convention within fields of action that shape "not only the ends to which . . . behavior should be directed, but the means by which those ends should be achieved. They provide individuals with vocabularies of motive and with a sense of self. They generate not only what is valued, but the rules by which it is calibrated and distributed."¹⁶ A notion of institutional logic insists first on the contingency of institutional roles, like the television writer's. In the lore of Steven Bochco, for example, run-ins with regulators reflect struggles for artistic freedom in a constraining industry.¹⁷ But undermining models of external censorship, those struggles go to perform a persona of the transgressive artist, in a kind of transaction enabled by television's regulatory structures. Similarly, Joss Whedon's artistic authority derives partly from a kind of contract with his cult audience, following structuring conventions for claiming authorship through claims against the industry. This structured performance of authorship is most visible in writers' interactions with audiences.¹⁸ But it also plays across industry careers. In his masterful history of anthology writers' struggles for control in the developing television industry, Jon Kraszewski suggests how their careers negotiated a palimpsest of institutional logics, so that their claims to property rights in their work rested on role structures given in logics from the theater.¹⁹

Like Bochco and Whedon, Kraszewski's anthology writers demonstrate how roles are not only structured by institutional logics but also negotiated within and especially across them. Counterbalancing structuralist tendencies in institutionalist analysis, Paul DiMaggio's concept of institutional entrepreneurship emphasizes how individual or collective action reshapes as well as reflects institutionalized conventions.²⁰ In recovering agency, interests, and politics in organizational life, the concept gives a view to workers' own leadership in the reconfiguration of work roles. This recovery also clarifies structure. If institutional entrepreneurship comprises an apparent "paradox of embedded agency," one resolution locates entrepreneurial agency in frictions

- 15 Rudolph Peritz, *Competition Policy in America: History, Rhetoric, Law* (New York: Oxford University Press, 2001), 9.
- 16 Roger Friedland and Robert Alford, "Bringing Society Back In: Symbols, Practices, and Institutional Contradictions," in *The New Institutionalism in Organizational Analysis*, ed. Walter Powell and Paul DiMaggio (Chicago: University of Chicago Press, 1991), 251.
- 17 Steven Bochco, interview by Jonathan Rintels, *Censorship Chronicles*, podcast audio, Center for Creative Voices in the Media, May 26, 2006, http://creativevoices.typepad.com/censor_bocho.mp3.
- 18 Bertha Chin and Matt Hills, "Restricted Confessions? Blogging, Subcultural Celebrity and the Management of Producer-Fan Proximity," *Social Semiotics* 18, no. 2 (2008): 253–272.
- 19 Jon Kraszewski, *The New Entrepreneurs: An Institutional History of Television Anthology Writers* (Middletown, CT: Wesleyan University Press, 2010). Focalized from writers' perspectives, however, Kraszewski's account tends to reify stronger constructions of writers' authority.
- 20 Paul DiMaggio, "Interest and Agency in Institutional Theory," in *Institutional Patterns and Organizations: Culture and Environment*, ed. Lynne Zucker (Cambridge, MA: Ballinger Press, 1988), 3–21. On the related concept of institutional work, see Thomas Lawrence, Roy Suddaby, and Bernard Leca, eds., *Institutional Work: Actors and Agency in Institutional Studies of Organizations* (Cambridge, UK: Cambridge University Press, 2009).