

Commentary

Industry Fails To Rally For Rights

■ BY JEFFREY L. GRAUBART

The entertainment industry's inability to use its influence in Washington to insist that there could be no General Agreement on Tariffs and Trade unless cinematographic and audiovisual works were included (Billboard, Dec. 25, 1993) illustrates the complex international scope of these issues.

GATT, which was officially signed by more than 100 member nations April 15 in Morocco, also provides a valuable lesson to U.S. artists and business interests about the need to organize and unite, at least as well as their European counterparts have done, to bring U.S. intellectual property law into the 21st century and, simultaneously, obtain all the rights due them as they seek to compete in the global entertainment marketplace.

European resoluteness on significant copyright issues has spurred Congress to consider modifying the term of U.S. copyright protection from the present term of life of the author plus 50 years. The proposed U.S. legislation would harmonize the U.S. term of copyright with the European term of life plus 70 years decreed by the European Economic Council. But the proposal fails to address the question of "moral rights" put forth in European law.

The new European legislation most significant to musical artists, adopted by the Council Directive of Oct. 29, 1993, confers authorship of a motion picture or video work upon the composer of music specifically created for that work, as well as upon the principal director, the author of the screenplay, and the author of the dialog. This is true regardless of whether the composer also is designated as a "co-author."

Significantly, Congress has not begun to consider the extension of such significant author status to U.S. composers, screenwriters, and directors for jointly created films and audiovisual works, and it is not likely to do so. Congress has long resisted formally accepting the otherwise internationally recognized concept of the author's "moral rights."

In 1988, after more than a century's delay, the U.S. agreed to sign the Berne Convention for the Protection of Literary and

Artistic Works, which safeguards the rights of authors across national borders and addresses moral rights.

Among the moral rights put forth by Berne are the following: the right of attribution, defined as the right to be identified as the author of a work, or to disclaim authorship; and the right of integrity, which allows the author to prevent mutilation or modification of the work that would preju-



'Congress has resisted the internationally recognized concept of moral rights'

Jeffrey L. Graubart is a Los Angeles-based entertainment and copyright attorney.

dice it or hurt his or her professional reputation. Other moral rights include the right to modify the work before (or after) its use, and the right to withdraw it from circulation.

Article 6bis of the Berne treaty deals with the value of signature and honor, and states: "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work which would be prejudicial to his honor or reputation."

Congress' decision to sign Berne was spurred by continued complaints from the U.S. business community that its interests were at a disadvantage in most of the world, due mainly to rampant film piracy. Prior to U.S. adherence to Berne, representatives of American film directors, screenwriters, and visual artists, such as Sydney Pollack and Martin Scorsese, appeared at Congressional hearings contending that "artists' rights is at the heart of the treaty—it gives the treaty its special char-

acter and its moral tone," and that existing U.S. law is insufficient to protect those rights.

However, as part of the Senate's debate on adherence to the terms of the treaty, Sen. Orrin Hatch, one of the co-sponsors of the bill, declared, "The rights have their origin in French law. If enforced in the United States, these moral rights would drastically alter copyright relationships... [and accordingly] U.S. implementing legislation should be neutral on the issues of moral rights."

Hatch's statement captures the salient difference between the Anglo-American copyright systems, which primarily reflect economic values and relate primarily to the object protected, and mainland Europe's deeply rooted copyright systems that center instead on the rights of the authors. Thus, Congress' declaration of the superiority of property rights over individual rights is light years away from Europe's approach, which asserts that the protection an author receives for his or her creation is a natural right, giving its legislation a distinctly individualistic tenor.

It appears that the U.S. has chosen to sign a treaty and ignore the plain intent of one of its key components. Does our national signature mean nothing?

More than two years ago, I wrote a commentary (Billboard, July 13, 1991) asserting that "the time has come for U.S. musical artists to make their voices heard for legislation to ensure that their moral rights are protected in this country." Notwithstanding that call, not one U.S. artist or U.S. music industry executive has stepped forward to be counted as a champion (or even a foe) of U.S. moral rights.

There seems to be a conspiracy of silence in our country, with unwillingness on the part of Congress and the industry to face the issue of artists' moral rights. As GATT illustrates, the Europeans have again shown us that unity and determination are a prescription for victory. Meanwhile, the U.S. entertainment industry has failed to come close to attempting to unite its artistic and business interests. Where is Lafayette?