

# #MORALSTOO: THE FILM INDUSTRY MUST IMPLEMENT AN INTERNATIONAL MORALS CLAUSE

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## I. INTRODUCTION

Employers across multiple industries have incorporated morals clauses into their employment contracts since Universal Film Manufacturing Company, now Universal Pictures, invoked the first morals clause in a talent contract in 1921.<sup>1</sup> Morals clauses became especially popular in the 1940s and 1950s after Hollywood abandoned the studio system.<sup>2</sup> While the morals clause hit its height of popularity during McCarthyism, it remains highly

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1. Caroline Epstein, *Morals Clauses: Past, Present and Future*, 5 N.Y.U. J. INTELL. PROP. & ENT. L. 72, 76 (2015).

2. Sally Helppie & Amy E. Mitchell, *Off-screen Behavior Matters: Morals Clauses for Performers*, S. BY SW CONTINUING LEGAL EDUC. 2 (Mar. 15, 2018, 11:00 AM), <https://www.sxsw.com/wp-content/uploads/2018/03/SXSW-2018-Morals-Clauses-Presentation.pdf>.

popular among studios today.<sup>3</sup> As a response to the #metoo movement, film studios have increased implementation of morals clauses.<sup>4</sup> However, bargained-for clauses often render morals clauses moot, as they create more lenient repercussions. Therefore, the entertainment industry must reconsider its approach to the morals clause, specifically in the context of sexual misconduct and violence.

When studios remove morals clauses from contracts, they expose themselves to liability, public contempt, and monetary loss.<sup>5</sup> Furthermore, when studios terminate contracts without morals clauses, studios must pay the individual despite the party's bad acts.<sup>6</sup>

Studios must implement a morals clause with a narrow focus on sexual misconduct and violence because (i) sexual misconduct is an international issue and the entertainment industry's international nature requires consistency and (ii) bargained-for provisions alone fail to address the sexual morality issue as effectively as an *international* morals clause.<sup>7</sup>

The current system surrounding morals clauses creates multiple problems. First, studios forfeit significant amounts of money paying out 'immoral' actors. Second, particularly famous or desirable talent<sup>8</sup> can negotiate away morals clauses by leveraging extraordinary industry standing and unequal bargaining power. This sends a message to the public and to the talent that they can buy the right to act immorally, then receive a contract's full benefit after doing so. Furthermore, the collective bargaining agreements for the Writers Guild of America and the Directors Guild of America prohibit the inclusion of morals clauses in member contracts.<sup>9</sup> Finally, there is no

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3. Epstein, *supra* note 1; 2 THOMAS D. SELZ ET AL., ENTERTAINMENT LAW: LEGAL CONCEPTS & BUSINESS PRACTICES § 9:105 (3d ed. 2018).

4. Tatiana Siegel, #MeToo Hits Movie Deals: Studios Race to Add 'Morality Clauses' to Contracts, HOLLYWOOD REP. (Feb. 7, 2018, 6:50 AM), <https://www.hollywoodreporter.com/news/metoo-hits-movie-deals-studios-race-add-morality-clauses-contracts-1082563>.

5. *See id.*

6. Seth Fiegerman, *Kevin Spacey Cost Netflix \$39 Million*, CNN BUS. (Jan. 22, 2018, 8:45 PM), <https://money.cnn.com/2018/01/22/media/netflix-kevin-spacey-cost/index.html>.

7. In this paper, I refer to an *international(ized) morals clause*, an *international(ized) clause*, or *the clause*. These phrases are meant to indicate an *international(ized) morals clause focused on sexual misconduct and violence*, but I use the aforementioned phrasing both to lend sensitivity to the issue of sexual misconduct and act as a shorthand.

8. The term *talent* is used in throughout the various sections of this Note, and refers to all levels of talent in the industry, including producers, directors, actors, crew members, and writers.

9. *Theatrical and Television Basic Agreement*, WRITERS GUILD AMERICA, art. 54 (2017), <https://www.wga.org/uploadedfiles/contracts/mba17.pdf>; *Basic Agreement of 2014*, DIRECTORS GUILD AM., § 17-123 (2014), <https://www.dga.org/-/media/E98E71412E1F4BB5B94AE0843C5CD8DE.pdf>.

single international approach to the issue of morals clauses, despite the entertainment industry's substantial international presence.

## II. BACKGROUND

On October 5, 2017, Ashley Judd took the world by storm when she accused film production mogul, Harvey Weinstein, of sexual assault in a New York Times article.<sup>10</sup> Three days later, the Weinstein Company fired Weinstein, its co-founder, in light of further allegations of misconduct.<sup>11</sup> The company was in financial trouble before the allegations surfaced and floundered in the following months.<sup>12</sup> In March 2018, the company filed for bankruptcy and released victims or witnesses of misconduct from unusually restrictive nondisclosure agreements.<sup>13</sup> The bankruptcy proceedings continue today, sixteen months later.<sup>14</sup>

After the Weinstein scandal, sexual assault stories spread throughout Hollywood. On October 15, 2017, actress Alyssa Milano reignited the #metoo movement, started by Tarana Burke in 2006.<sup>15</sup> Milano provoked a worldwide conversation about sexual harassment and assault when she tweeted, "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet."<sup>16</sup> This conversation spurred sexual misconduct and violence claims throughout the world and the entertainment industry in particular.

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10. See Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=alede-package-region&region=top-news&WT.nav=top-news>.

11. Megan Twohey, *Harvey Weinstein is Fired After Sexual Harassment Reports*, N.Y. TIMES (Oct. 8, 2017), <https://www.nytimes.com/2017/10/08/business/harvey-weinstein-fired.html?module=inline>.

12. Scott Mendelson, *The Weinstein Company was in Trouble Prior to Sex Abuse Revelations*, FORBES (Oct. 25, 2007, 3:00 PM), <https://www.forbes.com/sites/scottmendelson/2017/10/25/weinstein-sex-abuse-revelations-destroyed-his-company/#5a97a5ebb493>.

13. Brooks Barnes, *The Weinstein Company Files for Bankruptcy and Revokes Nondisclosure Agreements*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/business/weinstein-company-bankruptcy.html>.

14. Bankruptcy proceedings remain in progress at the time this article was authored. Dade Hayes, *Weinstein Co. Bankruptcy Hearing Pushed Again as Creditors and Accusers Await Resolution*, DEADLINE (Jun. 28, 2019, 10:14 AM), <https://deadline.com/2019/06/weinstein-co-bankruptcy-hearing-pushed-again-as-creditors-and-accusers-await-resolution-1202638108/>.

15. #MeToo: A timeline of events, CHICAGO TRIBUNE (Sep. 27, 2019 3:20 PM), <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htlmstory.html>.

16. Alyssa Milano (@Alyssa\_Milano), TWITTER (Oct. 15, 2017, 1:21 PM), [https://twitter.com/alyssa\\_milano/status/919659438700670976?lang=en](https://twitter.com/alyssa_milano/status/919659438700670976?lang=en).

Actor, Anthony Rapp, in an October 30, 2017 interview, claimed that actor, Kevin Spacey, sexually assaulted him at a party when Rapp was only fourteen years old.<sup>17</sup> In the days following, Netflix halted production of the show *House of Cards* starring Spacey, talent agency, Creative Artists Agency (CAA), dropped Spacey as a client, Netflix cancelled a Gore Vidal biopic starring Spacey, and director, Ridley Scott, removed Spacey altogether from the major motion picture *All the Money in the World* a mere month before its slated theatrical release.<sup>18</sup> Luckily, in the instance of *All the Money in the World*, contractual stipulations covered most reshooting costs.<sup>19</sup> Unfortunately for Netflix, however, the decision to cancel production on *House of Cards* and terminate Spacey's employment resulted in an unexpected \$39 million hit. While part of that sum went towards sunk costs into the project, a large part of it included a pay-out to Spacey, in part because Spacey was not bound by a morals clause.<sup>20</sup> While one of Spacey's victims dropped the civil suit against him, Scotland Yard has recently questioned the actor about other sexual misconduct allegations.<sup>21</sup>

However, moral reprehensibility affecting studios' content and economy is not new. The first prominent instance dates back ninety-seven years to the studio-system era and the adored silver screen comedic actor, Roscoe "Fatty" Arbuckle.<sup>22</sup> In response to Arbuckle's public backlash, Universal Film Manufacturing Company became the first studio to adopt a morals clause even though Arbuckle was with Paramount Pictures.<sup>23</sup> Today's account of this old story leaves readers with two interpretations of events.

In one version, up-and-coming silent film star, Arbuckle, was in the wrong place at the wrong time.<sup>24</sup> While celebrating the impending release of his new film, party guests witnessed fashion designer, model, and aspiring

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17. *Kevin Spacey Timeline: How the Story Unfolded*, BBC News (July 18, 2019), <https://www.bbc.com/news/entertainment-arts-41884878>.

18. *Id.*

19. See Brooks Barnes, *Purge of Kevin Spacey Gives 'All the Money in the World' a Pay Problem*, N.Y. TIMES (Jan. 10, 2018), <https://www.nytimes.com/2018/01/10/business/media/spacey-whalberg-williams-all-the-money-in-the-world.html>.

20. Fiegerman, *supra* note 6.

21. Gene Maddaus, *Kevin Spacey Sexual Assault Accuser Drops Civil Suit*, VARIETY (July 5, 2019, 9:05 AM), <https://variety.com/2019/biz/news/kevin-spacey-drop-civil-suit-1203260058>; Stewart Clarke, *Kevin Spacey Questioned by Scotland Yard Over Sexual Assault Allegations (EXCLUSIVE)*, VARIETY (July 6, 2019, 5:22 AM), <https://variety.com/2019/film/news/kevin-spacey-met-police-scotland-yard-questioned-1203260470>.

22. See Gilbert King, *The Skinny on the Fatty Arbuckle Trial*, SMITHSONIAN (Nov. 8, 2011), <https://www.smithsonianmag.com/history/the-skinny-on-the-fatty-arbuckle-trial-131228859/>.

23. Epstein, *supra* note 1.

24. See King, *supra* note 21.

actress, Virginia Rappe, tucked away in a separate room, sprawled across a bed, moaning in pain.<sup>25</sup> Rappe later died of a ruptured bladder and Maude Delmont, a brothel owner, claimed Arbuckle sexually assaulted and murdered Rappe.<sup>26</sup> Arbuckle, cooperative throughout the booking, investigation, and trial process, endured three separate trials for Rappe's death.<sup>27</sup> Eventually, the third jury acquitted Arbuckle, but his decimated reputation ensured he would never star in a film again.<sup>28</sup>

In the other version of events, Rappe was a victim of sexual assault whose reputation was tarnished by rampant sexism even after her tragic death.<sup>29</sup> Rappe allegedly encountered Arbuckle alone during a party while she was in search of a bathroom; he locked her in a hotel room, threw her on the bed, and fell on top of her, knocking her unconscious.<sup>30</sup> Four days later, she died of a ruptured bladder in the hospital.<sup>31</sup>

Arbuckle's attorney ensured Rappe received as much negative press as Arbuckle. Arbuckle's defense team painted Rappe as an irresponsible party girl who had numerous illegal abortions.<sup>32</sup> Arbuckle changed his story about the events multiple times and dismissed Rappe as "hysterical."<sup>33</sup> Even decades after Arbuckle's acquittal, the media still portrays Rappe as "an alcoholic prostitute" with sexually transmitted infections and implies she brought her death upon herself.<sup>34</sup>

Regardless of which story is correct, the fallout from the Arbuckle scandal lost Paramount millions of dollars.<sup>35</sup> Before the party where Rappe was mortally injured, Arbuckle signed a \$1 million contract with Paramount for three motion pictures that were never produced.<sup>36</sup> Further, theaters stopped playing Arbuckle's film, *Crazy to Marry*, the cause for celebration at the party gone wrong.<sup>37</sup> The scandal sent other studios reeling and, as a

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25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. See Gabrielle Bellot, *Hollywood's First Major Harassment Case, 96 Years Before Weinstein*, CUT (Nov. 29, 2017), <https://www.thecut.com/2017/11/before-harvey-weinstein-virginia-rappe-roscoe-fatty-arbuckle.html>.

30. *Id.*

31. *Id.*

32. *See id.*

33. *Id.*

34. *Id.*

35. *See King, supra* note 22.

36. *Id.*

37. *Id.*

direct result, Universal adopted the very first morals clause.<sup>38</sup> Universal attorneys created the clause to protect the studio from moral disrepute and to disincentivize talent from committing immoral acts, reassuring the public that morally reprehensible conduct is impermissible.<sup>39</sup>

Shortly after Universal implemented the first morals clause, other studios and industries followed suit. For example, in an attempt to curb his alcohol consumption and stop his late night partying, the New York Yankees introduced a morals clause in George Herman “Babe” Ruth’s playing contract in 1922.<sup>40</sup> Morals clauses became even more popular during McCarthyism in the 1940s and 1950s when studios invoked the clauses to terminate contracts based on alleged communist affiliations.<sup>41</sup> Academics claim morals clauses have increased in popularity since the 1980s.<sup>42</sup> However, empirical data on the number of morals clauses used since their inception is nonexistent.

Today, producers, financiers, and developers are quick to remove morals clauses from contracts, supporting the adage that any publicity is good publicity.<sup>43</sup> Furthermore, morals clauses remain broad, with varying limitations on conduct.<sup>44</sup> Finally, the Writers Guild of America and the Directors Guild of America prohibit morals clauses in contracts for any guild member.<sup>45</sup> Because morals clauses are commonly subject to removal, the remaining clauses are vague and overbroad. This and the fact that guilds protect members from morals clause implementation means the film industry

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38. *Morality Clauses for Films*, N.Y. Times, Sept. 22, 1921, at 8, <https://timesmachine.nytimes.com/timesmachine/1921/09/22/98743776.html?pageNumber=8>.

39. *Id.* (“The actor (actress) agrees to conduct himself (herself) with due regard to public conventions and morals and agrees that he (she) will not do or commit anything tending to degrade him (her) in society or bring him (her) into public hatred, contempt, scorn or ridicule, or tending to shock, insult or offend the community or outrage public morals or decency, or tending to the prejudice of the Universal Film Manufacturing Company or the motion picture industry. In the event that the actor (actress) violates any term or provision of this paragraph, then the Universal Film Manufacturing Company has the right to cancel and annul this contract by giving five (5) days’ notice to the actor (actress) of its intention to do so.”)

40. Porcher L. Taylor, III. et al., *The Reverse-Morals Clause: The Unique Way to Save Talent’s Reputation and Money in a New Era of Corporate Crimes and Scandals*, 28 CARDOZO ARTS & ENT. 65, 75 (2010) [hereinafter Taylor] (requiring Ruth to not drink any alcohol and to be in bed by 1:00am every night during baseball playing season).

41. *Id.* at 77; Epstein, *supra* note 1 at 76-78.

42. Taylor, *supra* note 40 at 78; Daniel Auerbach, *Morals Clauses as Corporate Protection in Athlete Endorsement Contracts*, 3 DEPAUL J. SPORTS L. 1, 3-4 (2005).

43. See SELZ ET AL., *supra* note 3 § 9:108.

44. *Id.* at § 9:107 (demonstrating, “(a) is not ‘with due regard’ to ‘social conventions and public morals and decency’; (b) ‘shocks, insults or offends’ the community; or (c) ‘reflects unfavorably’ on the person, the financier, the producer, the employer, or the distributor.”).

45. *Theatrical and Television Basic Agreement*, *supra* note 8; *Basic Agreement of 2014*, *supra* note 8.

sends a negative message that individual talent may act immoral without repercussions.

Contemporary instances of individuals' misconduct coupled with studios' elimination of morals clauses show that the current system fails to address specific issues of morality the clause should protect against. The contractual provision exists to protect studios and deter negative conduct, yet studios currently fail to draft contracts that include the stipulation resulting in substantial monetary loss, public unrest, and international inconsistency. The entertainment industry must adopt a morals clause that is (i) implemented by an international body (such as the Motion Picture Association) and (ii) accepted by film industry guilds. Such a clause would benefit national and international economies and resolve the issues that arise from power differences in bargained-for provisions.

### III. SEXUAL MISCONDUCT AND VIOLENCE IS AN INTERNATIONAL ISSUE

The film industry must implement an international morals clause in response to widespread sexual misconduct within the industry both domestically and internationally. The language of the clause should not focus on convictions, however, because that would render the clause wholly ineffective. Rather, the clause must call for reasonable investigation by an independent party after victims make credible accusations of sexual misconduct or violence. Investigative efforts are paramount because criminal justice systems often fail to investigate and convict perpetrators of sexual crimes.

In the United States, fewer than one half of sexual assault victims report sexual assault to authorities.<sup>46</sup> Another study reported that out of every one-thousand (1,000) sexual assaults that occur, only two-hundred thirty (230) are reported, only forty-six (46) result in arrests, and a mere five (5) lead to a felony conviction.<sup>47</sup> Only six tenths of a percent (0.6%) of sexual assaults actually lead to incarceration.<sup>48</sup>

The public, especially men in positions of power, criticize victims that come forward and demand protection against false accusations. Statistics regarding false accusations, however, are highly contested. Studies show that

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46. Jennifer L. Truman & Lynn Langton, *Criminal Victimization*, U.S. DEP'T JUST. (Sept. 29, 2015), <https://www.bjs.gov/content/pub/pdf/cv14.pdf>.

47. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> (last visited Nov. 5, 2019).

48. Andrew Van Dam, *Less Than 1% of Rapes Lead to Felony Convictions. At Least 89% of Victims Face Emotional and Physical Consequences.*, WASH. POST (Oct. 6, 2018, 4:00 AM), <https://www.washingtonpost.com/business/2018/10/06/less-than-percent-rapes-lead-felony-convictions-least-percent-victims-face-emotional-physical-consequences/>.

the rate of false reporting is between two and ten percent (2-10%).<sup>49</sup> This, however, is a false representation because law enforcement agencies often categorize reports as false because of insufficient evidence, delayed reporting, lack of cooperation, or inconsistencies in victim statements.<sup>50</sup> However, there are numerous reasons a victim may be reluctant to cooperate. Sexual assault is a traumatic experience and expecting victims to come forward immediately imposes additional societal hurdles on victims of violent crimes.<sup>51</sup>

Regardless of when victims report sex crimes, structural obstacles consistently prevent victims from receiving justice. Perpetrators of assault often repudiate victims' evidence and, because perpetrators in the film industry often enjoy substantially more bargaining power, claims of sexual assault often disappear.<sup>52</sup> For this reason, men like Johnny Depp, Roman Polanski and Woody Allen are still prominent in the industry despite allegations of violent crime, pedophilia, and sexual assault.<sup>53</sup>

Following the Weinstein accusations, the Los Angeles Police Department (LAPD) received over one-hundred reports of sexual assault in response to the #metoo movement.<sup>54</sup> Over the first few months of 2018, California saw an eighty-three percent (83%) increase in sexual harassment complaints while New York experienced a sixty percent (60%) jump.<sup>55</sup> While

49. NAT'L SEXUAL VIOLENCE RES. CTR., FALSE REPORTING 3 (2012), [https://www.nsvrc.org/sites/default/files/2012-03/Publications\\_NSVRC\\_Overview\\_False-Reporting.pdf](https://www.nsvrc.org/sites/default/files/2012-03/Publications_NSVRC_Overview_False-Reporting.pdf).

50. *Id.*

51. Jacey Fortin, *#WhyIDidntReport: Survivors of Sexual Assault Share Their Stories After Trump Tweet*, N. Y. TIMES, (Sept. 23, 2018), <https://www.nytimes.com/2018/09/23/us/why-i-didnt-report-assault-stories.html>.

52. Kantor & Twohey, *supra* note 10; Kim Severson, *Asia Argento, a #MeToo Leader, Made a Deal With Her Own Accuser*, N. Y. TIMES (Aug. 19, 2018), <https://www.nytimes.com/2018/08/19/us/asia-argento-assault-jimmy-bennett.html>.

53. Dylan Farrow, *Why has the #MeToo Revolution Spared Woody Allen?*, L.A. TIMES (Dec. 07, 2017, 3:00 AM), <https://www.latimes.com/opinion/op-ed/la-oe-farrow-woody-allen-me-too-20171207-story.html>; Dano Nissen, *Woody Allen: 'I've Done Everything the #MeToo Movement Would Love to Achieve'*, VARIETY (Sept. 6, 2019, 11:30 AM), <https://variety.com/2019/film/news/woody-allen-metoo-1203326247>; Rory Carroll, *Johnny Depp: How Hollywood's Biggest Star fell from Grace*, GUARDIAN (May 4, 2018, 12:06 PM), <https://www.theguardian.com/film/2018/may/04/johnny-depp-hollywood-star-actor-fall>; Scott Roxborough, *Roman Polanski's 'J'Accuse' is Filmmaker's First in the Post-#MeToo Era*, HOLLYWOOD REP. (Sept. 28, 2018, 10:29 AM), <https://www.hollywoodreporter.com/news/roman-polanskis-jaccuse-is-his-first-film-metoo-era-1147851>.

54. Gene Maddaus, *Many Accused, None Prosecuted: Why #MeToo Hasn't Let to a Single Criminal Charge in L.A.*, VARIETY (Sept. 25, 2018, 6:45 AM), <https://variety.com/2018/biz/news/metoo-legal-los-angeles-criminal-charges-1202955008/>.

55. *Id.*



the accusations brought awareness to the issue of rampant sexual assault in Hollywood and beyond, the accusations only yielded one arrest: Harvey Weinstein's.<sup>56</sup>

This underwhelming result is a symptom of a larger systemic issue: the American criminal justice system fails to take sexual assault and misconduct seriously. Justice is rarely served for those who come forward with the truth, and the trend is magnified with the film industry's elite.

However, the problem of injustice extends beyond the American criminal justice system. In the United Kingdom, the Crime Survey for England and Wales (CSEW) estimates that twenty percent (20%) of women and four percent (4%) of men have experienced some type of sexual assault since the age of sixteen, which is equivalent to an estimated 3.4 million female and 631,000 male victims.<sup>57</sup> From March 2016 to March 2017, an estimated three and one tenths of a percent (3.1%) of women (510,000) and eight tenths of a percent (0.8%) of men (138,000) aged 16 to 59 experienced sexual assault.<sup>58</sup> The CSEW showed that around five in six victims did not report the assault to police.<sup>59</sup> Of the cases that women choose to prosecute, less than half result in convictions.<sup>60</sup> Fewer than one third of young men accused of sexual assault are convicted; and approximately forty-seven percent (46.9%) of middle-aged men accused of sexual assault are convicted.<sup>61</sup> However, according to a report published by the Fawcett Society, over fifty percent (51%) of young women and fifty-eight percent (58%) of young men say they were more willing to challenge unacceptable behavior or comments after the revelations of the #metoo movement.<sup>62</sup>

In Japan, one in fifteen women claim they have experienced sexual violence at some time in their lives.<sup>63</sup> Japan's Cabinet Office, Gender Equality Bureau, conducted a recent study where less than eight percent

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56. *Id.*

57. OFFICE FOR NAT'L STATISTICS, SEXUAL OFFENCES IN ENGLAND AND WALES: YEAR ENDING MARCH 2017, 3 (2018).

58. *Id.*

59. *Id.*

60. See Alexandra Topping & Caelainn Barr, *Revealed: Less Than a Third of Young Men Prosecuted for Rape are Convicted*, GUARDIAN (Sept. 23, 2018, 12:00 PM), <https://www.theguardian.com/society/2018/sep/23/revealed-less-than-a-third-of-young-men-prosecuted-for-are-convicted>; See also CROWN PROSECUTION SERV., VIOLENCE AGAINST WOMEN AND GIRLS REPORT 10 (2018) [hereinafter CPS].

61. Topping & Barr, *supra* note 60; CPS, *supra* note 60, at 9.

62. FAWCETT SOC'Y, #METOO ONE YEAR ON – WHAT'S CHANGED? 8 (2018).

63. Motoko Rich, *She Broke Japan's Silence on Rape*, N.Y. TIMES (Dec. 29, 2017), <https://www.nytimes.com/2017/12/29/world/asia/japan-rape.html>.

(7.8%) of women reported forced sexual intercourse in their lifetime.<sup>64</sup> The Japanese study represents a stark difference to numbers in the United States.<sup>65</sup> Insight into the Japanese criminal law system suggests that this discrepancy is not merely due to cultural differences, but is the product of narrowly defined and poorly prosecuted criminal conduct in Japan.<sup>66</sup>

In Australia, two in five people aged eighteen years or older experienced an incident of physical or sexual violence since the age of fifteen.<sup>67</sup> Additionally, about seventeen percent (17%) of Australian women experienced sexual harassment.<sup>68</sup>

One in eight French women has been raped and around forty-three percent (43%) of French women have reported non-consensual sexual touching.<sup>69</sup> French women have even developed their own hashtag congruent to the #metoo movement: “balance ton porc,” which means “rat on your pig.”<sup>70</sup> Those who participated in the French hashtag faced backlash from over 100 women, including film star Catherine Deneuve, who wrote an open letter.<sup>71</sup> The letter accused participants of the hashtag movements of turning liberation on its head, placing people unwittingly amongst the ranks of sexual offenders.<sup>72</sup>

The film industry in Nigeria is second only to India in terms of the volume of films produced annually.<sup>73</sup> One in four Nigerian girls experience sexual violence before the age of eighteen.<sup>74</sup> Only thirty-eight percent (38%) of those girls told someone, and a mere five percent (5%) sought help.<sup>75</sup> The subject of sexual assault and harassment remains taboo, and as a result, many

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64. GENDER EQUAL. BUREAU, SURVEY ON VIOLENCE BETWEEN MEN AND WOMEN 16 (2018).

65. Rich, *supra* note 63 (highlighting that one in five U.S. women report sexual violence).

66. *Id.*

67. AUSTRALIAN BUREAU OF STATISTICS, PERSONAL SAFETY SURVEY 1 (2016).

68. *Id.*

69. *One French Woman in Eight has been Raped, Study Says*, BBC NEWS (Feb. 23, 2018), <https://www.bbc.com/news/world-europe-43167309>.

70. *Id.*

71. *Id.*

72. Valeriya Safronova, *Catherine Deneuve and Others Denounce the #MeToo Movement*, N.Y. TIMES (Jan. 9, 2018), <https://www.nytimes.com/2018/01/09/movies/catherine-deneuve-and-others-denounce-the-metoo-movement.html>.

73. Deidre McPhillips, *Inside Nigeria's Prolific Film Industry*, U.S. NEWS & WORLD REPORT (Feb. 29, 2016, 12:05 PM), <https://www.usnews.com/news/best-countries/articles/2016-02-29/inside-nigerias-prolific-film-industry>.

74. Stephanie Busari & Torera Idowu, *The #MeToo Stories you Haven't Heard*, CNN (Mar. 3, 2018, 4:53 AM), <https://www-m.cnn.com/2018/03/02/africa/nigeria-rape-survivors-metoo-asequals/index.html?r=https%3A%2F%2Fwww.google.com%2F>.

75. *Id.*

victims suffer in silence.<sup>76</sup> While the #metoo movement is not prominent in Nigeria, women are starting to share their stories in an attempt to remove the stigma surrounding sexual assault.<sup>77</sup>

The World Bank estimates India's 2016 population at 1.325 billion people and the female population at 635.91 million.<sup>78</sup> According to the Crime in India report for 2016, only 38,947 women and girls reported rape.<sup>79</sup> That is less than six thousandths of one percent (0.006%) of the female population reporting violent sexual crimes. Additionally, there were 84,746 reports of assaults on women in 2016.<sup>80</sup> More than half the crimes in major cities like Mumbai and New Delhi go unreported—women regularly refrain from reporting sexual crimes because they do not want to get involved with the bureaucracy of reporting.<sup>81</sup> The reported numbers of sexual assault and rape in India are startlingly low and disproportionate to population size, which suggests that victims feel judicial and societal pressure to suffer in silence.

Analyzing statistics about sexual crimes and reporting rates demonstrates how rarely victims report sex crimes to law enforcement. Also, statistics highlight how rarely assailants are convicted. Therefore, the industry should not apply an international clause based on convictions because the clause would have no effect whatsoever. Even in the current climate where accusation rates have increased substantially, conviction rates remain abysmal. Instead, the clause must focus on a reasonable investigation by a third party, modeled after the Time's Up legal defense fund.

After months of breaking sexual assault and harassment stories, over three-hundred women in Hollywood and the National Women's Law Center formed the Time's Up initiative and legal defense fund.<sup>82</sup> To date, more than

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76. *Id.*

77. *Id.*

78. *Population, Female - India*, WORLD BANK (2016), <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.IN?locations=IN>; *Population, Total - India*, WORLD BANK (2016), <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=IN>.

79. NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA 4 (2016), <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>.

80. *Id.*

81. Rina Chandran, *Much Crime Unreported in Indian Cities, Sexual Harassment Complaints Ignored*, REUTERS (Apr. 28, 2016, 10:10 AM), <https://www.reuters.com/article/us-india-women-harassment/much-crime-unreported-in-indian-cities-sexual-harassment-complaints-ignored-survey-idUSKCN0XP2CL>.

82. Lexy Perez, *Time's Up Legal Defense Fund Releases Annual Report, Unveils \$22M Donated in Fundraising*, THE HOLLYWOOD REP. (Dec. 18, 2018, 11:38 AM), <https://www.hollywoodreporter.com/news/times-up-legal-defense-fund-celebrates-one-year-anniversary-1170467>; *Our Story*, TIME'S UP NOW, <https://timesupnow.org/about/our-story> (last visited Nov. 5, 2019); NAT'L WOMEN'S LAW CTR., TIME'S UP LEGAL DEFENSE FUND ANNUAL REPORT (2018).

21,000 people from around the world have contributed over \$22 million to the defense fund.<sup>83</sup> Since its inception, 3,755 people sought help from 792 attorneys in the network.<sup>84</sup> Time's Up has funded seventy-five cases so far, and committed \$5 million to ongoing and future cases.<sup>85</sup> The defense fund responded to more than 3,700 people by providing access to attorneys for free initial consultations.<sup>86</sup> Time's Up is dedicated to the cultural transformation around sexual harassment and assault.

The Time's Up legal defense fund is a model of what third-party reporting and legal defense can offer to victims of sexual assault and misconduct. This article proposes implementation of a third-party to focus on instances of sexual assault and misconduct in the entertainment industry. This third-party, in addition to providing investigative and legal support, could have the ability to act as insurance for major studios. For example, the third-party could offer "morals insurance" to major motion picture studios, which the studios can purchase from the third-party on a project basis. Then, in the instance of a moral disrepute accusation (in this case, sexual misconduct or assault) against an individual involved in the studio's production, the third-party (insurer) would aid in covering costs toward investigation, legal fees, and repercussions of termination such as reshoots, recasts, or post-production modifications. This means studios would be more inclined to include morals clauses, victims may be more likely to come forward, and guilds may have an incentive to remove anti-morals clause provisions from their collective bargaining agreements.

One main argument against an international morals clause is that existing guilds in the entertainment industry prohibit morals clauses in their minimum basic agreements.<sup>87</sup> Before addressing guilds, unions, antitrust law, and how they interact, this article first seeks to remove a prohibition on morals clauses. Studios eliminate morals clauses with no regard for the financial consequences or impacts on victims' lives: multi-million-dollar payouts to bad actors, a negative public image for the studio, no victim support, and public reinforcement that powerful people can buy their way out of immoral conduct.

The Writers Guild of America and the Directors Guild of America, two of the most powerful guilds in the entertainment industry, must eliminate articles in their minimum basic agreements that prohibit the inclusion of

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83. NAT'L WOMEN'S LAW CTR, *supra* note 82.

84. *Id.*

85. *Id.*

86. *Id.*

87. See *Theatrical and Television Basic Agreement*, *supra* note 8; see also *Basic Agreement of 2014*, *supra* note 8.

morals clauses. Instead, the guilds should adopt and implement an international clause through an international organization. The guilds seek to protect their members, so restricting members' conduct with a moral's clause may seem counterproductive at first. However, after examining the prevalence of sexual assault and misconduct in the industry, guilds should understand that the clause protects members' rights to be free from personal harm and enforces the public's current concerns regarding justice for victims.

The best way to implement a morals clause would be through an international organization such as the Motion Picture Association (the "MPA"). The MPA currently conducts national research on the entertainment industry, protects the intellectual property of the six largest motion picture producers and distributors, and promotes the international film economy.<sup>88</sup> The goals of the MPA closely align with the goals of implementing an international morals clause. Promotion and implementation of the clause through the MPA would mean member studios would have a baseline clause to implement knowing it was drafted with their interests in mind.

The Motion Picture Association reaches regions throughout the world with the MPA of America ("MPAA"), MPA – Canada ("MPAC"), MPA – Latin America ("MPALA"), MPA – Asia Pacific ("MPAAP"), and MPA – Europe, Middle East and Africa ("MPAEMEA").<sup>89</sup> Many of the MPA's goals are profit-oriented: maintaining a rating system for films,<sup>90</sup> preventing online piracy, and expanding the global entertainment market.<sup>91</sup> Recommending an international morals clause to all regional branches and member companies matches with the association's profit-expanding goals while also protecting people from sexual misconduct and violence.

If the MPA implemented the clause, it would become the industry standard. Because the clause is created as a response to private contracting and parties can freely sign away rights as a concept of private contracting, nations need not worry about statutory implementation or regulation. Further, the MPA's content producers and distributors of the would-be parties implementing the clause and independent legal parties could review any relevant circumstances surrounding invocation of the clause.

The Big Six, the six largest entertainment conglomerates in the world, are MPA members – Walt Disney Studios Motion Pictures, Paramount

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88. *Who We Are*, MOTION PICTURE ASS'N, <https://www.mpa-i.org/who-we-are> (last visited Nov. 5, 2019).

89. *Id.*

90. Frank Pallotta, *How 'Indiana Jones' Finally Forced Hollywood to Create the PG-13 Rating*, BUSINESS INSIDER (Apr. 24, 2014, 8:13 AM), <https://www.businessinsider.com/indiana-jones-and-the-temple-of-doom-created-pg-13-rating-2014-4>.

91. *Who We Are*, *supra* note 88.

Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporations (now affiliated with Disney), Universal City Studios LLC, and Warner Bros. Entertainment Inc. – as well as Netflix, Inc., which recently joined the MPA.<sup>92</sup> As conglomerates, each member of the Big Six owns several subsidiary film studios. If the Big Six and Netflix implement morals clauses into their contracts, including subsidiaries' contracts, most film industry contracts will have active morals clauses.

The MPA would draft the proposed clause, recommend member studios implement the clause, and make suggestions for changes periodically over time. The Big Six and Netflix would likely implement the clause en masse, as some have already made public statements about widely adopting morals clauses in the future. The more popular the clauses become in the film community, the more likely mini-major and independent studios will adopt them. Additionally, studios are more likely to adopt the clause if the MPA publicly recommends implementation, because the public would question why studios fail to implement an endorsed clause from an association that furthers the studios' best interests.

If the MPA accepts and regulates the clause, it would not violate antitrust provisions. Antitrust law is governed by three applicable statutes: the Sherman Antitrust Act, the Clayton Act, and the Norris-LaGuardia Act.<sup>93</sup>

Section 1 of the Sherman Antitrust Act requires “(1) concerted activity involving more than one actor, (2) an unreasonable restraint of trade, and (3) an effect on interstate or foreign commerce” to show an antitrust violation.<sup>94</sup> Even if creating an international morals clause was considered a concerted activity that is an unreasonable restraint on trade, with an effect on foreign commerce, Section 6 of the Clayton Act exempts lawful labor activity.<sup>95</sup> Furthermore, the United States Supreme Court has held that unions enjoy a statutory exemption from antitrust laws, so long as the union acts in its own self-interest.<sup>96</sup>

There are two types of antitrust violations under the Sherman Act: per se illegal and illegal by rule of reason.<sup>97</sup> Conduct that triggers per se illegality is narrowly defined and must be plainly anticompetitive.<sup>98</sup> Morals clauses simply do not fit into the category of plainly anticompetitive behavior, or per

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92. *Id.*

93. STEVEN D. WHEELER, ANTI-TRUST LAW LABOR EXEMPTIONS: THE LMRA'S DISTANT COUSINS 1-2 (2011).

94. *Id.* at 1.

95. *Id.*

96. *Id.* at 2.

97. See SELZ ET AL., *supra* note 3 at § 7:2.

98. *Id.*

se illegal, as they are not price fixing, a market division, or a group boycott.<sup>99</sup> The rule of reason analysis deems conduct illegal only if it unreasonably restrains competition.<sup>100</sup>

Morals clauses at their core do not restrain competition, but rather enforce a code of moral conduct and make certain conduct actionable. An international morals clause would not adversely affect competition as a whole, rather, the clause would benefit members of the MPA, guild members, and the public at large for reasons discussed above. Therefore, entertainment industry unions should accept and allow morals clauses in their minimum basic agreements. The shift toward accepting proactive contractual clauses is especially important considering the widespread industry changes after the #metoo movement revelations.

#### IV. WHY BARGAINED-FOR CONTRACTUAL PROVISIONS ALONE FAIL

The current morals clauses system relies entirely on bargained-for contractual provisions. As evidenced by earlier discussion in this note, bargained-for provisions have completely failed studios and victims in instances of misconduct. Individuals with substantial bargaining power can bargain away morals clauses, which results in monetary loss, immoral or illegal conduct, and victimization of third parties.

The cornerstone of private contracting is the ability to sign away rights at will.<sup>101</sup> Morals clauses represent instances of bargaining rights away. Many academics have criticized morals clauses as reprehensible, unenforceable, and ambiguous.<sup>102</sup> Fortunately, United States courts have repeatedly held that termination based on morals clauses is enforceable and valid.<sup>103</sup>

Critics of morals clauses often disapprove of the provision because studios can take advantage of individuals with minimal bargaining power.<sup>104</sup> That is true, and should be addressed, but this critique fails to recognize the reverse gap in bargaining power. When individuals with extraordinary bargaining power, like Weinstein or Spacey, enter inter contracts with

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99. *Id.*

100. *Id.*

101. See Patricia Sanchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 Wash. & Lee L. Rev. 3, 32 (2017).

102. *Id.* at 46-48; Noah B. Kressler, *Using the Morals Clause in Talent Agreements: A Historical, Legal and Practical Guide*, 29 Colum. J. L. & Arts 1 (2005).

103. See generally *Loew's, Inc. v. Cole*, 185 F.2d 641 (9th Cir. 1950); see generally *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844 (9th Cir. 1954); see generally *Scott v. RKO Radio Pictures, Inc.*, 240 F.2d 87 (9th Cir. 1957); see generally *Nader v. ABC Television Inc.*, 150 Fed.App'x 54 (2d Cir. 2005).

104. Abril & Greene, *supra* note 101 at 47.

studios, they can bargain away the inclusion of a morals clause. In fact, a morals clause is usually the first contract provision to get eliminated.<sup>105</sup>

When individuals with bargaining power remove morals clauses from contracts, they send the wrong message: parties with monetary or social power can bargain away the requirement to act morally. In the context of the #metoo movement, it sends the message that people with greater influence can buy rights to sexually assault people. To make matters worse, individuals who can bargain away morals clauses still get paid for their contracts after termination. Individuals with extraordinary bargaining power can leverage fame and fortune to act immorally or illegally, then receive inordinate amounts of money for doing so. There are multiple examples as to how bargained-for contractual provisions failed both studios and victims of sexual harassment.

Comedian Bill Cosby's sexual assault and rape scandal embodies the climate surrounding sexual assault and the recent change the #metoo movement has caused. In 2005, his former costar, Andrea Constand, reported to police that Cosby had drugged and sexually assaulted her.<sup>106</sup> The district attorney at the time did not prosecute the case and Cosby's career maintained its trajectory.<sup>107</sup> Ten years later, prior to the #metoo movement, however, when more victims came forward, the district attorney chose to prosecute Cosby.<sup>108</sup> The first jury in 2017 deadlocked.<sup>109</sup> On April 26, 2018, after a retrial, a new jury convicted Cosby and, on September 25, 2018, a judge sentenced Cosby to three to ten years in prison.<sup>110</sup> Cosby's sentencing marks the first criminal conviction since the resurgence of the #metoo movement but came ten years too late for Constand, the first victim to come forward.

In April 2018, the Board of Governors of the Academy of Motion Picture Arts and Sciences voted to expel both Bill Cosby and Roman Polanski from the Academy's membership ranks.<sup>111</sup> The Board acted in response to decades old pedophilia allegations against Roman Polanski and Bill Cosby's sexual

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105. Epstein, *supra* note 1 at 90; Sarah D. Katz, *Reputations... A Lifetime to Build, Seconds to Destroy*, 20 CARDOZO J. INT'L & COMP. L. 185, 199-200 (2011).

106. Laura Benshoff & Bobby Allyn, *Bill Cosby Sentenced to at Least 3 Years in State Prison for Sexual Assault*, NPR (Sept. 25, 2018, 2:15 PM), <https://www.npr.org/2018/09/25/651065803/bill-cosby-sentenced-to-at-least-3-years-in-state-prison>.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Kristopher Tapley & Gene Maddaus, *Film Academy Expels Bill Cosby and Roman Polanski From Membership*, VARIETY (May 3, 2018, 11:19 AM), <https://variety.com/2018/film/awards/film-academy-expels-bill-cosby-and-roman-polanski-from-membership-1202797252/>.



assault conviction.<sup>112</sup> Polanski's attorney stated: "It seems to be wrong to just expel someone and make a decision without knowing all the facts."<sup>113</sup> The Academy expelled Cosby because of jury convictions but could not base Polanski's expulsion on the same grounds because Polanski fled the United States to escape trial. When Polanski sued for reversal, accusing the Academy of not following proper protocol, the Academy stood behind its decision.<sup>114</sup> By acting with an independent committee, voting, and finally removing bad actors from positions of power, the Academy upheld its moral code of conduct.<sup>115</sup> The Academy's actions comport well with the solutions proffered by an international morals clause, but the Academy's expulsions are merely a response to instances where morals clauses were not used.

The case against Harvey Weinstein exemplifies the invasive nature of sexual assault in the entertainment industry. Notably, in October 2018, a judge dismissed a count against Weinstein because police failed to provide information to prosecutors.<sup>116</sup> While this would otherwise appear as negative news, the current case against Weinstein moves forward as a New York judge denied his motion to dismiss other counts.<sup>117</sup> Even though Weinstein's defense remains "confident" he will be "completely exonerated," his case continues on its path to trial.<sup>118</sup> His case, which has been delayed numerous times, was supposed to come to a head in July 2019.<sup>119</sup> However, Paz de la Huerta has added the Walt Disney Company, Michael Eisner, Bob Iger, Bob Weinstein, and Miramax to an amended \$70 million claim against Weinstein.<sup>120</sup> It took decades, but the case against Weinstein continues to grow and change. The fact that this case moves forward symbolizes justice

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112. *Id.*

113. *Id.*

114. Matt Donnelly & Brent Lang, *Academy Responds to Roman Polanski: 'Procedures Were Fair and Reasonable'*, VARIETY (April 19, 2019, 12:28 PM), <https://variety.com/2019/film/news/roman-polanski-sues-film-academy-1203193579/>.

115. *Standards of Conduct and Process for Submitting Claims of Misconduct*, ACAD. MOTION PICTURE ARTS & SCI., <https://pmcvariety.files.wordpress.com/2018/01/standards-of-conduct-process.pdf> (last visited Nov. 5, 2019).

116. Eriq Gardner, *Judge Rejects Harvey Weinstein's Motion to Dismiss Assault Case*, HOLLYWOOD REP. (Dec. 20, 2018, 6:51 AM), <https://www.hollywoodreporter.com/thresq/harvey-weinstein-motion-dismiss-assault-case-rejected-by-judge-1171018>.

117. *Id.*

118. *Id.*

119. Dominic Patten, *Harvey Weinstein's Latest New Lawyers Strike No Delay Deal with Judge Over Rape Trial Start Date*, DEADLINE (July 8, 2019), <https://deadline.com/2019/07/harvey-weinstein-new-lawYERS-new-york-rape-trial-date-remains-1202640490/>.

120. Dominic Patten, *Disney to "Vigorously" Fight New \$60M Harvey Weinstein Assault Suit from Paz de la Huerta*, DEADLINE (Aug. 27, 2019, 5:03 PM), <https://deadline.com/2019/08/paz-de-la-huerta-sues-disney-harvey-weinstein-rape-claim-miramax-1202705695>.

for the thousands of women who came forward during the #metoo and Time's Up movements.<sup>121</sup>

More recently, CBS avoided a \$120 million payout to former executive Leslie Moonves.<sup>122</sup> The grounds for termination were based on “willful and material misfeasance, violation of company policies, and breach of his employment contract.”<sup>123</sup> To terminate Moonves without paying severance, CBS would need to invoke the “for cause” section of his contract, which requires CBS to show that Moonves caused a “materially adverse effect” on the company.<sup>124</sup> Because of this clause, it would be difficult for CBS to show that Moonves’ pattern of sexual harassment caused a materially adverse effect, but independent law firms still launched an investigation into his behavior as well as into company practices at CBS.<sup>125</sup> A report found that Moonves obstructed the investigation and obscured evidence of his sexual harassment, which allowed CBS to invoke the clause and avoid severance pay. The report further revealed that CBS’s sexual harassment training was not as robust as training at other companies, and that executives could often forego the training altogether.<sup>126</sup> CBS was lucky that Moonves was so apparent in his cover-up and obstruction of the investigation; otherwise, they may not have been able to void his \$120 million severance package.<sup>127</sup>

In March 2019, the Hollywood Reporter revealed that Warner Bros. CEO, Kevin Tsujihara, engaged in an extramarital affair with actress Charlotte Kirk.<sup>128</sup> The affair quickly broke down into casting demands from the actress.<sup>129</sup> Following an investigation into his relationship with Kirk,

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121. See @timesupnow, INSTAGRAM (Dec. 20, 2018), [https://www.instagram.com/p/BrnSq\\_NgrKn/](https://www.instagram.com/p/BrnSq_NgrKn/).

122. Edmund Lee & Rachel Abrams, *CBS Says Les Moonves Will Not Receive \$120 Million Severance*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/business/media/les-moonves-cbs-severance.html>.

123. *Id.*

124. Elizabeth C. Tippet, *CBS is Incredibly Lucky to not pay Les Moonves his \$120 Million Severance*, MARKET WATCH (Dec. 19, 2018, 11:44 AM), <https://www.marketwatch.com/story/cbs-is-incredibly-lucky-to-not-pay-les-moonves-his-120-million-severance-2018-12-19>.

125. Lee & Abrams, *supra* note 122.

126. *Id.*

127. See Rachel Abrams and Edmund Lee, *Les Moonves Obstructed Investigation into Misconduct Claims, Report says*, N.Y. TIMES (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/business/media/les-moonves-cbs-report.html>.

128. Tatiana Siegel & Kim Masters, *“I Need to Be Careful”: Texts Reveal Warner Bros. CEO Promoted Actress Amid Apparent Sexual Relationship*, HOLLYWOOD REP. (Mar. 06, 2019, 1:40 PM), <https://www.hollywoodreporter.com/features/i-need-be-careful-texts-reveal-warner-bros-ceo-promoted-actress-apparent-sexual-relationship-1192660>.

129. *Id.*

Tsujihara stepped down.<sup>130</sup> While Tsujihara's affair is not an allegation of sexual assault, it concerns sexual misconduct and actions that morals clauses aim to prevent.

Eight women claimed allegations of rape, sexual abuse, and psychological manipulation suffered at the hands of screenwriter Max Landis.<sup>131</sup> Landis's manager dropped him as a client shortly afterwards.<sup>132</sup> Luckily, Landis had few to no projects on the horizon, so studios did not have to endure the termination process.<sup>133</sup> However, if Landis was working on any projects, a morals clause would have prevented monetary loss and an internationalized morals clause would have aided in the process of effectuating the clause.

Bryan Singer, the director of the Oscar-nominated picture *Bohemian Rhapsody*, denied new sexual assault allegations of underage boys in January 2019.<sup>134</sup> Singer was removed from *Bohemian Rhapsody* a mere two weeks before the end of production and was subsequently replaced on the upcoming film *Red Sonja*.<sup>135</sup> In June, Singer agreed to settle an ongoing suit with one victim for \$150,000.<sup>136</sup> While Singer was not nominated for best director in the 2019 Oscars, he still received directorial credit for the film, as well as his full director's fee.

Unfortunately, the need for morals clauses expands beyond people directly involved in the entertainment industry's artistic endeavors. In August 2019, Steven Fabrizio, general counsel, and top executive at the MPAA, was fired after being charged with second-degree sexual abuse and blackmail.<sup>137</sup>

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130. Cynthia Littleton, *Kevin Tsujihara Out as Warner Bros. Chief amid Sexual Impropriety Scandal*, VARIETY (Mar. 18, 2019, 10:19 AM), <https://variety.com/2019/biz/news/kevin-tsujihara-warner-bros-sexual-impropriety-1203165653/>.

131. Gene Maddaus, *Max Landis Accused of Rape, Assault and Psychological Abuse*, VARIETY (June 18, 2019, 12:43 PM), <https://variety.com/2019/film/news/max-landis-sexual-assault-accusation-1203246371/>.

132. Dave McNary, *Max Landis Dropped by Manager Following Sexual Assault Allegations*, VARIETY (June 19, 2019, 11:30 AM), <https://variety.com/2019/film/news/max-landis-dropped-manager-sexual-assault-allegations-1203247788/>.

133. See Maddaus, *supra* note 131.

134. Gene Maddaus, *Bryan Singer Hit with Fresh Allegations of Sex with Underage Boys*, VARIETY (Jan. 23, 2019, 4:00 AM), <https://variety.com/2019/biz/news/bryan-singer-allegations-sex-underage-boys-1203115090/>.

135. *Id.*; Alex Stedman & Matt Donnelly, *Jill Soloway Replaces Bryan Singer as 'Red Sonja' Director*, VARIETY (June 21, 2019, 11:40 AM), <https://variety.com/2019/film/news/jill-soloway-red-sonja-bryan-singer-1203250238/>.

136. Gene Maddaus, *Bryan Singer to Pay \$150,000 to Resolve Rape Claim*, VARIETY (June 12, 2019, 5:45 PM), <https://variety.com/2019/biz/news/bryan-singer-sanchez-guzman-settlement-1203241557/>.

137. Nate Nickolai & Matt Donnelly, *Top MPAA Executive Steven Fabrizio Fired Amid Sexual Abuse, Blackmail Charges*, VARIETY (Aug. 26, 2019, 10:12 PM),

The above instances prove just how necessary morals clauses are: they can save millions of dollars, protect victims, and bring perpetrators to justice.

## V. CONCLUSION

Studios created and implemented morals clauses as a reaction to morally reprehensible conduct from talent. While the clause's use increased over time, studios failed to implement them in situations where talent had substantially more bargaining power. Failure to implement morals clauses in such circumstances sent the message that people of high power could bargain away the requirement to act morally, setting the stage for a moral crisis in the film industry. The #metoo movement revealed the dark inner workings of Hollywood, and later the state of film industries in the United Kingdom, China, India, Japan, and Australia. As a response, the film industry must effectuate an international morals clause to protect themselves and the public against immoral and illegal conduct.

Overall, the MPA should implement an international morals clause approved and accepted by guilds in the entertainment industry. Studios should invoke the clause in response to sexual misconduct or violence allegations. The effect of the clause need not be immediate termination, but, instead, suspension pending an independent investigation of the conduct. An independent legal body, modeled after the Times Up legal defense fund, should investigate alleged conduct and make a fair evaluation for suspension or termination based on the conduct alleged and the content of the clause. As discussed, the clause would not violate antitrust law and guild involvement with the clause would further protect against antitrust or competition claims.