

# OSCAR LAW

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## OSCAR LAW

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*In most vocational fields, trade associations promote their industry's common business interests by performing various community-building functions, including the establishment of awards for outstanding professional accomplishments. In the entertainment industry, however, the elite trade associations (known as academies) are almost exclusively devoted to the presentation and production of achievement awards, a ritual that has evolved into its own cottage industry. By televising the year's best performances in a stylized media format now firmly etched in the American cultural zeitgeist, entertainment academies promote their membership's shared economic interests in stimulating consumer demand for their respective performing arts industries.*

*This Article breaks new ground by examining entertainment awards from a legal perspective. It begins by asserting two related claims: first, the ritual presentation of elite entertainment awards has matured into its own distinct industry, which now represents an important microeconomy generating hundreds of millions of dollars in direct annual turnover; second, the law plays a singularly pivotal role in protecting and regulating the entertainment awards industry. The Article then develops the latter claim into a descriptive account of "Oscar Law" by identifying the legal doctrines, principles, and regulations relevant to this unique field.*

*The Article's descriptive account presents a cross-cutting survey of intersections between law and the entertainment awards industry. Those intersections implicate matters of antitrust, contracts, corporate governance, federal broadcasting regulation, intellectual property (copyright and trademark), nonprofit tax exemption, property, income tax, and trespass, among other legal subfields. The resulting analysis represents the first comprehensive, rigorously sourced, scholarly legal examination of the entertainment awards industry, with a particular focus on the most elite awards: Oscars, Emmys, Grammys, Tonys, and Golden Globes.*

## INTRODUCTION

Admission to the Oscar awards ceremony is strictly by invitation of the Academy of Motion Picture Arts and Sciences.<sup>1</sup> All invited ticketholders must sign the following agreement: "I understand that Academy Awards tickets are not transferable, and that any transferred tickets will be revoked and their bearers deemed trespassers at the ceremony."<sup>2</sup> In 1997, however, an Academy member

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1. Acad. of Motion Picture Arts & Scis. v. Olsen, No. B159508, 2004 WL 292134, at \*1 n.1 (Cal. Ct. App. Feb. 17, 2004).

2. *Id.* The following restriction also appears on the ticket's face: "Any tickets sold or otherwise transferred will be deemed revoked." *Id.*

violated the above recital by giving his Oscar tickets to a friend, though he expressly instructed the recipient not to resell them.<sup>3</sup> Disregarding that instruction, the friend enlisted a broker to resell the tickets for \$10,000.<sup>4</sup> The broker sold them to a local radio station, which violated the transfer restriction yet again by advertising the tickets as a promotional prize.<sup>5</sup> On the evening of the live telecast, the radio-promotion winners presented their tickets to enter the Shrine Auditorium but were ejected by security long before the Oscar would be presented to James Cameron for producing the year's best picture, *Titanic*.<sup>6</sup> Keen to deter future violations of its invitation-only policy,<sup>7</sup> the Academy successfully sued the ticket broker for breach of contract, trespass, and conspiracy to induce trespass.<sup>8</sup> The court awarded the Academy monetary damages and injunctive relief enjoining the broker from selling Oscar tickets.<sup>9</sup>

\* \* \*

In June of 2020, a conspiracy-themed social media company called "Crowdsource the Truth" posted a nine-minute video entitled "The Crony Awards."<sup>10</sup> The faux ceremony honored virus skeptics with digitally altered Emmy statuettes that depicted the iconic winged muse holding a spiky coronavirus instead of an atom.<sup>11</sup>

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3. *Id.* at \*1.

4. *Id.* A private investigator hired by the Academy's lawyers conducted a sting operation to identify the ticket scalper but did not ultimately purchase the tickets, instead opting to forbear to gather intelligence. *Id.*

5. *Id.*

6. *See id.* The court explained how the ticketholders came to be seated:

After ushers permitted the couple to enter the awards ceremony and take their seats, . . . the Academy's attorney . . . advised the couple that they were trespassers, and police promptly escorted the couple to the exit. At the time of the 1998 awards ceremony, it was not practicable for the Academy to verify at the door whether ticketholders were in fact invited guests, and any delay to check for [suspicious] tickets at the door would have held up the live telecast of the program.

*Id.*

7. *Cf.* John Eligon, *Oscars Watchdog Monitors Foul Play in Stores, Online and on Red Carpet*, N.Y. TIMES (Feb. 25, 2011), <https://www.nytimes.com/2011/02/26/movies/awardsseason/26oscar.html> [<https://perma.cc/3DA5-93EZ>] (noting that roughly fifteen trespass arrests occur annually at the Oscars).

8. *Olsen*, 2004 WL 292134, at \*3, \*5–8.

9. *Id.*; *see also* World Sports Grp., Inc. v. Motion Picture Acad. of Arts & Scis., 273 A.D.2d 53, 54 (N.Y. App. Div. 2000) (dismissing due to lack of jurisdiction a ticket broker's action against the Academy to enforce contract for sale of tickets and affirming award of attorneys' fees for the Academy).

10. Nat'l Acad. of Television Arts & Scis. v. Multimedia Sys. Design, Inc., 551 F. Supp. 3d 408, 418 (S.D.N.Y. 2021).

11. *Id.* at 418–19.



**Figure 1**

Emmy statuette (left); Crony Award (right)<sup>12</sup>

To protect its intellectual property rights in the Emmy statuette, the National Academy of Television Arts and Sciences (Television Academy) sued Crowdsorce for copyright and trademark infringement, among other claims.<sup>13</sup> Crowdsorce defended its depiction on fair-use grounds, while lodging an unusually acrimonious countersuit against the Television Academy's president in his *personal* capacity.<sup>14</sup> The court ultimately rejected Crowdsorce's fair-use defense, finding that the Crony Award did not engage in sufficient parody, criticism, or commentary about the Emmy statuette.<sup>15</sup> It further held that the Television Academy had "adequately alleged that [it] suffered actual and reputational harm through [Crowdsorce's] association of the Emmy statuette with dangerous misinformation about the COVID-19 pandemic."<sup>16</sup>

\* \* \*

During the live telecast of the 2003 Golden Globe Awards, Bono made the following profane utterance while accepting U2's award for best original song: "this is really, really, f\*\*\*ing brilliant."<sup>17</sup> Bono's expletive was an iconic moment

12. *Id.* at 419.

13. *Id.*

14. *See id.*; Complaint, Goodman v. Sharp, No. 21-CV-10627 (S.D.N.Y. Mar. 15, 2022). While litigating the Television Academy's takedown notice, Crowdsorce "tweeted and posted a YouTube video accusing [National Academy of Television Arts and Sciences President and CEO] Mr. Sharp of being a 'political operative' and declaring that Mr. Sharp and his father's careers were the products of 'nepotism, corruption, and CIA-led propaganda campaigns.'" *Nat'l Acad. of Television Arts & Scis.*, 551 F. Supp. 3d at 419.

15. *Nat'l Acad. of Television Arts & Scis.*, 551 F. Supp. 3d at 426.

16. *Id.* at 425 (alteration in original).

17. *See* FCC v. Fox TV Stations, Inc., 567 U.S. 239, 248 (2012); *see also* Anthony Breznican, 'Chicago,' Zellweger, Gere Dance Away with Golden Globes, WASH. POST (Jan. 19, 2003), <https://www.washingtonpost.com/archive/lifestyle/2003/01/20/chicago-zellweger-gere-dance-away-with-golden-globes/f6d4d3b6-5694-4ecd-ae93-416f39201de7/> [https://perma.cc/EL73-Q54K].

of primetime television, but it created a legal headache for NBC, which had paid the Hollywood Foreign Press Association (HFPA) handsomely for exclusive national broadcasting rights.<sup>18</sup> The incident also elicited a complaint to the Federal Communications Commission (FCC) by the Parents Television Council (PTC),<sup>19</sup> a conservative advocacy group, which alleged that NBC had violated federal decency regulations governing television broadcast licensees.<sup>20</sup>

In a decision that came to be known as the “Golden Globes Order,” the FCC ruled in favor of the PTC.<sup>21</sup> Announcing a major departure from prior policy, the FCC declared that it would enforce the federal decency regulations under a stricter regime that included sanctions for broadcasting so-called “fleeting expletives.”<sup>22</sup> The Golden Globes Order spawned a mountain of litigation that reached the Supreme Court twice: first, to determine whether the FCC had implemented its new policy properly under the Administrative Procedure Act;<sup>23</sup> and second, to decide whether the FCC’s enforcement complied with constitutional due process.<sup>24</sup> By deciding the latter question on due process grounds, however, the Supreme Court left unresolved the thornier merits of whether the indecency regulations ran afoul of First Amendment speech protections.<sup>25</sup> Television broadcasters adapted to that uncertainty by implementing new precautions for live award telecasts, such as time-delay protocols that enable control rooms to monitor for fleeting indecent content

18. See *Hollywood Foreign Press Ass’n v. Red Zone Cap. II*, 870 F. Supp. 2d 881, 886 (C.D. Cal. 2012) (“Since 1996, the Golden Globe Awards show has aired on NBC under a long-term license agreement that dcp and NBC entered into in 1993, which dcp and NBC extended in 2001 and 2010.”); see also Bill Higgins, *Globes Gelt Grows*, VARIETY (Jan. 22, 2004, 9:00 PM), <https://variety.com/2004/film/awards/globes-gelt-grows-1117898936/> [<https://perma.cc/9L5H-9HCV>].

19. See *Mission and Vision*, PARENTS TELEVISION & MEDIA COUNCIL, <https://www.parentstv.org/about-us/mission> [<https://perma.cc/8382-8MRN>].

20. See *Complaints Against Various Broadcast Licenses Regarding the Airing of the “Golden Globe Awards” Program*, 19 FCC Rcd. 4975, 4976 (2004) [hereinafter *Golden Globes Order*]; see also 18 U.S.C. § 1464 (criminal statute prohibiting broadcast of obscene language by means of radio communication); 47 C.F.R. § 73.3999(b) (2024) (FCC regulation providing that “[n]o licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent”). The FCC has regulatory jurisdiction over television broadcast licensees. See 47 U.S.C. § 303 (enumerating the FCC’s powers and duties).

21. See *Golden Globes Order*, *supra* note 20, at 4982.

22. See *id.* at 4978–82; see generally Sarah Herman, *The Battle for the Remote Control—Has the FCC Indecency Policy Worn Out Its Welcome in America’s Living Room?*, 38 WASH. U. J.L. & POL’Y 357, 358 (2012) (describing the FCC’s policy reforms under the George W. Bush administration); see also Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, 16 FCC Rcd. 7999 (2001).

23. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 510–13, 517 (2009) (holding, by a 5–4 vote, that implementation of the new policy complied with the Administrative Procedure Act).

24. See *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 243, 258 (2012) (holding unanimously that certain broadcasters lacked fair notice before the FCC enforced its new policy).

25. See *id.* at 258 (observing that “because the Court resolves these cases on fair notice grounds under the Due Process Clause, it need not address the First Amendment implications of the Commission’s indecency policy”).

and excise it from the broadcast in real time.<sup>26</sup> In 2022, for instance, ABC censored profanity uttered during the infamous physical confrontation between Chris Rock and Will Smith at the Academy Awards.<sup>27</sup> Likewise, in 2023, CBS censored Broadway director Michael Arden's raw but empowering acceptance speech denouncing homophobia at the Tony Awards.<sup>28</sup>

\* \* \*

The three preceding vignettes illustrate a paradigm explored in this Article for the first time through the lens of legal scholarship—the law's central role in nearly every facet of the modern entertainment awards industry. That paradigm rests on two related claims: First, the venerable tradition of bestowing awards for outstanding achievement in the performing arts has matured into a distinct, highly visible microeconomy. Second, the microeconomy of entertainment awards, in turn, is protected and regulated by a taxonomically identifiable legal ecosystem which we coin herein as "Oscar Law."

This Article dissects the above paradigm by presenting a cross-cutting survey of the entertainment awards industry's legal ecosystem. Our descriptive account spans a broad range of disparate subfields, including federal tax exemption, corporate governance, intellectual property, antitrust, contracts, federal broadcasting, and trespass, among others. The resulting narrative describes the industry's legal structure, organization, and operation in ways that enrich our understanding of the modern presentation of entertainment awards and how the ritual of bestowing such awards has evolved over time. Our descriptive account also contributes to the scholarly literature on the theory of the firm and media law.

Oscar Law deserves scholarly attention because the entertainment awards industry has matured into an important, highly visible microeconomy. The industry's direct economic impact represents a relatively small but notable slice of the broader show-business sector.<sup>29</sup> Its indirect economic impact has spawned a sprawling cottage industry of journalism devoted to satiating the

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26. See Brian Palmer, *How Does Live Television Censorship Work?*, SLATE (Oct. 1, 2012, 3:03 PM), <https://slate.com/news-and-politics/2012/10/fox-news-live-suicide-how-do-you-censor-live-television.html> [<https://perma.cc/N2BC-6BD2>].

27. See Kim Bellware, *ABC Tried to Censor the Oscars Slap. It Spread Unedited Anyway*, WASH. POST (Mar. 28, 2022), <https://www.washingtonpost.com/arts-entertainment/2022/03/28/oscars-slap-editing/> [<https://perma.cc/RM56-27QJ>].

28. The live CBS telecast censored the following portion of Arden's acceptance speech: "Growing up, I was called the F-word more times than I can remember, and now I'm a f\*ggot with a Tony. So, keep raising your voices, my friends. Keep loving and uplifting each other, standing up against intolerance any time you see it. And vote every chance you get." See Michael Major, *What Michael Arden Said During His Censored Tony Awards Acceptance Speech*, BROADWAYWORLD (June 11, 2023), <https://www.broadwayworld.com/article/What-Michael-Arden-Said-During-His-Censored-Tony-Awards-Acceptance-Speech-20230611> [<https://perma.cc/L5CG-AME5>].

29. See *infra* Section I.B.

fervent worldwide demand for media coverage and commentary.<sup>30</sup> The major entertainment awards also punch vastly above their weight in cultural influence, having cultivated global reputations as standard-setting arbiters of the performing arts. The elite academies have achieved that stature by investing heavily in their brand identities, by legitimizing their nomination and award selections through the promulgation of written rules and democratic voting procedures, and by televising their awards in a glitzy showcase format that promotes public demand for their artistic disciplines.<sup>31</sup> The cumulative effect of those efforts has clothed the elite academies with leadership status that reverberates cultural influence across large domestic and international audiences.<sup>32</sup>

Our descriptive account of Oscar Law begins with an examination of the legal organization of each major award-granting academy, with a particular focus on corporate structure and tax-exempt status.<sup>33</sup> We discovered that all the major academies employ a somewhat obscure legal-entity structure for their awards-related activities—the noncharitable, nonprofit business league. Under 26 U.S.C. § 501(c)(6), noncharitable business leagues are entitled to a federal income-tax exemption and may engage in political lobbying activities that are off limits for charitable nonprofit organizations exempt under § 501(c)(3).<sup>34</sup> But the internal dynamics of a business league can facilitate anticompetitive conduct among industry competitors, thus implicating the market-regulating principles of antitrust law.<sup>35</sup> We found that allegations of monopolization and anticompetitive collusion emerged as a recurring theme in civil litigation involving the major entertainment academies.

Our second area of focus examines the internal rules governing admission to each academy's voting membership and award nominations.<sup>36</sup> We discovered that these areas are a significant source of controversy, but courts tend to exercise judicial restraint when reviewing an academy's internal deliberations, in deference to a private organization's right of self-governance. As we will detail,

30. See, e.g., EMANUEL LEVY, *ALL ABOUT OSCAR: THE HISTORY AND POLITICS OF THE ACADEMY AWARDS* 26, 65, 304 (2003).

31. See TOM O'NEIL, *MOVIE AWARDS: THE ULTIMATE, UNOFFICIAL GUIDE TO THE OSCARS, GOLDEN GLOBES, CRITICS, GUILD, & INDIE HONORS* 5–7 (2003).

32. See *Acad. of Motion Picture Arts & Scis. v. GoDaddy.com, Inc.*, No. CV 10-03738 AB (CWX), 2015 WL 5311085, at \*1–2 (C.D. Cal. Sept. 10, 2015); see also Pedro Amaya-Mendoza, *Film and the Oscars' Impact on Society: A View from Several Minority Standpoints*, DARTMOUTH JOURNEYS (2019), <https://journeys.dartmouth.edu/cynthiamonroe/film-and-the-oscars-impact-on-society-a-view-from-several-minority-standpoints/> [<https://perma.cc/8CC2-4FW5>]; cf. Edgar Dobie, *Theater/The Tony Awards: It's an Imperfect Process, as It Should Be*, N.Y. TIMES (May 21, 2000), <https://www.nytimes.com/2000/05/21/arts/theaterthe-tony-awards-its-an-imperfect-process-as-it-should-be.html> [<https://perma.cc/6PUE-XNWR>] (observing that, as “the most important recognition a theatrical production or artist can win, the Tonys have become a lightning rod that attracts a great deal of—well, lightning”).

33. See *infra* Section I.C.

34. See *infra* Section I.C.

35. See *infra* Section I.C.

36. See *infra* Part II.

litigation filed by the late borscht-belt comedian Jackie Mason helped establish judicial deference as a legal norm after a New York court dismissed his \$75 million lawsuit against the Broadway League for its refusal to nominate his one-man show for a Tony Award.<sup>37</sup>

Our third inquiry looks at the production of annual awards-show telecasts, including the role of contract law in facilitating agreements with event vendors and television production firms.<sup>38</sup> There, for instance, we discovered an epic legal dispute between the HFPA and Dick Clark Productions, the firm hired by the HFPA to produce and televise the Golden Globe Awards.<sup>39</sup> In that colorful case, a federal district court found that the parties' longstanding collaboration had degenerated into a bitter dispute, in part because of the HFPA's "unbusiness-like display of misplaced priorities," such as bickering over "whether to serve soup or caviar" rather than tending to more serious matters like the renewal of its broadcasting agreement with NBC.<sup>40</sup> We view that as a cautionary tale about the dangers of mixing business and pleasure. Other legal issues implicated by the telecast production, as previewed in our cold open, include guest invitation and ticketing policies,<sup>41</sup> as well as federal regulations governing the broadcast of live awards ceremonies over the public airwaves.<sup>42</sup>

Our fourth area of focus examines the use of property and contract law by the academies to restrain the sale and transfer of award statuettes.<sup>43</sup> We found, for example, that courts have generally upheld alienation restraints imposed by the academies on the distribution of statuettes, but a robust underground auction market has long evaded the academies' enforcement efforts.<sup>44</sup> We also explored the academies' ownership and enforcement of copyrights and trademarks to protect their intellectual property and brand identity.<sup>45</sup> There, we unearthed one of our most surprising discoveries: a 1989 federal district court decision holding that the copyrighted design of the iconic Oscar statuette reverted to the public domain.<sup>46</sup> That industry-rattling decision remained in place for two years until the Ninth Circuit eventually reversed it.<sup>47</sup>

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37. See *Mason v. Am. Theatre Wing, Inc.*, 627 N.Y.S.2d 539, 54 (N.Y. Sup. Ct. 1995); *infra* Section II.B.

38. See *infra* Section III.A.

39. *Hollywood Foreign Press Ass'n v. Red Zone Cap. Partners II*, 870 F. Supp. 2d 881 (C.D. Cal. 2012); see *infra* Section III.A.

40. *Hollywood Foreign Press Ass'n*, 870 F. Supp. at 891.

41. See *infra* Section III.B.

42. See *infra* Section III.C.

43. See *infra* Section IV.A.

44. See *infra* Section IV.A.

45. See *infra* Part IV.

46. See *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 728 F. Supp. 1442 (C.D. Cal. 1989); *infra* Section IV.A.

47. See *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 944 F.2d 1446 (9th Cir. 1991); *infra* Section IV.A.



A key element of our research methodology relied on public litigation records to identify major sources of controversy and industry flashpoints. To that end, we conducted an extensive review of court records for each topical strand of our research. We used Westlaw and LexisNexis to scour public court records to compile a comprehensive dataset of litigated disputes, which we then analyzed for observable patterns. To streamline that inquiry, we mostly confined our search activity to the elite award-granting academies in the fields of motion picture, television, music, and theater—specifically searching for cases mentioning the Emmys, Grammys, Oscars, Tonys, and Golden Globes, plus the academies that bestow those awards.<sup>48</sup> The resulting hits painted a rich and compelling picture of the law's pronounced role in protecting and regulating the entertainment awards industry.

The Article proceeds as follows: Part I describes the history, economics, corporate structure, and tax status of the entertainment awards industry. Part II examines the internal corporate governance of the entertainment academies with respect to membership admission and nomination eligibility criteria. Part III explores various legal aspects of producing a live awards-ceremony telecast. Part IV explores the role of property law in restraining the alienation of award statuettes and protecting the academies' intellectual property through copyrights and trademarks. So please stay tuned for all of these exciting developments and more when we return after a short (paragraph) break.

## I. THE ENTERTAINMENT AWARDS INDUSTRY

This Part begins by recounting a brief history of the entertainment awards industry, detailing origin stories for each of the major entertainment awards (ordered chronologically by year of establishment): Oscars (film), Golden Globes (film and television), Tonys (theater), Emmys (television), and Grammys (recording). It then offers a snapshot of the modern entertainment awards industry as a distinct microeconomy, defined by television viewership and financial performance of the major award-granting organizations. It then examines the corporate structure and tax-exempt nonprofit statuses employed by the academies to carry out their corporate and charitable purposes.

### A. *The Modern History of Awards*

One hundred years ago, the nascent science of motion pictures was beginning to mature from an experimental art into a lucrative business.<sup>49</sup> By the

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48. The entertainment award industry includes a broad range of other televised and untelevised awards ceremonies, such as the American Music Awards, BET Awards, Country Music Awards, Drama Desk Awards, MTV Video Music Awards, People's Choice Awards, and Screen Actors Guild Awards. This Article, however, focuses solely on legal issues pertaining to the elite award-granting entertainment academies.

49. See JACK C. ELLIS, A HISTORY OF FILM 1–3 (1979).

early 1920s, Louis Mayer had already co-founded one of Hollywood's most storied film studios, Metro-Goldwyn-Mayer (MGM), thus establishing himself as one of the industry's leading business voices.<sup>50</sup> Known for driving a hard bargain, Mayer watched the labor movement's recent foothold in Hollywood with concern, fearing that MGM's actors and writers might unionize in the wake of the newly formed International Alliance of Theatrical Stage Employees.<sup>51</sup> But Mayer was reluctant to accede to costly demands by workers for higher compensation, pension benefits, and health insurance.<sup>52</sup> Instead, he believed that labor relations could be improved by placating the talents' insatiable hunger for praise and public recognition.<sup>53</sup> Hollywood studios could feed the egos of its leading actors by establishing a *nonpecuniary* award for outstanding artistic achievement.<sup>54</sup> As Mayer later explained, "I found that the best way to handle [moviemakers] was to hang medals all over them. . . . If I got them cups and awards they'd kill themselves to produce what I wanted. That's why the Academy Award was created."<sup>55</sup> In 1927, the Academy of Motion Picture Arts and Sciences (Academy of Motion Pictures) incorporated for the purpose of recognizing outstanding achievement in film.<sup>56</sup>

In 1929, the Academy of Motion Pictures celebrated its inaugural affair in Hollywood at the Roosevelt Hotel's Blossom Room, where dinner service paused for fifteen minutes to recognize a small handful of previously announced "academy award" winners.<sup>57</sup> In time, the ceremony's modest scale and formality gradually evolved into the grand event that, by 1939, had become known as the Oscars.<sup>58</sup> That same year also marked the Academy's first haphazard foray into radio, when a gossip columnist surreptitiously transmitted the first twelve minutes of audio before the Biltmore Hotel's security abruptly

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50. See JOHN DORNEY ET AL., *BEST PICK: A JOURNEY THROUGH FILM HISTORY AND THE ACADEMY AWARDS* 1–2 (2022).

51. See MASON WILEY & DAMIEN BONA, *INSIDE OSCAR: THE UNOFFICIAL HISTORY OF THE ACADEMY AWARDS* 2 (1986).

52. David Thomson, *The House that Mr. Mayer Built: Inside the Union-Busting Birth of the Academy Awards*, VANITY FAIR (Feb. 21, 2014), <https://www.vanityfair.com/hollywood/2014/02/secret-oscar-history> [https://perma.cc/SD67-DYWB].

53. See SCOTT EYMAN, *LION OF HOLLYWOOD: THE LIFE AND LEGEND OF LOUIS B. MAYER* 117 (2005).

54. See *id.* The only winners to *decline* an Academy Award include screenwriter Dudley Nichols (amidst the 1936 Writers' Strike) and actors Marlin Brando (in protest of the industry's treatment of Native Americans) and George C. Scott (who called the ceremony a degrading "meat parade"). See GAIL KINN & JIM PIAZZA, *ACADEMY AWARDS: THE COMPLETE UNOFFICIAL HISTORY* 35, 182, 191, 286 (2014).

55. EYMAN, *supra* note 53, at 117.

56. See LEVY, *supra* note 30, at 26–27.

57. See *id.* at 27. The dinner included broiled chicken, string beans, and ice cream. Patt Morrison, *A Moveable Feast: How the Oscars Venue-Hopped Through Los Angeles*, L.A. TIMES (Mar. 8, 2023, 12:19 PM), <https://www.latimes.com/california/story/2023-03-08/explaining-l-a-with-patt-morrison-the-oscars-weren-t-always-in-hollywood> [https://perma.cc/6UGF-VN6M].

58. Morrison, *supra* note 57.

ended the unauthorized broadcast.<sup>59</sup> The Academy later came to embrace its relationship with the airwaves, awarding ABC the first national radio-broadcasting rights in 1944, and, in 1953, contracting with NBC to broadcast the first live telecast.<sup>60</sup>

Inspired by the Oscars' success, eight foreign journalists based in Los Angeles established the HFPA, which hosted the first Golden Globe Awards in 1944.<sup>61</sup> The HFPA replicated many aspects of the Oscars, but tinkered with a few key elements.<sup>62</sup> For example, unlike the Oscars' focus on domestic film, the HFPA expanded the Golden Globes' geographic scope to foreign productions.<sup>63</sup> The HFPA also broadened its mission to include achievements on the small screen, presenting the inaugural award for excellence in television in 1956 to Lucille Ball and Desi Arnaz for *I Love Lucy*.<sup>64</sup> In stylistic contrast to the Oscars, which had relocated to a formal auditorium after 1943,<sup>65</sup> the HFPA resurrected the banquet-style ballroom format, which later became famous for serving its guests unlimited free alcohol.<sup>66</sup> Viewers would tune in to the boozy event with anticipation that the live telecast might capture a rare glimpse of Hollywood's most wild, unscripted moments.<sup>67</sup> Memorable examples include the 1958 telecast, when the Rat Pack (Frank Sinatra, Sammy Davis Jr., and Dean Martin) dramatically commandeered the ballroom stage to dethrone a bland master of ceremony,<sup>68</sup> and the 1980 telecast, when Bette Midler sparked controversy by using the Golden Globe statuette to simulate oral sex.<sup>69</sup>

In 1947, the American Theatre Wing (Theater Wing) established the Tony Awards to recognize outstanding achievements in live theater, naming the

59. See *Oscars on Air*, ACAD. OF MOTION PICTURE ARTS & SCI. (Feb. 18, 2015, 5:00 PM), <https://www.oscars.org/news/oscars-air> [<https://perma.cc/XH3R-8H9V>].

60. See *id.*

61. See O'NEIL, *supra* note 31, at 797.

62. See *id.* at 795–97.

63. See Marielle Wakim, *The Golden Globes: An Abridged History*, L.A. MAG. (Jan. 7, 2015), <https://lamag.com/celebrity/golden-globes-abridged-history> [<https://perma.cc/CRQ5-DKHC>].

64. See *Golden Globes History*, GOLDEN GLOBES, <https://goldenglobes.com/history-golden-globes/> [<https://perma.cc/79WW-6NYC>]. As Amy Poehler would later wryly remark at the 2013 telecast, “[o]nly at the Golden Globes do the beautiful people of film rub shoulders with the rat-faced people of television.” See Tim Nudd, *Tina Fey and Amy Poehler Hilariously Take Down James Franco and James Cameron*, PEOPLE (Jan. 13, 2013, 8:45 PM), <https://people.com/awards/golden-globes-tiny-fey-and-amy-poehlers-best-jokes/> [<https://perma.cc/E65J-4AZP>].

65. See Morrison, *supra* note 57.

66. See Merle Ginsberg, *Drunk at the Golden Globes: How 7,500 Glasses of Champagne Impact the Show*, HOLLYWOOD REP. (Jan. 8, 2016, 10:00 AM), <https://www.hollywoodreporter.com/news/general-news/drunk-at-golden-globes-how-852119/> [<https://perma.cc/2YQT-YPUQ>].

67. See Dave Schilling, *Thank you, Golden Globes, for Embarrassment, Insincerity – and Mel*, GUARDIAN (Jan. 8, 2016, 8:14 PM), <https://www.theguardian.com/film/2016/jan/08/golden-globes-2016-preview-mel-gibs-on> [<https://perma.cc/5WS3-GY6W>].

68. See O'NEIL, *supra* note 31, at 795.

69. See Ginsberg, *supra* note 66.

award in honor of its co-founder Antoinette Perry.<sup>70</sup> Theatrical work is eligible for consideration if produced on a Broadway stage, defined as any New York City theater with more than 500 seats located between 41st and 65th Streets.<sup>71</sup> The Waldorf Astoria hosted the inaugural Tonys, which conferred eleven awards plus eight special recognitions (including one for Vincent Sardi Sr., proprietor of the eponymous eatery, Sardi's, known for providing "a transient home and comfort station for theatre folk").<sup>72</sup> In the 1960s, the charitable nonprofit Theater Wing formalized its partnership with the nonprofit business league of theater owners and producers known as the Broadway League to co-produce the Tony Awards.<sup>73</sup> Partnership between the two separately governed organizations has endured, though, in 1999, the two came close to parting ways over contrasting visions for the ceremony.<sup>74</sup> The Broadway League favored a high-profile event supported by corporate sponsorships whereas the Theater Wing opposed promoting anything other than the individuals and productions recognized for artistic achievement.<sup>75</sup> They ultimately settled their differences at the behest of CBS, their broadcasting partner.<sup>76</sup> Televised since 1967, the Tonys attract a smaller audience compared to other elite entertainment award

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70. See ISABELLE STEVENSON & ROY A. SOMLYO, *THE TONY AWARDS: A COMPLETE LISTING OF WINNERS AND NOMINEES WITH A HISTORY OF THE AMERICAN THEATRE WING XIX–XX* (3d ed. 2001).

71. See *id.* at 180 (listing eligible theaters); RULES AND REGULATIONS OF THE AMERICAN THEATRE WING'S TONY AWARDS 2023-2024 SEASON, at 21 (2023), [https://www.tonyawards.com/documents/18/2023-2024\\_Tony\\_Rules\\_and\\_Regulations.pdf](https://www.tonyawards.com/documents/18/2023-2024_Tony_Rules_and_Regulations.pdf) [<https://perma.cc/3363-AWC9>] (listing eligible theaters); see also Playbill Staff, *How To Tell Broadway from Off-Broadway from . . .*, PLAYBILL (Jan. 13, 2019), <https://playbill.com/article/how-to-tell-broadway-from-off-broadway-from-com-110450> [<https://perma.cc/3X7V-DB2P>]. For most major award categories, nominations for plays and musicals do not compete against each other but, instead, contend for awards within the threshold classification of play or musical. See Gillian Russo, *Your Guide to the Tony Awards Categories*, N.Y. THEATRE GUIDE (May 22, 2023, 11:00 PM), <https://www.newyorktheatreguide.com/theatre-news/news/your-guide-to-the-tony-awards-categories> [<https://perma.cc/A5MB-D7WV>]. So, for example, two Tonys are awarded each year for best actress (one actress in a musical, one actress in a play). *Id.*

72. See Louis Botto, *Backward Glances at Tony Memories*, PLAYBILL (June 1, 2001), <https://playbill.com/article/backward-glances-at-tony-memories-com-96930> [<https://perma.cc/D774-7F6B>]; STEVENSON & SOMLYO, *supra* note 70, at 3.

73. See *Mason v. Am. Theatre Wing, Inc.*, 627 N.Y.S.2d 539, 540 (N.Y. Sup. Ct. 1995); see also *About Us*, BROADWAY LEAGUE, <https://www.broadwayleague.com/about/about-us/> [<https://perma.cc/2PNS-P99D>] (describing an association of "theatre owners and operators, producers, presenters, and general managers"). The Broadway League was chartered in 1930 "[t]o protect the general public . . . against the evils of speculation in theatre tickets." *Wells v. League of Am. Theatres & Producers, Inc.*, 706 N.Y.S.2d 599, 601 n.1 (N.Y. Sup. Ct. 2000). It later expanded its mission to promoting the general welfare and shared business interests of theater producers. See *id.* at 601.

74. See Jesse McKinley, *On Stage and Off; Settling a Spat over the Tonys*, N.Y. TIMES (Feb. 5, 1999), <https://www.nytimes.com/1999/02/05/movies/on-stage-and-off-settling-a-spat-over-the-tonys.html> [<https://perma.cc/8CPH-ZY66>].

75. See *id.*

76. See *id.*

telecasts,<sup>77</sup> but advertisers are said to covet the 'Tonys' viewership demographics, which skew toward "rich and smart."<sup>78</sup>

The Primetime Emmy Awards were first presented by the Television Academy in 1949 at the Hollywood Athletic Club.<sup>79</sup> The inaugural Emmys were modest in both mission and formality, recognizing six television performers from the local Los Angeles broadcast market.<sup>80</sup> In 1951, the Television Academy tapped then-California Governor Earl Warren to host the Emmys, just two years before his appointment as Chief Justice of the United States Supreme Court.<sup>81</sup> In time, the Television Academy broadened the Emmys to include national primetime programming,<sup>82</sup> daytime programming (soap operas, talk shows, children's content, etc.),<sup>83</sup> and local programming through a growing consortium of regional chapters.<sup>84</sup> In 1978, the Television Academy introduced awards for engineering, science, and technology to recognize technical achievements such as closed captioning for the hearing impaired (developed by ABC and PBS) and visual enhancements developed by ESPN for broadcasting live sporting events.<sup>85</sup>

77. See Gavin Bridge, *Tonys Will Put Awards Show Ratings Rebound to the Test*, VARIETY (June 7, 2023, 6:00 AM), <https://variety.com/vip/tonys-will-put-awards-show-ratings-rebound-to-the-test-grammys-oscars-golden-globes-emmys-1235634398/> [https://perma.cc/FV8C-HQWY]. Average ratings from 2016–2023: Tony Awards: 5.5 million viewers; Oscars: 24.1 million; Grammys: 17.6 million; and Golden Globes: 15.3 million. See *id.*

78. See Jesse McKinley, *Is There a Tony Doctor in the House*, N.Y. TIMES (June 1, 2003), <https://www.nytimes.com/2003/06/01/arts/theater-the-tony-awards-is-there-a-tony-doctor-in-the-house.html> [https://perma.cc/W2TE-WL6X].

79. See WESLEY HYATT, EMMY AWARD WINNING NIGHTTIME TELEVISION SHOWS 1948-2004, at 1 (2006); *History of the Television Academy*, TELEVISION ACAD. (Aug. 12, 2013), <https://www.televisionacademy.com/academy/about/history> [https://perma.cc/6UJ7-95VZ].

80. See *A History of the Emmys - the 1940's*, EMMYS, <https://www.emmys.com/content/history-emmy-1940s> [https://perma.cc/3S53-6WAV]. The Television Academy presented the first Emmy award for Outstanding Television Personality to a twenty-year-old ventriloquist named Shirley Dinsdale and her puppet sidekick Judy Splinters. *Id.*

81. See Andrew Gruttadaro, *What Was the Worst Emmys Ceremony in History?*, RINGER (Sept. 14, 2017, 8:15 AM), <https://www.theringer.com/tv/2017/9/14/16306634/worst-emmys-ceremony-in-history> [https://perma.cc/ZLS9-Y852]. Warren compared the cultural impact of television to the Bible, stating, "[J]ust like [the Bible] affected more lives than all the gunpowder ever invented, so will it be with television." *Id.*; see also *Justices 1789 to Present*, SUP. CT. U.S., [https://www.supremecourt.gov/about/members\\_text.aspx](https://www.supremecourt.gov/about/members_text.aspx) [https://perma.cc/J7EE-B5TR].

82. See HYATT, *supra* note 79, at 2.

83. Susan Pennington, *Daytime Emmys Flashback: The Awards Started with Wins for 'The Doctors,' Elizabeth Hubbard and Macdonald Carey*, GOLDDERBY (Apr. 29, 2023, 6:00 AM), <https://www.goldderby.com/article/2023/when-did-daytime-emmys-start/> [https://perma.cc/U484-292V]. *Sesame Street* holds the record for most Daytime Emmys, with 122 awards. Lindsay Kusiak, *Which TV Show Has Won the Most Daytime Emmy Awards?*, SHOWBIZ CHEATSHEET (June 24, 2022), <https://www.cheatsheet.com/entertainment/which-tv-show-has-won-most-daytime-emmy-awards.html/> [https://perma.cc/4J77-63LZ]; see also ROBERT W. MORROW, *SESAME STREET AND THE REFORM OF CHILDREN'S TELEVISION* 119 (2006).

84. See *A Few Words About Our Regional Chapters*, NAT'L ACAD. OF TELEVISION ARTS & SCI., <https://theemmys.tv/chapters/> [https://perma.cc/Q6XJ-85FY] (describing nineteen regional chapters of the Television Academy).

85. See *Engineering, Science & Technology Emmy Award Winners*, TELEVISION ACAD., <https://www.emmys.com/awards/engineering-emmys/winners#engineering> [https://perma.cc/2FJF-3MJS]; *Closed Captioning*

In 1959, the National Academy of Recording Arts and Sciences (Recording Academy) established the Gramophone Awards—later rebranded as the Grammy Awards—to recognize outstanding achievements in musical recording.<sup>86</sup> The Recording Academy's inaugural ceremony presented twenty-eight statuettes at two simultaneous banquets in Los Angeles (Beverly Hilton Hotel) and New York City (Park Sheraton Hotel).<sup>87</sup> The Recording Academy later consolidated its ceremonies into a single location,<sup>88</sup> and, by the early 2000s, expanded its scope to more than one hundred award categories.<sup>89</sup> Only two artists have earned the distinction of winning all four major awards in a single year—Christopher Cross in 1981 and Billie Eilish in 2020—though Beyoncé made history in 2023 for winning her record-setting 32nd Grammy.<sup>90</sup> The Recording Academy was the first elite entertainment academy to eliminate gender-based criteria from its major award categories.<sup>91</sup>

### B. *Viewership and Financials*

Elite entertainment academies generate the lion's share of their revenues from licensing broadcast rights for their annual award telecasts. Broadcast rights are valuable because the major awards telecasts attract large television audiences that tend to include desirable viewer demographics that are highly prized by

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for the Hearing Impaired: How It Originated, NAT'L INST. OF STANDARDS & TECH. (May 11, 2010), <https://www.nist.gov/pml/time-and-frequency-division/time-services/closed-captioning-hearing-impaired-how-it-originated> [<https://perma.cc/AXX3-7JVC>]; Bill Squadron, *The Story Behind Football's Innovative Yellow First Down Line*, SPORTS ILLUSTRATED (July 18, 2013), <https://www.si.com/nfl/2013/07/18/nfl-birth-yellow-line> [<https://perma.cc/9ZNR-BJ2W>].

86. See DAVID WILD, *AND THE GRAMMY GOES TO . . . THE OFFICIAL STORY OF MUSIC'S MOST COVETED AWARD* 19 (2007). One impetus for establishing the Grammys was a perception within the music industry that the Hollywood Walk of Fame's induction criteria for recording artists were too onerous (sale of one million records or a quarter million albums). See HENRY SCHIPPER, *BROKEN RECORD: THE INSIDE STORY OF THE GRAMMY AWARDS* 3–4 (1992).

87. See WILD, *supra* note 86, at 21. *Nel Blu Dipinto Di Blu (Volare)* by Domenico Modugno received the top awards for Record and Song of the Year. *Id.*

88. See *id.* at 69.

89. See Kelsey McKinney, *Why the Grammys Have So Many Categories*, VOX (Feb. 12, 2017, 6:15 PM), <https://www.vox.com/culture/2017/2/11/14588062/grammy-categories-so-many-record-song-album-performance> [<https://perma.cc/MPA5-53KX>].

90. See SCHIPPER, *supra* note 86, at 215; Hugh McIntyre, *Billie Eilish Makes Grammy History by Sweeping the Big Four Categories*, FORBES (Jan. 26, 2020, 11:57 PM), <https://www.forbes.com/sites/hughmcintyre/2020/01/26/billie-eilish-makes-grammy-history-by-sweeping-the-big-four-categories/> [<https://perma.cc/4HRX-85LG>]; see also Lior Philips, *Watch Beyoncé Break the Record for Most GRAMMY Wins in History*, GRAMMY AWARDS (Feb. 5, 2023, 8:53 PM), <https://www.grammy.com/news/beyonce-most-grammys-in-history-renaissance-best-dance-electronic-album-2023-grammys-acceptance-speech> [<https://perma.cc/V4HJ-T9T> A].

91. See Shannon Doyne, *Should Award Shows Eliminate Gendered Categories?*, N.Y. TIMES (Mar. 6, 2023), <https://www.nytimes.com/2023/03/06/learning/should-award-shows-eliminate-gendered-categories.html> [<https://perma.cc/P55H-JUKF>].

advertisers.<sup>92</sup> Under the conventional economics of broadcast television, the price of advertising slots is driven primarily by viewer ratings, so telecasts with the largest expected audiences attract the highest licensing bids from television networks.<sup>93</sup>

With almost nineteen million viewers in 2023, the Oscars are the perennial ratings champion.<sup>94</sup> In 2022, ABC reportedly paid the Academy of Motion Pictures \$137 million for broadcast rights and, in turn, ABC sold advertising slots for nearly \$2 million per thirty-second commercial.<sup>95</sup> The Super Bowl is the only televised program with a higher unit price for commercial advertisements.<sup>96</sup> In contrast, comparable thirty-second advertising slots that air during regularly scheduled nonsports primetime programming typically sell for between \$150,000 and \$250,000.<sup>97</sup>

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92. See Madeline Berg, *ABC Oscar Ad Revenue Tops \$115 Million Despite Last Year's Low Ratings*, FORBES (Feb. 23, 2017, 10:59 AM), <https://www.forbes.com/sites/maddieberg/2017/02/23/abc-oscar-ad-revenue-tops-115-million-despite-last-years-low-ratings/> [https://perma.cc/8RTT-ND53].

93. Cf. Simon P. Anderson & Jean J. Gabszewicz, *The Media and Advertising: A Tale of Two-Sided Markets*, in HANDBOOK OF THE ECONOMICS OF ART AND CULTURE 607 n.62 (Victor Ginsburgh & David Throsby Elsevier eds., 2006) (“[T]he willingness to pay for an ad is a linear function of the number viewers delivered by a channel.”).

94. See John Koblin & Brooks Barnes, *Oscars Draw 18.7 Million Viewers*, N.Y. TIMES (Mar. 13, 2023), <https://www.nytimes.com/2023/03/13/business/oscars-viewers-ratings.html> [https://perma.cc/S6Y3-26MT].

95. See *id.*; see also Scott Feinberg, *Oscars' TV Ratings Headache Turns into a Migraine*, HOLLYWOOD REP. (Mar. 2, 2022, 6:55 AM), <https://www.hollywoodreporter.com/movies/movie-news/oscars-tv-ratings-live-telecast-1235102498/> [https://perma.cc/6V4T-L7WR].

96. See John McCarthy, *The Oscars Surpassed on Price Only by the Super Bowl for a 30 Second Slot*, DRUM (Feb. 22, 2017), <https://www.thedrum.com/news/2017/02/22/the-oscars-surpassed-price-only-the-super-bowl-30-second-slot> [https://perma.cc/Q62Z-RJKW].

97. See Kantar, *Leading TV Shows on Broadcast TV in the United States During the 2020/21 TV Season*, STATISTA (Nov. 2020), <https://www.statista.com/statistics/275158/cost-of-a-30-second-tv-spot-during-select-tv-shows-in-the-us/> [https://perma.cc/22XU-V936].

**Table 1**  
Television Viewership, Broadcast License Fees,  
Market Price of Commercial Advertisements

AWARDS TELECAST	TELEVISION VIEWERSHIP (#)	BROADCAST LICENSE FEE (\$)	ADVERTISING RATE (\$ PER 30- SECOND SLOT)
Oscars	19 mil	\$137 mil	\$2 mil
Golden Globes <sup>98</sup>	6.3 mil	\$60 mil	\$575,000
Tonys <sup>99</sup>	3.86 mil	N/A	N/A
Primetime Emmys <sup>100</sup>	7.83 mil	\$9.5 mil	N/A
Grammys <sup>101</sup>	12.5 mil	\$55 mil	\$954,000

The other side of the financial ledger reveals that the academies incur high operational and production expenses. In 2021, all elite entertainment academies except the Academy of Motion Pictures and Recording Academy reported negative cashflow;<sup>102</sup> however, most academies maintain large endowments, which enable them to cover operating deficits in lean years.<sup>103</sup> A closer look at expenditures revealed that, for some academies, legal fees rank among the highest costs. The Recording Academy, for example, has faced criticism for spending on average nearly \$3 million per year on legal work performed by

98. See Erick Pederson, *Golden Globes Returning to NBC in 2023 on One-Year Deal*, DEADLINE (Sept. 20, 2022), <https://deadline.com/2022/09/golden-globes-nbc-return-2023-hfpa-1235122811/> [<https://perma.cc/3F4D-NAXJ>]; Tony Magio, *The Golden Globes Returned to TV with Just 6.3 Million Viewers*, INDIEWIRE.COM (Jan. 11, 2023), <https://www.indiewire.com/awards/industry/golden-globes-2023-viewers-ratings-1234797398/> [<https://perma.cc/GJ2Z-Q3W4>].

99. See Jennifer Maas, *Tony Awards Viewership up 39% on CBS from Last Year's Performance Special*, VARIETY (June 13, 2022), <https://variety.com/2022/awards/ratings/tony-awards-ratings-tonys-2022-viewership-1235292423/> [<https://perma.cc/M3HW-KDVB>].

100. See Rick Porter, *TV Ratings: Emmys Rise, Stopping Streak of All-Time Lows*, HOLLYWOOD REP. (Sept. 20, 2021), <https://www.hollywoodreporter.com/tv/tv-news/emmys-tv-ratings-sunday-sept-19-2021-1235016990/> [<https://perma.cc/2CLL-TVUS>]; see also NATAS, *2022 Annual Report*, at 42, <https://www.televisionacademy.com/files/assets/Downloads/television-academy-annual-report-v1-2022.pdf> [<https://perma.cc/KFP3-A8T3>].

101. See Brian Steinberg, *CBS Sets Deal to Keep Grammy Awards Telecast Through 2026*, VARIETY (June 15, 2016), <https://variety.com/2016/tv/news/grammy-awards-cbs-new-deal-2026-1201795817/> [<https://perma.cc/4L3W-VNUJ>]; see also *2023 Grammy Awards' TV Ratings Rise from the Record Lows*, L.A. TIMES (Feb. 8, 2023), <https://www.latimes.com/entertainment-arts/tv/story/2023-02-08/2023-grammy-awards-tv-ratings> [<https://perma.cc/HKX2-U5ZU>].

102. See *infra* Table 2.

103. See *infra* Table 2.



outside law firms.<sup>104</sup> Likewise, legal expenses consumed over \$4.3 million of the HFPA's 2021 budget.<sup>105</sup>

**Table 2**  
Academy Cashflows and Balance Sheets (2021/2022)

ACADEMY	REVENUE	EXPENSES	NET INCOME	NET ASSETS / ENDOWMENT
Academy of Motion Pictures <sup>106</sup>	\$134.8 mil	\$115 mil	\$19.8 mil	\$646 mil
HFPA <sup>107</sup>	\$17.3 mil	\$23.7 mil	-\$6.4 mil	\$72 mil
Broadway League <sup>108</sup>	\$8.4 mil	\$9.2 mil	-\$866,703	\$13.8 mil
Television Academy <sup>109</sup>	\$32.2 mil	\$35 mil	-\$2.8 mil	\$84 mil
Recording Academy <sup>110</sup>	\$89.3 mil	\$88.5 mil	\$853,673	\$98.4 mil

All elite academies perform philanthropy through charitable grants from their 501(c)(6) business-league entities and affiliated 501(c)(3) charitable

104. See Paul Grein, *After Criticism of Excessive Spending, Recording Academy Looking to Hire In-House General Counsel*, BILLBOARD (June 15, 2021), <https://www.billboard.com/music/music-news/recording-academy-seeking-in-house-general-counsel-9587695/> [https://perma.cc/2Y5S-8MMD].

105. See HOLLYWOOD FOREIGN PRESS ASS'N, FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1, 10 (May 12, 2023) [hereinafter HOLLYWOOD FOREIGN PRESS ASS'N, FORM 990], reprinted in *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/956191816/202321329349308377/full> [https://perma.cc/846G-BNPF] (Jan. 31, 2025).

106. See ACAD. OF MOTION PICTURES ARTS & SCIS., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (May 12, 2023) [hereinafter ACAD. OF MOTION PICTURES ARTS & SCIS., FORM 990], reprinted in *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/950473280/202321329349309812/full> [https://perma.cc/JK8P-XL3W] (Jan. 31, 2025); see also ACAD. OF MOTION PICTURE ARTS & SCIS., NOTES TO CONSOLIDATED FINANCIAL RECORDS (2022) [hereinafter NOTES TO CONSOLIDATED FINANCIAL RECORDS], [https://www.oscars.org/sites/oscars/files/01-academy\\_of\\_motion\\_picture\\_arts\\_and\\_sciences\\_2022\\_final\\_financial\\_statements.pdf](https://www.oscars.org/sites/oscars/files/01-academy_of_motion_picture_arts_and_sciences_2022_final_financial_statements.pdf).

107. See HOLLYWOOD FOREIGN PRESS ASS'N, FORM 990, *supra* note 105, at 1.

108. See BROADWAY LEAGUE, FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME 1 (July 17, 2023) [hereinafter BROADWAY LEAGUE, FORM 990], reprinted in *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/130951470/202311989349301046/full> [https://perma.cc/Q6XN-B8CJ] (Jan. 31, 2025).

109. See NAT'L ACAD. OF TELEVISION ARTS & SCIS., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (Nov. 15, 2022) [hereinafter NAT'L ACAD. OF TELEVISION ARTS & SCIS., FORM 990], reprinted in *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/454000028/202243199349329284/full> [https://perma.cc/4E6T-KHX9] (Jan. 31, 2025); see also NATAS, *supra* note 100, at 32.

110. See NAT'L ACAD. OF RECORDING ARTS & SCIS. INC., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (June 15, 2023) [hereinafter NAT'L ACAD. OF RECORDING ARTS & SCIS. INC., FORM 990], reprinted in *Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/956052058/202301669349300705/full> [https://perma.cc/6FXT-TVNY] (Jan. 31, 2025).

nonprofit entities.<sup>111</sup> As detailed in Table 3 below, the Academy of Motion Pictures is by far the most philanthropic of the major entertainment academies.

**Table 3**  
Charitable Grants (2021/2022)

ACADEMY	CHARITABLE GRANTS BY ACADEMY-AFFILIATED 501(C)(3) ENTITIES	CHARITABLE GRANTS BY ACADEMY- AFFILIATED 501(C)(6) ENTITIES
Academy of Motion Pictures <sup>112</sup>	\$122 mil	\$65 mil
HFFPA <sup>113</sup>	\$315,000	\$2 mil
Broadway League <sup>114</sup>	\$602,873	\$74,243
Television Academy <sup>115</sup>	\$137,580	\$20,000
Recording Academy <sup>116</sup>	\$6.6 mil	\$6.6 mil

C. Corporate Structure and Nonprofit Status

The organizational structures of all major award-granting academies bifurcate operations between awards operations and philanthropic activities.

111. See *infra* Table 3.

112. See NOTES TO CONSOLIDATED FINANCIAL RECORDS, *supra* note 106, at 4 (reporting expenditures of \$21 million on “preservation operations,” \$2.2 million on “science and technology council operations,” \$93.4 million on “museum development and operations,” and \$5.4 million on “public outreach programs”); see also ACAD. OF MOTION PICTURE ARTS & SCIS., FORM 990, *supra* note 106, at 1.

113. See HOLLYWOOD FOREIGN PRESS ASS’N CHARITABLE TRUST, FORM 990-PF: RETURN OF PRIVATE FOUNDATION 1 (May 12, 2023) [hereinafter HOLLYWOOD FOREIGN PRESS ASS’N CHARITABLE TRUST, FORM 990-PF], *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/953735188/202311329349104211/full> [<https://perma.cc/846G-BNPF>] (Jan. 31, 2025); see also HOLLYWOOD FOREIGN PRESS ASS’N, FORM 990, *supra* note 105, at 1.

114. See AM. THEATRE WING INC., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (Oct. 5, 2023) [hereinafter THEATRE WING, FORM 990], *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/131893906/202322789349301657/full> [<https://perma.cc/5CL9-ZTZ5>] (Jan. 31, 2025); see also BROADWAY LEAGUE, FORM 990, *supra* note 108, at 1.

115. See FOUND. OF THE NAT’L ACAD. OF TELEVISION ARTS AND SCIS., FORM 990-EZ: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (Aug. 9, 2023), *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/753046415/202312219349201116/full> [<https://perma.cc/H6K9-2AU4>] (Jan. 31, 2025); see also NAT’L ACAD. OF TELEVISION ARTS & SCIS., FORM 990, *supra* note 109, at 1.

116. See MUSICARES FOUND. INC., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (June 15, 2023), *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/954470909/202311669349300411/full> [<https://perma.cc/UBW3-2RRM>] (Jan. 31, 2025); see also NAT’L ACAD. OF RECORDING ARTS & SCIS. INC., FORM 990, *supra* note 110, at 1.

They carry out their primary corporate purpose of producing annually televised awards ceremonies through nonprofit entities that are federally tax-exempt under 26 U.S.C. § 501(c)(6)<sup>117</sup> as business leagues.<sup>118</sup> They pursue philanthropic goals of promoting education and literacy of the performing arts through charitable nonprofit entities that are federally tax-exempt under 26 U.S.C. § 501(c)(3).<sup>119</sup> Bifurcation allows the academies to cherry-pick the benefits of each tax-exempt status across its various corporate objectives.<sup>120</sup> For instance, their business leagues derive tax-free income from noncharitable award-related operations that would not be tax-exempt under § 501(c)(3).<sup>121</sup> Conversely, their charitable nonprofit entities solicit tax-exempt philanthropic contributions that are also tax-deductible for donors, but the same gifts would not be tax-deductible for donors if given to a § 501(c)(6) entity.<sup>122</sup>

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117. Under 26 U.S.C. § 501(c)(6), the following entities may qualify for federal tax-exempt status: “Business leagues . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.” For the classic formulation of the “nondistribution constraint,” see Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 YALE L.J. 835, 838 (1980). Professor Hansmann argued that tax exemption for nonprofit entities enables them to accumulate capital to offset the nondistribution constraint’s effect of precluding nonprofits from raising capital by issuing corporate shares. See Henry Hansmann, *The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation*, 91 YALE L.J. 54, 72 (1981).

118. See ACAD. OF MOTION PICTURE ARTS & SCI., FORM 990, *supra* note 106, at 1 (describing the organization’s mission as “to recognize and uphold excellence in the motion picture arts and sciences, inspire imagination, and connect the world through the medium of motion pictures”); HOLLYWOOD FOREIGN PRESS ASS’N, FORM 990, *supra* note 105, at 1 (describing the organization’s mission as “promot[ing] the development of motion picture, television, dramatic, musical and comedy theater, and audio visual recording art forms”); BROADWAY LEAGUE, FORM 990, *supra* note 108, at 1 (describing the organization’s mission as “increas[ing] awareness of, and interest in, Broadway theatre”); NAT’L ACAD. OF TELEVISION ARTS & SCI., FORM 990, *supra* note 109, at 1 (describing the organization’s mission as “promot[ing] creativity, diversity, innovation and excellence through recognition, education and leadership in the telecommunication arts and sciences”); NAT’L ACAD. OF RECORDING ARTS & SCI. INC., FORM 990, *supra* note 110, at 1 (describing the organization’s mission as “advanc[ing] the arts and sciences of recording and to foster creative leadership”).

119. See 26 U.S.C. § 501(c)(3) (tax exemption for nonprofit entities devoted exclusively to charitable, educational, scientific, or literary activities, among a handful of other exempt purposes); see also ACAD. FOUND., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (May 12, 2022), *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/952243698/202231329349304208/full> [<https://perma.cc/RX66-N8WL>] (Jan. 31, 2025); HOLLYWOOD FOREIGN PRESS ASS’N CHARITABLE TRUST, FORM 990-PF, *supra* note 113, at 1; AM. THEATRE WING, FORM 990, *supra* note 114, at 1; NAT’L ACAD. OF TELEVISION ARTS & SCI., FORM 990, *supra* note 109, at 1; GRAMMY MUSEUM FOUND. INC., FORM 990: RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX 1 (Mar. 3, 2023), *reprinted in Nonprofit Explorer*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/261447714/202300829349300400/full> [<https://perma.cc/3BQQ-66MD>] (Jan. 31, 2025).

120. See Kristine Ensor, *501(c)(3) vs. 501(c)(6) – A Detailed Comparison for Nonprofits*, DONORBOX BLOG, <https://donorbox.org/nonprofit-blog/501c3-vs-501c6> [<https://perma.cc/7654-E9F3>] (May 29, 2024).

121. Compare 26 U.S.C. § 501(c)(3), with *id.* § 501(c)(6); see ACAD. OF MOTION PICTURE ARTS & SCI., FORM 990, *supra* note 106, at 9; HOLLYWOOD FOREIGN PRESS ASS’N, FORM 990, *supra* note 105, at 9; BROADWAY LEAGUE, FORM 990, *supra* note 108, at 9; NAT’L ACAD. OF TELEVISION ARTS & SCI., FORM 990, *supra* note 109, at 9; NAT’L ACAD. OF RECORDING ARTS & SCI. INC., FORM 990, *supra* note 110, at 9.

122. The following three provisions authorize donors to deduct the value of charitable gifts: 26 U.S.C. § 170 (income-tax deduction); 26 U.S.C. § 2055 (estate-tax charitable deduction); 26 U.S.C. § 522 (gift-tax charitable deduction).

The Academy of Motion Pictures's organizational structure offers a nice illustration of bifurcation's tax advantages: As noted, the Academy uses a § 501(c)(6) entity for all Oscar-related activities while maintaining a host of § 501(c)(3) charitable nonprofit entities for its philanthropic work.<sup>123</sup> In 2022, the Academy's (c)(6) business league generated more than \$80 million in tax-free income from its award-show operations.<sup>124</sup> Additionally, the Academy's charitable nonprofit entities solicited \$41 million in tax-free income from donors who were entitled to itemize their charitable gifts as deductions on their own income-tax returns.<sup>125</sup> The Academy's combined net income of roughly \$121 million was entirely tax-free.

Bifurcation also enables academies to engage in lobbying activities through (c)(6) entities without running afoul of political-action restrictions that apply to (c)(3) entities. That is because treasury regulations expressly permit (c)(6) entities to engage in political lobbying: "[A] business league [is entitled to tax-exempt status] even though its sole activity is directed to the influencing of legislation which is germane to such common business interest."<sup>126</sup> In contrast, § 501(c)(3) statutorily prohibits charitable nonprofit organizations from devoting a "substantial part of [their] activities [to] carrying on propaganda, or otherwise attempting, to influence legislation" and from participating or intervening in "any political campaign on behalf of (or in opposition to) any candidate for public office."<sup>127</sup> Some academies have used their (c)(6) entities to lobby for legal reforms on behalf of their industry membership. For example, in 2015, the Broadway League touted a successful lobby campaign seeking special federal tax incentives for theater investors.<sup>128</sup> More recently, the Broadway League and the Recording Academy each reported lobbying expenditures of more than \$400,000 apiece on their 2022 tax returns.<sup>129</sup>

123. PRICEWATERHOUSECOOPERS LLP, ACADEMY OF MOTION PICTURE ARTS AND SCIENCES AND ITS AFFILIATES CONSOLIDATED FINANCIAL STATEMENTS JUNE 30, 2022 AND 2021, at 6 (Nov. 23, 2022), [https://www.oscars.org/sites/oscars/files/01\\_academy\\_of\\_motion\\_picture\\_arts\\_and\\_sciences\\_2022\\_final\\_financial\\_statements.pdf](https://www.oscars.org/sites/oscars/files/01_academy_of_motion_picture_arts_and_sciences_2022_final_financial_statements.pdf) [<https://perma.cc/9AJG-UVGJ>] (listing the following as affiliated charitable entities: the Academy Foundation, Vine Street Archive Foundation, Academy Museum Foundation, and Archival Foundation).

124. *See id.* at 4 (showing \$137 million in revenues minus \$57 million in expenses).

125. *See id.* at 4, 13 (reporting that the "AMPAS, Foundation, Vine Street, Museum and Archival are non-profit organizations determined by the Internal Revenue Service and the California Franchise Tax Board to be exempt from federal and state income taxes, respectively" and that "[t]he Academy has no open tax positions that result in material unrecognized tax benefits or liabilities").

126. Rev. Rul. 61-177, 1961-2 C.B. 117.

127. 26 U.S.C. § 501(c)(3).

128. Press Release, Broadway League, Fed. Tax Bill Including First Ever Provision for Invs. in Live Theatre on Its Way to President's Desk (Dec. 18, 2015), <https://www.broadwayleague.com/press/press-releases/federal-tax-bill-including-first-ever-provision-for-investors-in-live-theatre-on-its-way-to-presidents-desk/> [<https://perma.cc/4QDL-UGPB>].

129. *See Client Profile: Broadway League*, OPENSECRETS, <https://www.opensecrets.org/federal-lobbying/clients/summary?id=D000048016&cycle=2022> [<https://perma.cc/T9U6-3J5Y>] (Jan. 23, 2025); *Client Profile: National Academy of Recording Arts & Sciences*, OPENSECRETS, <https://www.opensecrets.org/federal-lobbying/clients/summary?id=D000048016&cycle=2022> [<https://perma.cc/T9U6-3J5Y>] (Jan. 23, 2025).

Tax-exemption for nonprofit business leagues thus plays a pivotal role in the corporate structure of the entertainment academies. Business leagues, however, are somewhat of a legal obscurity that have largely avoided the scrutiny of tax scholarship because they represent just a tiny subset of the larger nonprofit sector dominated by public charities. Indeed, the 210,000 charitable nonprofit entities registered with the IRS under § 501(c)(3) dwarf the roughly 19,000 business leagues registered under § 501(c)(6) by more than an order of magnitude.<sup>130</sup> We therefore took a closer look at the tax exemption for nonprofit business leagues to understand the legal implications for award-granting academies.

In researching the policy rationale for exempting business leagues from federal taxation, we discovered that even tax experts who have studied § 501(c)(6) are perplexed by the apparent lack of legislative purpose.<sup>131</sup> That void has prompted calls to scale back the tax benefits under § 501(c)(6), such as by taxing a business league's net investment income as unrelated business income.<sup>132</sup> Some believe that the exemption reflects a pragmatic concession that any income tax imposed on business leagues would fail to generate much (if any) tax revenue.<sup>133</sup> By one account, taxing business leagues would be largely “self-defeating” from a tax-revenue perspective because business leagues would increase membership charges “to offset the tax, and the additional amounts [paid by members] would be deductible by the members as business expenses.”<sup>134</sup>

The practical import of § 501(c)(6) is that federal law allows businesses to collaborate on matters that promote common industry interests without subjecting the economic fruits of their collaboration to federal income tax.<sup>135</sup>

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org/federal-lobbying/clients/summary?id=D000054380&cycle=2022 [https://perma.cc/RU3E-N7QW] (Jan. 23, 2025).

130. See *SOI Tax Stats - Charities & Other Tax-Exempt Organizations Statistics, Table 3: Form 990 Returns of 501(c)(3)-(9) Organizations: Balance Sheet and Income Statement Items*, by Internal Revenue Code Section (2019), INTERNAL REVENUE SERV., <https://www.irs.gov/statistics/soi-tax-stats-charities-and-other-tax-exempt-organizations-statistics> [https://perma.cc/42PQ-NMUX] (reporting 19,154 (c)(6) returns and 218,516 (c)(3) returns).

131. Professors Bittker and Rahdert argued that “[o]nce it is recognized that § 501(c)(6) organizations ordinarily serve the business objectives of their members, the justification for their statutory exemption is exposed as rickety.” Boris I. Bittker & George K. Rahdert, *The Exemption of Nonprofit Organizations from Federal Income Taxation*, 85 YALE L.J. 299, 357 (1976).

132. In the 1990s, for example, industry lobbyists successfully fended off such a proposal by the Clinton administration. See Philip T. Hackney, *What We Talk About When We Talk About Tax Exemption*, 33 VA. TAX REV. 115, 153–54 (2013).

133. See Bittker & Rahdert, *supra* note 131, at 304.

134. See *id.* at 357 (explaining further that the members’ “own taxes would thus be reduced by about one-half of the taxes paid by the organization”).

135. Treasury regulations provide that a business-league entity must be “an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.” 26 C.F.R. § 1.501(c)(6)-1 (2024) (defining business league as “an organization of the same general class as a chamber of commerce or board of trade,” and “[t]hus, its activities should be directed to the improvement of business conditions of one or

Courts have held that a common business interest must concern the entire industry rather than the interests of individual competitors, such as a particular brand, product, or package type.<sup>136</sup> Thus, in *National Muffler Dealers Association, Inc. v. United States*, the Supreme Court held that “a tax exemption is not available to aid one group in competition with another within an industry.”<sup>137</sup> In that case, a trade association of Midas Muffler franchisees was not entitled to tax exemption under § 501(c)(6) because they sought to use their business league to compete against other muffler brands, not to promote the common interests of businesses operating in the muffler industry.<sup>138</sup>

Entertainment academies establish an organizational vehicle through which competitors within the same industry compete against each other for achievement awards, but that type of competition differs qualitatively from the facts of *National Muffler* in which a business league was formed solely to market a particular brand of products. Unlike the business league in *National Muffler*, most entertainment academies do not limit their voting membership or eligibility for nomination contention to any predetermined set of individuals or businesses.<sup>139</sup> Bestowing an achievement award certainly promotes the work or production of the winning candidate, but the *purpose* of bestowing achievement awards is not to aid any particular individual in competing against other competitors. Rather, the academies use entertainment awards to promote their industry’s common business interests, such as elevating the trade’s public visibility and bolstering consumer demand for the industry as a whole.<sup>140</sup>

Nonprofit business leagues are allowed to generate tax-free income, but they are statutorily prohibited from organizing for the express purpose of generating profit.<sup>141</sup> All exempt net income must be derived from activities that relate to the business league’s exempt purposes (e.g., promoting an industry’s common business interests).<sup>142</sup> Conversely, gross income derived from regularly

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more lines of business as distinguished from the performance of particular services for individual persons”). Unlike a charitable nonprofit under § 501(c)(3), a § 501(c)(6) business league need not confer any public benefit. One commentator offers the following to illustrate that distinction: “Where a professional trade association primarily conducts educational activities—publications, libraries and speakers programs, for example—it *may* qualify under section 501(c)(3). Where it undertakes an action program designed to benefit the profession as a whole, the appropriate category is section 501(c)(6).” Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1433 (1984) (footnote omitted).

136. See *Nat’l Muffler Dealers Ass’n, Inc. v. United States*, 440 U.S. 472, 483 (1979) (noting that the IRS has denied § 501(c)(6) status to “groups composed of businesses that market a single brand of automobile, or have licenses to a single patented product, or bottle one type of soft drink” (footnotes omitted)).

137. *Id.* at 488.

138. *Id.*

139. See *infra* Part II (discussing that the criteria for league membership and award nomination generally apply neutrally to all industry participants).

140. Armando Marín III, Note, “*and the Oscar Goes to . . .*”: *Why the Academy Awards May Create Antitrust Drama with Proposed Eligibility Rule Changes*, 42 CARDOZO L. REV. 645, 656 (2021).

141. 26 U.S.C. § 501(c)(6).

142. See *id.* § 501(b).

carrying on a trade or business unrelated to the entity's exempt purpose is subject to the unrelated business income tax (UBIT).<sup>143</sup>

In *Texas Farm Bureau v. United States*, for instance, an association of farmers established the Texas Farm Bureau as a (c)(6) entity to promote their common interests within the farming industry.<sup>144</sup> The Texas Farm Bureau, however, entered into a series of business partnerships with for-profit financial institutions for the purpose of marketing life-insurance products to individual farmers.<sup>145</sup> Because that arrangement paid the Texas Farm Bureau a share of profits from the life-insurance business, the IRS characterized the resulting income as unrelated to the business league's exempt purpose of promoting interests common to the farming industry.<sup>146</sup> The Fifth Circuit sided with the IRS, holding that any benefit to the agricultural industry from selling life insurance to individual farmers was "incidental," so any profits derived from that activity constituted unrelated business income.<sup>147</sup>

Entertainment academies use their (c)(6) business-league entities to generate income from various sources, including broadcast-licensing fees, event ticket sales, advertising revenues, and membership dues.<sup>148</sup> But unlike the Texas Farm Bureau's side hustle of selling life-insurance policies, all income derived by the entertainment academies from awards-show operations is directly related to their business league's exempt purpose—promoting the common business interests in showcasing the entertainment industry.<sup>149</sup> The academies therefore have a well-founded basis for qualifying their business-league entities as tax-

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143. See *id.* § 511(a)(1) (imposing tax "on the unrelated business taxable income (as defined in section 512) of every [nonprofit] organization"); see also *id.* § 512(a)(1) (noting that "the term 'unrelated business taxable income' means the gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it"); see also *Carolinas Farm & Power Equip. Dealers Ass'n, Inc. v. United States*, 699 F.2d 167, 169 (4th Cir. 1983) (unrelated business income tax applies when a nonprofit entity's income "(1) arises from a trade or business, (2) which is regularly carried on, and (3) which is not substantially related to the organization's exempt purpose"). UBIT applies when a nonprofit's business activities are regularly carried on and lack a substantial "causal relationship to the achievement of exempt purposes (other than through the production of income)." *Cf.* 26 C.F.R. § 1.513-1(d)(2) (2024) (stating that "the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes").

144. *Tex. Farm Bureau v. United States*, 53 F.3d 120, 122 (5th Cir. 1995) (summarizing the entity's exempt purposes: "to better the conditions of those engaged in agricultural pursuits, to improve the grade of their products, and to develop a higher degree of efficiency in the respective occupations of those engaged in agricultural pursuits").

145. *Id.* at 122–24.

146. See *id.* at 122.

147. *Id.* at 126 (finding that "no substantial causal relationship exists between the insurance sales and the improvement of agricultural products or the development of a higher degree of efficiency in agricultural occupations").

148. See *supra* Section I.B.

149. See, e.g., ACAD. OF MOTION PICTURE ARTS & SCIENCES, FORM 990, *supra* note 106, at 1 (describing the organization's mission as "to recognize and uphold excellence in the motion picture arts and sciences, inspire imagination, and connect the world through the medium of motion pictures"); see also *id.* at 9 (listing 2021 revenues and classifying all revenues from "Academy Awards" as "[r]elated or exempt function revenue").

exempt under § 501(c)(6), and they are unlikely to trigger UBIT liability by generating income from awards show operations.

The academies' use of the nonprofit business-league form, however, creates an internal dynamic rife with antitrust implications. As a general rule, tax-exempt nonprofit status provides no immunity from the Sherman Act's prohibitions against monopolization and price fixing.<sup>150</sup> To the contrary, several nonprofits have been adjudged liable for price fixing and monopolization violations.<sup>151</sup> The academies must therefore closely monitor their business-league activities to ensure that industry rivals do not use their (c)(6) entities to engage in anticompetitive conduct, such as monopolizing the market or conspiring to fix prices.

Complaints about anticompetitive conduct are indeed a recurring theme in regulatory and legal disputes involving the entertainment academies. In 2019, for instance, the Academy of Motion Pictures considered amending its nomination criteria to increase the theatrical exhibition requirement from one week, which had been the longstanding rule, to four weeks.<sup>152</sup> That change would have imposed a disproportionate burden on films produced by internet-streaming providers, who do not typically participate in box-office marketing campaigns and foot the cost of limited theatrical exhibition solely for the purpose of awards qualification.<sup>153</sup> The United States Department of Justice responded to the proposed modification by issuing the Academy an advisory letter "outlining concerns that eligibility changes shutting out certain studios and streaming services may violate antitrust laws under the Sherman Act."<sup>154</sup> The letter highlighted the fact that the Academy was "an association that includes multiple competitors in its membership."<sup>155</sup> Another legal challenge emerged in 2020, when a pair of plaintiffs filed a civil action against the HFPA alleging that its membership admission rules violated federal and state antitrust laws.<sup>156</sup> The complaint was ultimately dismissed for reasons we'll discuss in Part II,<sup>157</sup> but the case represents a cautionary tale about the antitrust implications

150. See generally 15 U.S.C. §§ 1, 2. Federal law, however, contains various antitrust exemptions for professional sports leagues, several of which are organized as tax-exempt business leagues under § 501(c)(6). See, e.g., 15 U.S.C. § 1291 (outlining "[e]xemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues"); Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, 22 JEFFREY S. MOORAD SPORTS L.J. 75 (2015); cf. Andrew Zimbalist, *The Nonprofit Status of Sports Leagues Is Irrelevant*, N.Y. TIMES (Sept. 4, 2014, 12:59 pm), <https://www.nytimes.com/roomfordebate/2014/09/03/should-pro-sport-leagues-get-tax-breaks/the-non-profit-status-of-sports-leagues-is-irrelevant> [https://perma.cc/NNJ7-AB3R].

151. See Amelia Miazad, *Prosocial Antitrust*, 73 HASTINGS L.J. 1637, 1669 (2022).

152. Marin, *supra* note 140, at 646.

153. See *id.* at 648.

154. *Id.* at 646; see also Letter from the Dep't of Just. to Dawn Hudson, CEO, Acad. of Motion Picture Arts & Scis. (Mar. 21, 2019), <https://www.documentcloud.org/documents/5792523-DOJ-Academy-Letter.html> [https://perma.cc/VJV6-ADLD].

155. Letter from the Dep't of Just. to Dawn Hudson, *supra* note 154.

156. See *Flaa v. Hollywood Foreign Press Ass'n*, 55 F.4th 680, 686–87 (9th Cir. 2022).

157. See *infra* Section II.A.



of operating a business league that fosters collaboration among market competitors on interests common to their industry.

## II. INTERNAL GOVERNANCE OF ENTERTAINMENT ACADEMIES

The entertainment academies zealously protect their right to self-govern internal affairs. This Part explores the internal governance of the entertainment academies with a particular focus on rules relating to membership admission, nomination eligibility criteria, and award selection.

### A. Academy Membership Rules

The major entertainment academies are all membership organizations, a corporate form requiring the adoption of rules to govern the admission and removal of members, and the rights and responsibilities of academy membership.<sup>158</sup> Membership-qualification criteria, for instance, are typically based on quantitative and qualitative benchmarks of professional accomplishment within a particular artistic or scientific discipline. By way of illustration, the following snapshot compiles a sampling of membership-qualification rules for each academy:<sup>159</sup>

- *Academy of Motion Pictures*: General membership candidates must “demonstrate[] exceptional achievement” in one of twenty branches of cinema<sup>160</sup> and obtain sponsorship “by two Academy members from the branch to which the candidate seeks admission,”<sup>161</sup> though the sponsorship requirement is waived for Academy Award nominees.<sup>162</sup> Branch committees submit new membership recommendations to the Academy’s Board of Governors for final approval.<sup>163</sup> In 2022, the Academy’s total membership exceeded 10,000 members.<sup>164</sup>

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158. See 11 C.F.R. § 114.1(e)(1) (2024) (defining membership organization); *What Are Membership Organizations*, JOIN IT, <https://joinit.com/membership-organizations-guide> [<https://perma.cc/M4ZU-Y4HW>].

159. We omit membership rules for the HFPA, which sold its assets in 2023 and appears to have dissolved. See Press Release, Golden Globe Awards, Partnership Creates the Golden Globe Foundation, a California Nonprofit Public-Benefit Corporation (June 12, 2023), <https://www.goldenglobes.com/articles/dick-clark-productions-and-eldridge-acquire-golden-globes> [<https://perma.cc/684Z-ZAX3>].

160. *Academy Membership*, ACAD. OF MOTION PICTURES, <https://www.oscars.org/about/join-academy> [<https://perma.cc/TE5X-9U5X>]; see *Branch Requirements*, ACAD. OF MOTION PICTURES, <https://www.oscars.org/about/becoming-new-member/branch-requirements>.

161. *Academy Membership*, *supra* note 160.

162. *Id.*

163. *Id.*

164. See Josh Rottenberg, *Billie Eilish, Ariana Debose Among Newest Members of the Film Academy*, L.A. TIMES (June 28, 2022, 12:00 PM), <https://www.latimes.com/entertainment-arts/movies/story/2022-06-28/film-academy-new-members-billie-eilish-ariana-debose> [<https://perma.cc/6UL3-A8JV>]; see also *Academy*

- *Broadway League / American Theater Wing*: The voting membership pool for the Tony Awards consists of approximately 830 theater professionals drawn from (1) voting members of the Theater Wing, (2) directors and other officers of the Broadway League, and (3) board members of various unions and guilds.<sup>165</sup> Many Tony Award voters are full, lifetime, and honorary members of the Broadway League.<sup>166</sup>
- *Television Academy*: The Television Academy includes two membership tiers, both available to individuals engaged in the production or distribution of nationally exhibited television.<sup>167</sup> Active members are assigned to peer groups representing various artistic and technical disciplines.<sup>168</sup> Applicants for active membership can satisfy eligibility criteria based on two years of cumulative employment within the candidate's peer-group discipline, a minimum body of work, or nomination for an Emmy Award.<sup>169</sup> Associate members must also be active in their respective peer group, but they lack voting rights to cast a ballot for the Primetime Emmy Awards.<sup>170</sup> In 2019, the Television Academy's roster exceeded 25,000 members.<sup>171</sup>

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*Invites 397 New Members*, ACAD. OF MOTION PICTURES (June 28, 2022), <https://aframe.oscars.org/news/post/the-academy-new-members-2022-the-full-list> [<https://perma.cc/42YE-WYYG>].

165. See *Rules and Regulations*, TONY AWARDS, <https://www.tonyawards.com/about/rules-and-regulations/> [<https://perma.cc/9X76-YAXG>].

166. Cf. BROADWAY LEAGUE, MEMBERSHIP GUIDE 8 (2019), [https://broadwayleague.com/static/user/admin/media/membershipguide\\_2019-03.pdf](https://broadwayleague.com/static/user/admin/media/membershipguide_2019-03.pdf) [<https://perma.cc/YW87-VNRR>] (summarizing benefits for each class of membership); *Official Website*, BROADWAY LEAGUE, <https://www.broadwayleague.com/home/> [<https://perma.cc/93TA-5CRE>] (describing the "Broadway League's 700-plus members" as including "theatre owners and operators, producers, presenters, and general managers in North American cities, as well as suppliers of goods and services to the commercial theatre industry").

167. See *Voting*, TELEVISION ACAD., <https://www.emmys.com/faq/voting#> [<https://perma.cc/PUZ8-AFQ7>] ("Only *National Active* members of the Television Academy are eligible to vote. For the 75th Emmy Awards (2023), eligibility is limited to those who were members prior to June 26, 2023. The following membership types do not qualify to vote: Associate, Los Angeles Area, Faculty, Student, or those who joined the Television Academy after June 26, 2023.").

168. See *Peer Groups*, TELEVISION ACAD., <https://www.emmys.com/academy/organization/peer-groups> [<https://perma.cc/6D6G-LJTE>].

169. *How to Join*, TELEVISION ACAD., <https://www.televisionacademy.com/members/how-to-join> [<https://perma.cc/K9BQ-82WA>]. For example, to qualify for membership as a performer, a candidate must demonstrate cumulative employment of at least two years in performing roles plus ten qualifying credits on nationally exhibited programs in a principal role (background work is excluded). See *Peer Groups: Performers*, TELEVISION ACAD., <https://www.emmys.com/academy/organization/peer-groups/performers> [<https://perma.cc/8GG5-E636>].

170. See *Television Academy*, TELEVISION ACAD., <https://www.emmys.com/faq/membership> [<https://perma.cc/ZR8X-SJFY>] ("An Associate member does not have voting privileges, but they do receive two (2) complimentary entries into the Primetime Emmy competition and have the opportunity to purchase discounted tickets to the Primetime Emmy Awards telecast.").

171. See *Television Academy Organization Overview*, TELEVISION ACAD., <https://www.emmys.com/academy/organization/overview> [<https://perma.cc/YK45-27GW>].

- *Recording Academy*: Prospective candidates may apply for three tiers of membership to the Recording Academy: The flagship class is for voting members and is composed of performers, songwriters, producers, engineers, instrumentalists, and other creators in the recording industry.<sup>172</sup> A nonvoting class of professional members includes various noncreative professionals within and adjacent to the music industry, such as agents, managers, journalists, entertainment attorneys, and music educators.<sup>173</sup> The Academy established a third nonvoting category of “Grammy U Members” as part of its outreach program for college students with a demonstrated interest in pursuing music as a career.<sup>174</sup> All membership candidates must obtain “strong recommendations” from two “music industry peers” who are either current members or otherwise actively employed in the music industry.<sup>175</sup> Candidates must also submit a personal statement to the Academy’s Peer Review Panel.<sup>176</sup> As of 2022, the Recording Academy’s roster included more than 12,000 flagship voting members, 3,000 professional members, and 32,000 Grammy U members.<sup>177</sup>

Show-business professionals covet admission to the elite academies because membership status is a special distinction reserved only for the industry’s highest echelon of celebrities, thought leaders, and cultural tastemakers.<sup>178</sup> For talented individuals who succeed in navigating the formidable barriers to admission, academy “membership has its privileges,” as the old adage goes.<sup>179</sup> Academy members are entitled to an array of special perquisites, such as “Oscar screeners” for members of the Motion Picture

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172. See *Membership Types*, RECORDING ACAD., [https://members.recordingacademy.com/s/member-info?language=en\\_US](https://members.recordingacademy.com/s/member-info?language=en_US) [https://perma.cc/N56W-5BLM].

173. See *id.*

174. See *id.*

175. See *id.*

176. See *Membership Process Video Tutorials*, RECORDING ACAD., <https://www.recordingacademy.com/membership/application-video-tutorial> [https://perma.cc/HWV2-4STK].

177. See Paul Grein, *Recording Academy Issues Invitations to Over 2,000 New Voting Members*, BILLBOARD (June 28, 2022), <https://www.billboard.com/music/awards/recording-academy-new-voting-members-invitations-1235108187/> [https://perma.cc/DAL5-D4ZK]; see also Caela Griffin, *Recording Academy Expands Grammy U Eligibility*, MUSICROW (Aug. 15, 2023), <https://musicrow.com/2023/08/recording-academy-expands-grammy-u-membership-eligibility/> [https://perma.cc/JN29-7A2L].

178. See ROBERT OSBORNE, 50 GOLDEN YEARS OF OSCAR: THE OFFICIAL HISTORY OF THE ACADEMY OF MOTION PICTURES & SCIENCES 19 (1979); see also *Membership Has Its Benefits: Joining the Recording Academy Opens All Kinds of Doors*, BILLBOARD (Dec. 21, 2012), <https://www.billboard.com/music/music-news/membership-has-its-benefits-joining-the-recording-academy-opens-all-kinds-1483762/> [https://perma.cc/KSZ4-JGBU].

179. See American Express, *Membership Has Its Privileges (80s)*, YOUTUBE (June 8, 2012), <https://www.youtube.com/watch?v=u4jAqXAcziQ> [https://perma.cc/4XM6-GJF2].

Academy,<sup>180</sup> exclusive access to Hollywood talent and “invitations to all-expenses-paid excursions to film festivals and press junkets” for HFPA members,<sup>181</sup> and complementary tickets to every Tony-nominated performance for all Tony voters and ex officio members of the Broadway League.<sup>182</sup> Given the high stakes involved, heated disputes have erupted over the admission and removal of academy members.<sup>183</sup> The few cases that led to actual litigation serve to reaffirm industry perceptions about the tremendous value of academy membership status.<sup>184</sup>

One notable dispute dates back to the late 1990s, when the Broadway League amended its bylaws to terminate the franchise rights of all “inactive” members.<sup>185</sup> Despite their inactive status, prior to the amendment, inactive members continued to receive a complimentary pair of tickets to all Tony-nominated shows and the Tony Awards ceremony, and they were entitled to cast ballots as members of the Tony voting pool.<sup>186</sup> Inactive members initially objected to the bylaw amendment, challenging the decision internally, but the League’s officers refused to turn over any corporate records related to the amendment.<sup>187</sup> The inactive members then filed a civil action to compel inspection of the League’s business records.<sup>188</sup> Once joined in litigation, the dispute became acrimonious, with the parties lodging reciprocal allegations of bad faith against each other.<sup>189</sup> The League claimed that the inactive members were abusing the levers of corporate governance for personal gain (to restore their complimentary ticketing privileges) rather than for a proper corporate

180. Academy members are provided advance or promotional copies of eligible films (also known as “screeners”) for consideration purposes. In 2021, the Academy discontinued DVD mailers in favor of The Academy Streaming Room, a streaming platform that compiles eligible films for Academy members to view. See Eric Cohn & Marcus Jones, *Meet the Oscar Season’s Newest Power Player: The Academy Screening Room*, INDIEWIRE (Sept. 8, 2022, 9:00 AM), <https://www.indiewire.com/features/general/oscar-season-academy-screening-room-1234758899/> [https://perma.cc/QG5A-2HMW].

181. See *Flaa v. Hollywood Foreign Press Ass’n*, 55 F.4th 680, 686 (9th Cir. 2022) (noting that “HFPA members receive opportunities to interview and interact with popular actors, directors, and producers” and that “[s]tudios grant HFPA members such privileges in order to gain favor with the individuals responsible for voting on the Golden Globe Awards”).

182. Every Broadway production in contention for a Tony Award nomination must provide complimentary tickets to the Tony voting pool. See AMERICAN THEATER WING, *supra* note 71, at 8. Productions forgo hundreds of thousands of dollars in ticket revenue to provide the complimentary tickets. See Robin Pogrebin, *The Awards Theater People Hate and Love*, N.Y. TIMES (May 21, 2000), <https://www.nytimes.com/2000/05/21/theater/the-award-theater-people-hate-and-love.html> [https://perma.cc/XPR3-NTX8].

183. See *Academy Reforms Spark Backlash*, CBS (Jan. 28, 2016, 9:03 AM), <https://www.cbsnews.com/news/academy-reforms-spark-backlash/> [https://perma.cc/EB9R-M448].

184. See, e.g., *Wells v. League of Am. Theatres & Producers, Inc.*, 706 N.Y.S.2d 599 (N.Y. Sup. Ct. 2000).

185. See *id.* at 602.

186. See *id.*

187. See *id.*

188. See *id.*

189. See *id.* at 603.

purpose.<sup>190</sup> The inactive members countered that the League's covert efforts to modify its internal governance rules tainted the bylaw amendment's legitimacy and implicated potential board misconduct.<sup>191</sup>

Unmoved by the dueling claims of bad faith, the court concluded that the existence of personal motivations for invoking the levers of corporate governance did "not preclude there being a legitimate corporate interest involved."<sup>192</sup> The inactive members may have stood to gain from challenging the bylaw amendment's validity, but the contingent of theater-owning members who sought to disenfranchise their peers stood to gain from their efforts as well.<sup>193</sup> The court ultimately concluded that the League's own internal governance rules entitled the inactive members to challenge their disenfranchisement.<sup>194</sup> The League's statement of corporate purpose expressly "afford[ed] to its members an opportunity to act for their common purpose and interest."<sup>195</sup> That entitled inactive members to inspect the corporate records to the extent "necessary to protect their interest in the corporation."<sup>196</sup>

The court thus compelled the inspection and ordered the League to produce its "official membership list."<sup>197</sup> In a last-ditch attempt to avoid document production, the League claimed that it did not maintain an official membership list and that the statutory inspection right included no obligation to create new business records.<sup>198</sup> However, the court chided the League for asserting such a credulity-straining excuse.<sup>199</sup> The inactive members thus won the battle,<sup>200</sup> but their procedural victory was probably short-lived. We suspect that the inactive members lacked enough votes to block a future attempt to revise the bylaw, though the public record went cold after the case concluded.

Another recent dispute reveals that academy membership rejections can be tempting but difficult to challenge on the merits through civil litigation. In 2020, two LA-based foreign journalists (one Norwegian, the other Spanish) sued the HFPA for repeatedly rejecting their membership applications despite the

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190. *See id.*

191. *See id.*

192. *See id.*

193. *See id.* The court explained:

[I]t can also be argued that the theatre owner members of the League have a personal financial interest in reducing the number of free tickets distributed for the many shows that may be nominated for a Tony Award. This does not make their decision to alter the League policy any less legitimate.

*Id.*

194. *See id.*

195. *Id.*

196. *Id.* at 604.

197. *Id.* at 605.

198. *Id.*

199. *See id.* ("I am hard pressed to believe that such a list does not exist; however, even if it is so, the court, in its discretion, can direct the League to create the list the [inactive members] seek.")

200. *See id.* at 604–05.

plaintiffs' purportedly strong professional qualifications as entertainment news journalists.<sup>201</sup> The plaintiffs claimed that the HFPA's membership rules and practices violated federal and state antitrust laws by unreasonably restraining competition in the Hollywood foreign-press market.<sup>202</sup> One theory alleged a group boycott of nonmember journalists in furtherance of the HFPA's purported monopoly on access to Hollywood talent.<sup>203</sup> The plaintiffs claimed that foreign journalists could not compete for newsworthy interviews without HFPA membership because Hollywood studios tightly restricted access to their talent and assigned great importance "to currying favor with Golden Globe voters."<sup>204</sup> They alleged that the HFPA orchestrated an anticompetitive "group boycott of everyone who might compete with its members to force them into irrelevancy or out of the business of reporting on the news, events, and personalities related to American movies for media outlets outside the United States altogether."<sup>205</sup>

The journalists' heartfelt sincerity leaps from the language of their complaint, but their allegations failed to plead a cognizable antitrust theory capable of reaching a jury.<sup>206</sup> A "group boycott" antitrust claim must allege a concerted refusal to deal that cannot otherwise be "justified by plausible arguments that [it is] intended to enhance overall efficiency and make markets more competitive."<sup>207</sup> But the complaint's group-boycott theory contained a fatal flaw—the parties who were allegedly refusing to deal with the plaintiffs were not members of the HFPA, let alone defendants in the case, as the court explained:

Critically, . . . the HFPA does not control access to talent—Hollywood studios do. As the complaint concedes, Hollywood studios provide HFPA members with interview opportunities in order to gain favor with the individuals who organize and vote on the Golden Globe Awards. The complaint does not allege that the HFPA entered into an exclusive agreement with the studios or otherwise "persuad[ed] or coerced" the studios to deny opportunities to non-HFPA members.<sup>208</sup>

The court also found that the HFPA's membership practices, which the HFPA argued were designed to "enhanc[e] the subject-matter expertise of [its] member

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201. See *Flaa v. Hollywood Foreign Press Ass'n*, 55 F.4th 680, 686–87 (9th Cir. 2022).

202. *Id.* at 688.

203. *Id.* at 688–90.

204. Amended Complaint at ¶¶ 38, 45, *Flaa v. Hollywood Foreign Press Ass'n*, 55 F.4th 680 (9th Cir. 2022) (No. 2:20-cv-06974-SB-E) (alleging that "[j]ournalists who compete with the HFPA's members are almost always denied any opportunity to interview the talent made available to the HFPA as a matter of course").

205. *Id.* ¶ 38.

206. See *Flaa*, 55 F.4th at 687. The district court dismissed all claims with prejudice for failure to state a claim, and the Ninth Circuit affirmed in a precedential opinion. *Id.* at 685.

207. *Id.* at 689 (quoting *Nw. Wholesale Stationers, Inc., v. Pac. Stationary & Printing Co.*, 472 U.S. 284, 294 (1985)).

208. *Id.* at 690 (quoting *Nw. Wholesale Stationers*, 472 U.S. at 294).

journalists,” could be “justified by plausible pro-competitive explanations.”<sup>209</sup> The antitrust laws, for instance, allow professional associations “to limit their membership to those that they deem to be among the elite of the profession.”<sup>210</sup> The court explained:

[T]he HFPA could decide to limit its membership to prevent the organization from becoming unwieldy in size, and it could choose to select members who will add particular viewpoints to the Golden Globe voting pool. Whether that is a sensible approach is a question to be decided not by us, but by the moviegoing public, which can give Golden Globe Awards whatever weight it thinks they deserve.<sup>211</sup>

The plaintiffs also failed to allege a plausible antitrust theory of market power in part because their complaint characterized the HFPA’s membership as small, unqualified, clubby, dysfunctional, and incompetent.<sup>212</sup> Those allegations painted an unflattering picture of the HFPA, but they also inadvertently undermined the plaintiffs’ antitrust theory by implying that the HFPA was incapable of wielding market power.<sup>213</sup> That logical contradiction led the court to remark that “a plaintiff can plead itself out of court by alleging facts that are inconsistent with its claim, and we agree with the district court that the journalists have done so here.”<sup>214</sup>

*Flaa* illustrates the uphill legal battle faced by applicants seeking to contest the merits of an academy’s decision to deny admission to its membership. The exclusivity of academy membership is more of a feature than a bug. As the *Flaa* court explained, “membership in almost any trade association provides some kind of economic benefit. It does not follow that every trade association must open itself to all comers.”<sup>215</sup> Likewise, in other recent cases, we found that litigants have been uniformly unsuccessful in pleading membership grievances

209. *Id.* at 691.

210. *Id.* (explaining that the HFPA’s “restrictive admission policy is not inherently anticompetitive, so [it] generally is ‘entitled to determine its members and is certainly not required to accept every applicant’”).

211. *Id.*

212. *Id.* at 693 (noting that only half of HFPA members were “active journalists” and that “only ‘[t]wo or three dozen’ [HFPA] members ‘[were] legitimate, respected media figures,’ while the rest [were] ‘intermittent freelancers at best’”); see also Amended Complaint, *supra* note 204, at ¶ 53 (alleging that “HFPA members do not need to worry about market conditions, pandemics, or working hard to prosper” and that the “HFPA pays its 85 members well over \$2,000,000 annually to perform trivial or non-existent tasks”).

213. See *Flaa*, 55 F.4th at 694 (finding that plaintiffs had failed to “describe [the HFPA as] an organization wielding market power of global proportions”).

214. *Id.* at 692. The court also rejected plaintiffs’ allegation that the HFPA had conspired to control and “divide the foreign market for entertainment news” by allocating a geographic market to each member and then by prohibiting members from encroaching into each other’s assigned market. *Id.* at 691–92. The plaintiffs again undercut their market-division theory by describing the HFPA’s membership as competing in different product markets (e.g., photography, electronic media, print journalism, etc.) and in different geographic markets that are inhospitable to foreign journalists for reasons apart from the HFPA’s restrictions. *Id.* at 692.

215. *Id.* at 690.

as civil rights violations by invoking federal antidiscrimination laws.<sup>216</sup> Membership grievances are difficult to win because, at bottom, the entertainment academies are private entities which are generally entitled to make subjective decisions about whom to admit as members and which procedures to follow in admitting them.<sup>217</sup>

While academy membership criteria are largely impervious to external legal challenge, the academies have proven vulnerable to criticism in the court of public opinion.<sup>218</sup> Over the last decade, social activists—both within the entertainment industry and beyond—have denounced the major award-granting academies for membership criteria that have perpetuated longstanding patterns of exclusion against women and racial minorities.<sup>219</sup> Those criticisms have been corroborated by studies revealing that the academies’ lack of membership diversity placed them demonstrably out of step with national demographic population trends and the demography of professionals working within each academy’s own respective industry.<sup>220</sup> The elite entertainment

216. For example, federal courts dismissed a recent spate of civil actions filed by a former member of the Recording Academy, which allegedly wrongfully terminated the plaintiff’s membership due to his status as a racial minority. *See, e.g., Emrit v. Grammy Awards on CBS*, No. 5:23-CV-499-M, 2023 WL 6545417, at \*2 (E.D.N.C. Sept. 15, 2023), *report and recommendation adopted*, No. 5:23-CV-00499-M, 2023 WL 6541844, at \*1 (E.D.N.C. Oct. 6, 2023) (holding that “Plaintiff’s claim that he was discriminated against in violation of the Equal Protection and Due Process clauses of the Constitution are not actionable against Defendant because it is not a state actor”); *Emrit v. Grammys Awards on CBS*, No. 1:23-CV-1155, 2023 WL 6577793, at \*6 (N.D.N.Y. Oct. 6, 2023) (warning plaintiff that the filing of further frivolous actions would be treated as vexatious litigation); *Emrit v. Grammy Awards on CBS*, No. 1:23-CV-953, 2023 WL 7135219, at \*2 (W.D. Mich. Oct. 13, 2023), *report and recommendation adopted*, No. 1:23-CV-953, 2023 WL 7128556, at \*2 (W.D. Mich. Oct. 30, 2023) (describing the complaint as reciting “rambling, non-sensical . . . language which appears to have been cut and pasted from other lawsuits”); *Emrit v. Nat’l Acad. of Recording Arts & Scis.*, No. A-14-CA-392-SS, 2015 WL 518774 (W.D. Tex. Feb. 5, 2015). The plaintiff described himself as “an indigent, disabled, and unemployed” Black musician whose “Grammys membership would have been reinstated if he were a [W]hite man.” *Emrit v. Grammy Awards on CBS*, No. 23-CV-1346-PP, 2023 WL 6847698, at \*2 (E.D. Wis. Oct. 17, 2023). *But see* Ogletree, Deakins, Nash, Smoak & Stewart, P.C., *California News in Brief*, 11 No. 21 CAL. EMP. L. LETTER 5 (Jan. 7, 2002) (reporting the Recording Academy’s \$650,000 settlement of a sexual harassment lawsuit brought by its former accountant).

217. *See, e.g., Academy Membership*, OSCARS, <https://www.oscars.org/about/join-academy> [<https://perma.cc/F7WQ-N3AV>].

218. *See, e.g., Rebecca Sun, Television Academy Reports 75 Percent of Its Membership Is White*, THE HOLLYWOOD REP. (Feb. 16, 2023, 3:17 PM), <https://www.hollywoodreporter.com/tv/tv-news/television-academy-diversity-report-1235328103/#> [<https://perma.cc/SJ96-TPZA>]; Anastasia Tsioulcas, *Seeking Greater Diversity, Grammy Organization Alters Its Rules for Membership*, NPR (Nov. 19, 2018, 4:50 PM), <https://www.npr.org/2018/11/19/669324103/seeking-greater-diversity-grammy-organization-alters-its-rules-for-membership> [<https://perma.cc/JK3H-THDC>].

219. *See* Sun, *supra* note 218; Tsioulcas, *supra* note 218.

220. *See* John Horn et al., *From the Archives: Unmasking Oscar: Academy Voters Are Overwhelmingly White and Male*, L.A. TIMES (Feb. 19, 2012, 5:00 AM), <https://www.latimes.com/entertainment/la-et-unmasking-oscar-academy-project-20120219-story.html> [<https://perma.cc/9LYK-MTPG>]. A 2012 analysis by the *Los Angeles Times* reported that 94% of the Academy of Motion Pictures’ voting members were White, 77% were male, and fewer than 4% were Black or Latino. *See id.* A later study by the University of Southern California’s Annenberg School of Journalism and Communications found that of the 899 individuals nominated for Grammy Awards between 2013 and 2018, only 9.3% were women. STACY L. SMITH ET AL., *INCLUSION IN THE RECORDING STUDIO?* 8 (2018), <https://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf> [<https://perma.cc/GZ89-4LBC>].



academies, despite their zeal for self-governance rights, realized that they could not ignore the crescendo of calls to enact diversity reforms.<sup>221</sup> Complacency could have imperiled their reputation or eroded public perceptions of institutional legitimacy.

In recent years, the academies have followed through on their renewed commitments to diversity by implementing significant reforms to their membership policies. In 2016, for instance, the Academy of Motion Pictures increased its membership invitations three-fold while targeting a more diverse pool comprised of 46% women and 41% people of color.<sup>222</sup> Acceptance of all 683 invitations would have increased the Academy's female membership from 25% to 27% and its racial minority membership from 8% to 11%.<sup>223</sup> Most other academies undertook similar reforms, which started to yield their intended results after several years of cumulative membership additions.<sup>224</sup>

The HFPA proved to be the most stubborn holdout to resist the call for diversity reforms, a tact that surprised industry observers given the severity of the HFPA's lack of diversity.<sup>225</sup> Two particular revelations appear to have hastened the HFPA's demise: in 2021, a former HFPA president revealed that the organization had not admitted a single Black member in over two decades.<sup>226</sup> Shortly thereafter, an eight-term HFPA president emailed the

221. See Erin A. Shackelford, *An Immovable Object and an Unstoppable Force: Reconciling the First Amendment and Antidiscrimination Laws in the Claybrook Court*, 17 VAND. J. ENT. & TECH. L. 781, 786 (2015). One commentator described the following as "anecdotal examples of a consistent diversity gap in Hollywood": "Of the nearly 6,000 Academy Awards voters, 94 percent are [W]hite, with the remaining 6 percent being comprised of 2 percent [B]lack, less than 2 percent of Hispanic origin, and less than 1 percent Asian or Native American descent." *Id.* For the fascinating history of the Oscar bestowed to Hattie McDaniel, the first Black actress to win an Academy Award for the role of Mammy in *Gone with the Wind*, see generally W. Burlette Carter, *Finding the Oscar*, 55 HOW. L.J. 107 (2011).

222. See Anne Thompson, *How the Academy Pushed the Diversity Needle with 683 Member Invites*, INDIEWIRE (June 29, 2016, 5:54 PM), <https://www.indiewire.com/awards/industry/oscars-academy-diversity-new-member-invites-1201701095/> [<https://perma.cc/4F3U-WZSF>].

223. *Id.*

224. See *The Academy Invites 398 New Members for 2023: See the Full List*, OSCARS (June 28, 2023), <https://aframe.oscars.org/news/post/the-academy-new-members-2023-full-list> [<https://perma.cc/UK79-9GW8>]; see also Whitney Whitener, *The Academy Invites 398 New Members*, AWN.COM (June 30, 2023, 12:05 PM), <https://www.awn.com/news/academy-invites-398-new-members> [<https://perma.cc/U3PD-MBKE>] (highlighting that in 2023, for instance, new members inducted into the Academy of Motion Pictures were 40% female and 34% racial minorities). Likewise, in 2022, the Recording Academy's Diversity, Equity, and Inclusion initiative reported that 44% of its new members were people of color, 47% were under the age of forty, and 32% were women. See Paul Grein, *Recording Academy Welcomes 'Nearly 2,000 Diverse' New Members*, BILLBOARD (Sept. 9, 2022), <https://www.billboard.com/music/music-news/recording-academy-welcomes-nearly-2000-new-members-1235136676/> [<https://perma.cc/446A-F953>]; cf. Jonathan Gingerich, *Remixing Rawls: Constitutional Cultural Liberties in Liberal Democracies*, 11 NE. U. L. REV. 523, 563–67 (2019) (proposing reforms to increase racial diversity for elite entertainment academies).

225. See Dino-Ray Ramos, *HFPA Responds to Criticism About Its Lack of Diversity: "We Need to Bring in Black Members"* – Update, DEADLINE (Feb. 25, 2021, 7:35 PM), <https://deadline.com/2021/02/hollywood-foreign-press-association-diversity-golden-globes-diversity-hfpa-1234697981/> [<https://perma.cc/75YW-X5E9>].

226. See Lauren Edmonds, *The Hollywood Foreign Press Association Hasn't Had Any Black Members in Nearly 2 Decades, Former Golden Globes President Says*, BUS. INSIDER (Feb. 28, 2021, 12:19 PM), <https://www.>

organization's members and staff criticizing the Black Lives Matter movement, sharing a post that called the organization a "racist hate movement."<sup>227</sup> Pushback from across the various entertainment fields began to ostracize the HFPA from the entertainment awards industry: in 2022, the Golden Globes lost its television broadcasting contract with NBC, and, in 2023, the HFPA folded as an independent organization, selling off its assets to its estranged producing partner, Dick Clark Productions.<sup>228</sup> That dissolution, however, did not stop winners at the 2024 Golden Globes from thanking the HFPA in their acceptance speeches.<sup>229</sup>

### B. Nomination Eligibility Criteria

The academies promulgate technical nomination eligibility criteria that establish baseline rules for every award category.<sup>230</sup> When applicants submit work for award contention, the academies delegate most threshold determinations about eligibility and category classification to a nominations committee.<sup>231</sup> However, for certain major awards, such as Best Picture or Best

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insider.com/golden-globes-president-hfpa-no-black-members-in-two-decades-2021-2 [https://perma.cc/P L7A-2SCR].

227. See Stacy Perman, *Former HFPA President Faces a Backlash over Email Calling Black Lives Matter a 'Hate Movement'*, L.A. TIMES (Apr. 19, 2021, 3:30 PM), <https://www.latimes.com/entertainment-arts/business/story/2021-04-19/former-hfpa-president-faces-a-backlash-over-email-calling-black-lives-matter-a-hate-movement> [https://perma.cc/4HRC-UT4N].

228. See Dominic Patten, *Golden Globes 2022 Canceled On NBC as HFPA Struggles to Reform to Hollywood's Stipulations*, DEADLINE (May 10, 2021, 11:31 AM), <https://deadline.com/2021/05/golden-globes-canceled-nbc-2022-hfpa-1234753314/> [https://perma.cc/45F5-TKAH]; see also Nellie Andreeva, *Golden Globes Acquired by Dick Clark Productions & Eldridge; HFPA to Wind Down*, DEADLINE (June 12, 2023, 10:11 AM), <https://deadline.com/2023/06/golden-globes-acquired-dick-clark-productions-eldridge-hfpa-shut-down-1235414600/> [https://perma.cc/34VC-5JA4].

229. See Justin Curto, *Golden Globe Winners Thank the Nonexistent Hollywood Foreign Press Association*, VULTURE (Jan. 7, 2024), <https://www.vulture.com/2024/01/golden-globes-2024-thank-hollywood-foreign-press.html> [https://perma.cc/35T4-JWAA].

230. See *Academy Awards Registration and User Account FAQ*, OSCARS, <https://submissions.oscars.org/FAQ.aspx#1> [https://perma.cc/UQH9-6CE8]; see also GOLDEN GLOBES, 82ND GOLDEN GLOBE AWARDS ELIGIBILITY AND CONSIDERATION RULES (2024), [https://goldenglobes.com/wp-content/uploads/2024/11/Golden\\_Globe\\_Awards\\_-82nd\\_-2024-2025\\_Eligibility\\_and\\_Consideration\\_Rules\\_111124-FINAL.pdf](https://goldenglobes.com/wp-content/uploads/2024/11/Golden_Globe_Awards_-82nd_-2024-2025_Eligibility_and_Consideration_Rules_111124-FINAL.pdf) [https://perma.cc/Z9FG-7YYS]; RECORDING ACAD., 66TH GRAMMY AWARDS RULES & GUIDELINES 21–25 (2023), [https://naras.a.bigcontent.io/v1/static/2023RULEBOOK\\_11.21](https://naras.a.bigcontent.io/v1/static/2023RULEBOOK_11.21) [https://perma.cc/8A6G-EWCM]; *Frequently Asked Questions*, TELEVISION ACAD., <https://www.emmys.com/faq> [https://perma.cc/922V-QJRS].

231. See TONY AWARDS, RULES AND REGULATIONS OF THE AMERICAN THEATRE WING'S TONY AWARDS 6–12 (2023), [https://www.tonyawards.com/documents/18/2023-2024\\_Tony\\_Rules\\_and\\_Regulations.pdf](https://www.tonyawards.com/documents/18/2023-2024_Tony_Rules_and_Regulations.pdf) [https://perma.cc/9X76-YAXG]; ACAD. AWARDS, 96TH OSCARS RULES 2–4 (2023), [https://www.oscars.org/sites/oscars/files/96o\\_complete\\_rules.pdf](https://www.oscars.org/sites/oscars/files/96o_complete_rules.pdf) [https://perma.cc/4EJ2-TBYK]; GOLDEN GLOBES, AWARD RULES & ENTRY FORMS 1 (2023), <https://goldenglobes.com/award-rules-and-entry-forms/> [https://perma.cc/UCK9-QCMT]; RECORDING ACAD., *supra* note 230, at 21–25; TELEVISION ACAD., PRIMETIME EMMY AWARDS RULES & PROCEDURES 2022–2023, at 5 (2022), <https://www.televisionacademy.com/files/assets/Downloads/2023-rules-procedures-v5a.pdf> [https://perma.cc/3J24-RQY9].

New Album, academies select nominees by polling the voting membership from a slate of pre-vetted submissions (sometimes called a “Reminder List”).<sup>232</sup>

Eligibility criteria and category classification rules often include technical requirements based on professional standards or industry conventions, such as minimum running time or broadcast requirements.<sup>233</sup> For example, eligibility criteria for a Primetime Emmy Award require that the submitted work be “broadcast to at least 50% of the total potential United States television market,” transmitted by “by pay/cable,” or presented “by broadband to markets representing at least 50% or more of U.S. households.”<sup>234</sup> In other disciplines, technical requirements specify particulars such as film type and digital media format for motion pictures, and minimum seating capacity for live theater.<sup>235</sup> The academies update their technical criteria periodically to keep pace with changes in technology, new practices in the field, and the evolving regulatory environment.<sup>236</sup> In 2023, the Academy of Motion Pictures introduced “representation and inclusion standards” for films contending for Best Picture.<sup>237</sup> The policy, which seeks to promote greater representation for

232. See ACAD. AWARDS, *supra* note 231, at 6 (“All eligible films will be listed by the Academy on Reminder Lists of Eligible Releases for specific categories.”); GOLDEN GLOBES, *supra* note 230, at 18 (“A nomination ballot with an ‘Eligibility List’ of qualifying motion pictures [and] television programs . . . is sent to all eligible Golden Globe voters . . .”). If a nomination is subsequently disqualified, the vacancy is not filled by a replacement nomination. See ACAD. AWARDS, *supra* note 231, at 7 (“In the event a nominated achievement is declared ineligible by the Academy, it shall not be replaced, and the category will remain with one less nomination.”); see also ACAD. AWARDS, REMINDER LIST OF PRODUCTIONS ELIGIBLE FOR THE 95TH ACADEMY AWARDS (2023), [https://www.oscars.org/sites/oscars/files/reminder\\_list\\_productions\\_eligible\\_95\\_oscars.pdf](https://www.oscars.org/sites/oscars/files/reminder_list_productions_eligible_95_oscars.pdf) [<https://perma.cc/V6PR-EDJZ>].

233. See, e.g., GOLDEN GLOBES, *supra* note 230.

234. See TELEVISION ACAD., *supra* note 231, at 3 (noting further that “[e]ntries that were available only in a limited number of physical locations, through closed or ‘invitation only’ websites, or exhibited solely at conferences, shows, events or festivals, are not eligible”).

235. See ACAD. AWARDS, *supra* note 231, at 2–4 (explaining that films may be projected in “35mm or 70mm film” or qualifying digital formats, including “in a 24- or 48-frame progressive scan Digital Cinema format with a minimum projector resolution of 2048 by 1080 pixels”); TONY AWARDS, *supra* note 231, at 9 (“In order to qualify as an eligible Broadway theatre, a theatre must (i) have 500 or more seats, (ii) be used principally for the presentation of legitimate theatrical productions and (iii) be deemed otherwise qualified by the Tony Awards Administration Committee.”).

236. See Kory Grow, *Grammys Intelligently Ban Artificial Intelligence from Awards Eligibility*, ROLLING STONE (Sept. 8, 2023), <https://www.rollingstone.com/music/music-news/drake-weekend-artificial-intelligence-grammys-1234821174/> [<https://perma.cc/R6DF-LZ4P>] (showing that the Recording Academy, for instance, recently enacted a per se rule that disqualified musical recordings generated by artificial intelligence from Grammy eligibility). That rule change aligns with current policy of the United States Copyright Office, which does not recognize copyright protection for works of authorship that are not created by a human being. See U.S. COPYRIGHT OFF., COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 306 (3d ed. 2021), <https://www.copyright.gov/comp3/docs/compendium.pdf> [<https://perma.cc/254Y-9CLT>] (“The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being [because] copyright law only protects ‘the fruits of intellectual labor’ that ‘are founded in the creative powers of the mind.’” (quoting Trade-Mark Cases, 100 U.S. 82, 94 (1879))).

237. See *Representation and Inclusion Standards*, OSCARS, <https://www.oscars.org/awards/representation-and-inclusion-standards> [<https://perma.cc/KR4L-WM48>]. The four diversity standards include: 1) on-screen representation, themes, and narratives; 2) diversity among creative leadership; 3) access opportunities (e.g., paid internships); and 4) diversity among audience development teams (e.g., marketing and publicity). See *id.*

marginalized racial or ethnic groups, has been criticized for injecting identity politics into the arts<sup>238</sup> and for under-inclusivity.<sup>239</sup>

Nomination criteria can be capacious enough to enable forum shopping among multiple potential award categories. On Broadway, for instance, Tony-classification gamesmanship is the stuff of legend, as producers strategically target award categories to position their productions and star performers most favorably relative to a category's other competing entries.<sup>240</sup> For example, producers of a new drama featuring prominent musical elements might submit the work for nomination in the Best Play category to avoid competing against more formidable rivals in the Best Musical category.<sup>241</sup> Academies occasionally try to reign in category gamesmanship by refining their nomination criteria.<sup>242</sup> For example, in 2014, Netflix submitted its genre-bending television show, *Orange Is the New Black* (OITNB), for consideration as a comedy and garnered five Primetime Emmy Award nominations.<sup>243</sup> But the show's break-out success prompted industry veterans to question whether "dramedies" like OITNB should be more accurately categorized as dramas.<sup>244</sup> The following year, the Television Academy revised its nomination criteria by imposing a rebuttable presumption that categorized any program with a running time exceeding thirty minutes as a drama.<sup>245</sup> That change forced OITNB, which featured hour-long episodes, to contend for Emmy nominations the following year as a drama rather than as a comedy.<sup>246</sup> As mentioned above, however, criteria revisions enacted to protect some competitors to the detriment of other competitors

238. See Conor Murray, *Anti-'Woke' Critics Target the Oscars—But Here's What the Academy's New Diversity Rules Actually Require*, FORBES (June 20, 2023, 3:28 PM), <https://www.forbes.com/sites/conormurray/2023/06/20/anti-woke-critics-target-the-oscars-but-heres-what-its-new-diversity-rules-actually-require/> [https://perma.cc/443K-QH3N].

239. See Rebecca Sun, *Julianne Margulies, Greg Berlanti, Mayim Bialik Among 260 Signatories of Letter to Film Academy Critiquing Jewish Exclusion from Diversity Standards*, THE HOLLYWOOD REP. (Jan. 9, 2024, 7:30 AM), <https://www.hollywoodreporter.com/movies/movie-news/jewish-hollywood-letter-academy-inclusion-standards-1235782834/> [https://perma.cc/4ZXS-BFSJ] (noting that the current diversity standards do not include individuals of Jewish descent).

240. See, e.g., Robin Pogrebin, *The Drama! The Song and Dance! It's Tony Time!; With So Much at Stake, Producers Make Every Effort to Work the System*, N.Y. TIMES (Apr. 29, 1999), <https://www.nytimes.com/1999/04/29/theater/drama-song-dance-it-s-tony-time-with-so-much-stake-producers-make-every-effort.html> [https://perma.cc/57FM-FSJ4] (describing "weeks of special pleading and jockeying for position, with investments hanging heavily in the balance").

241. *Id.*

242. See Nellie Andreeva, *Emmy's: 'Orange Is the New Black' to Run as Drama, Ruled Ineligible for Comedy Race*, DEADLINE (Mar. 20, 2015, 10:24 AM), <https://deadline.com/2015/03/orange-is-the-new-black-run-drama-ineligible-as-comedy-emmys-1201395807/> [https://perma.cc/R5BE-F94J].

243. *Id.*

244. Bill Carter, *Emmy Nominations Cross a Few Lines*, N.Y. TIMES (July 10, 2014), <https://www.nytimes.com/2014/07/11/arts/television/2014-emmy-nominations-game-of-thrones-true-detective-among-the-honored.html> [https://perma.cc/3L3V-3RVV].

245. See TELEVISION ACADEMY, 2015 PRIMETIME EMMY RULES CHANGES 1 (2015), <https://www.emmys.com/sites/default/files/Downloads/2015-whats-new-v1.pdf> [https://perma.cc/ZX7H-29SV].

246. Andreeva, *supra* note 242.

have attracted antitrust scrutiny from the Department of Justice on at least one occasion for implicating anticompetitive cooperation among market adversaries under the aegis of a nonprofit business league.<sup>247</sup>

Each academy has promulgated internal operating rules that designate the academy itself as the final arbiter of all disputes concerning nomination eligibility and award categorization.<sup>248</sup> In most eligibility disputes, the complaining party accepts the academy's decision as the final word.<sup>249</sup> Only a handful of nomination disputes have been litigated in court, but none successfully because subjective assessments of artistic merit are difficult for courts to review for illegal motive or bias.<sup>250</sup> Indeed, our exhaustive review of public court records did not identify a single judicial opinion in which a plaintiff prevailed against an academy in a dispute concerning award eligibility. Conversely, in the small handful of litigated cases involving nomination disputes, the academies succeeded in dismissing all claims.

In 1994, for instance, Jackie Mason, a renowned borscht-belt comedian, filed a New York state court civil action a couple months after that year's Tony Awards ceremony.<sup>251</sup> Mason sought \$75 million in damages allegedly caused by the Tony nomination committee's disqualification of his one-man show, *Jackie Mason: Politically Incorrect*, from contention as either Best Play or Best Musical.<sup>252</sup> Mason argued that the committee had discriminated against him by applying unfair bias against one-man acts, a theory that the court dismissed as "patently

247. See Letter from the Dep't of Just. to Dawn Hudson, *supra* note 154; see also *supra* Section I.O.

248. See ACAD. AWARDS, *supra* note 231, at 4 ("The Academy shall resolve all questions of eligibility and rules."); see also RECORDING ACAD., *supra* note 230, at 17 ("The Recording Academy reserves these rights . . . [t]o place any selection into the Category it deems appropriate . . .").

249. See Rudie Obias, *9 Oscar Nominations that Were Revoked*, MENTAL FLOSS (Feb. 23, 2019), <https://www.mentalfloss.com/article/73722/8-oscar-nominations-were-revoked> [<https://perma.cc/TJ7M-C8HL>]. For instance, according to one tally as of 2023 the Academy of Motion Pictures has rescinded a total of nine nominations. See *id.*; see also Rudie Obias, *Nine Oscar Nominations that Were Revoked*, MENTALFLOSS.COM (Feb. 23, 2019), <https://www.mentalfloss.com/article/73722/8-oscar-nominations-were-revoked> [<https://perma.cc/TJ7M-C8HL>]. Only one of those revocations appears to have led to litigation. See *Cinematca Uruguay v. Acad. of Motion Picture Arts & Scis.*, 826 F. Supp. 323 (C.D. Cal. 1993); see also *Uruguay Oscar Entry Disqualified*, UPI (Feb. 25, 1993), <https://www.upi.com/Archives/1993/02/25/Uruguay-Oscar-entry-disqualified/4478730616400/> [<https://perma.cc/5F48-U8N5>] (noting the disqualification of "*A Place in the Sun*" as Uruguay's first Academy Award nominee for best foreign language film "because academy officials determined it was primarily an Argentine production").

250. In dismissing a civil action contesting a high school student's unsuccessful application for National Honor Society membership, the court explained:

Inherent in such a [subjective] system is the possibility of error. If Paul Newman (*The Verdict*) "wins" the academy award instead of Dustin Hoffman (*Tootsie*), who is to say that he really is more deserving? Courts would indeed be entering into a prickly briarpatch were they to get involved in reviewing these kinds of subjective judgments.

*Karnstein v. Pewaukee Sch. Bd.*, 557 F. Supp. 565, 567 (E.D. Wis. 1983).

251. See *Mason v. Am. Theatre Wing, Inc.*, 627 N.Y.S.2d 539 (N.Y. Sup. Ct. 1995).

252. *Id.* at 540–41 (alleging that "defendants 'did not consider plaintiff's one-man comedy show a proper Broadway production for a Tony Award . . . although several other one-man shows had been considered for a Tony Award in the past'").

frivolous.”<sup>253</sup> In dismissing Mason’s discrimination claim, the court explained that classification as a one-man act “does not fall within any of the protected categories enumerated in the Human Rights Law,” and, further, that “the proscribed activities [regulated by the New York Human Rights Law] relate only to employment, housing and credit, and it [was] not alleged that any defendant . . . employed, lodged or financed Mr. Mason.”<sup>254</sup> For context, the court reproduced a long list of other solo acts disqualified for Tony contention because they, like Mason’s, failed to satisfy the nomination criteria for both plays and musicals.<sup>255</sup>

Mason’s contract claim alleged that the defendants’ publication of Tony eligibility rules constituted an offer that Mason rightfully accepted.<sup>256</sup> Dismissing that theory “out of hand,” the court rejected Mason’s characterization of the Tony Awards as a contest wherein “a contract arises between contest entrants and the sponsor.”<sup>257</sup> Conversely, the court reasoned, “an award or nomination for an award (*i.e.*, the Oscar) recognizes an achievement (*i.e.*, a film) that was accomplished not for a contest but for independent reasons.”<sup>258</sup> Unlike contests that imply a contractual offer to members of the public, performing-arts awards like the Tonys are “made in recognition of past achievements . . . out of affection, respect, admiration, charity or like impulses.”<sup>259</sup>

Mason’s final claim sought to challenge the Broadway League’s corporate procedures under a state statute known as “Article 78.”<sup>260</sup> Under New York law, an Article 78 proceeding provides a judicial forum for common law “writs of certiorari to review, mandamus or prohibition.”<sup>261</sup> Article 78 proceedings usually challenge a governmental action, but, as at least one state law treatise explains, “the conduct of private corporations is also subject to Article 78 review.”<sup>262</sup> Finding this to be Mason’s least frivolous claim, the court acknowledged that Article 78 had “been applied by at least one court in a dispute over whether a film warranted the ‘X’ rating assigned to it by the Motion

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253. *Id.* at 541, 543.

254. *Id.* at 543.

255. *Id.* at 542–43.

256. *Id.* at 541.

257. *Id.* at 541, 543 (quoting *Cinemateca Uruguay v. Acad. of Motion Picture Arts & Scis.*, 826 F. Supp. 323, 325 (C.D. Cal. 1993)).

258. *Id.* at 543 (quoting *Cinemateca Uruguay*, 826 F. Supp. at 325, which denied the foreign filmmakers’ request for a preliminary injunction against the Motion Picture Academy and dismissed the remaining claims with prejudice).

259. *Id.* (quoting *Cinemateca Uruguay*, 826 F. Supp. at 325).

260. *Id.* at 542.

261. N.Y. C.P.L.R. § 7801 (MCKINNEY 2024).

262. *Id.* § C7801:1.

Picture Association of America.”<sup>263</sup> But Mason’s complaint sought to recover monetary damages that were not authorized by Article 78.<sup>264</sup> Furthermore, even if monetary damages had been available, Mason would have had to prove that the “defendants breached some duty created by the Tony Rules.”<sup>265</sup> The court explained that the standard for evaluating the corporation’s breach was the business judgment rule, which is deferential to a corporate action unless the defendant failed to act “in good faith in furtherance of its own legitimate purpose.”<sup>266</sup> Mason failed to overcome that presumption.<sup>267</sup> Thus, the court concluded that the Tony Rules expressly granted the nominations committee “power to make final determinations regarding all matters of eligibility,” so “[f]urther inquiry as to the wisdom of their action is precluded.”<sup>268</sup>

A decade later, another nomination dispute became embroiled in litigation when plaintiff Bob Yari challenged his disqualification as an Oscar-eligible film producer.<sup>269</sup> Yari brought his claim under California’s common law right of fair procedure, which authorizes judicial review of a private organization’s decision-making process.<sup>270</sup> This dispute concerned a recent change to the rule governing the number of individual producers eligible to share credit for the Best Picture award.<sup>271</sup> Until 2004, the Oscar for Best Picture was awarded “to all producers designated as such on the movie itself.”<sup>272</sup> But in 2005, the Academy amended the eligibility criteria to restrict the number of Oscar-qualifying producer slots<sup>273</sup>:

Under the new rules, “The individual(s) who shall be credited for Academy Awards purposes must have screen credit as ‘producer’ or ‘produced by.’ . . . The nominees will be those with three or fewer producers who have performed the major portion of the producer function. The Producers Branch Executive Committee will designate the qualifying producer nominees for

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263. *Mason*, 627 N.Y.S.2d at 542 (citing *Miramax Films Corp. v. Motion Picture Ass’n of Am.*, 560 N.Y.S.2d 730, 731 (N.Y. Sup. Ct. 1990), which involved the sexually explicit, “controversial film, ‘Tie Me Up! Tie Me Down!’”).

264. *Id.* (noting that Mason’s complaint requested “only monetary damages not available under article 78”).

265. *Id.*

266. *Id.* (explaining that “[t]his ‘more limited’ standard of judicial review precludes the court from substituting its own judgment for the wisdom of the corporate governing body” (quoting *Miramax*, 560 N.Y.S.2d at 735) (referencing *in re Levandusky v. One Fifth Ave. Apartment Corp.*, 553 N.E.2d 1317, 1322 (N.Y. 1990))).

267. *Id.* at 542–43.

268. *Id.* at 542.

269. *See Yari v. Producers Guild of Am., Inc.*, 73 Cal. Rptr. 3d 803, 806 (Cal. Ct. App. 2008).

270. *Id.* at 805–06.

271. *Id.*

272. *Id.* at 805.

273. *Id.*

each of the nominated pictures.” The executive committee relies on Guild designations.<sup>274</sup>

Yari was one of six individuals credited as producers of the feature film *Crash*, which won the Oscar for Best Picture in 2006.<sup>275</sup> In his entry submission for Oscar consideration, Yari provided the Guild with a long list of his specific responsibilities in the film’s development, pre-production and post-production, to establish himself as an award-eligible producer.<sup>276</sup> The Guild, however, did not select Yari as one of the film’s three eligible producers.<sup>277</sup> In response, Yari lodged two unsuccessful private appeals, one with the Guild and another with the Academy.<sup>278</sup>

Yari then sued both the Guild and the Academy for “wrongful denial of the right of fair procedure, breach of fiduciary duty, breach of implied contract, and promissory estoppel.”<sup>279</sup> He claimed that both organizations were “powerful, quasi-public institutions;” that their decisions were arbitrary and unfair; that his disqualification from Oscar contention “tarnished his reputation because it amounted to a public statement that he was a ‘mere “money man”’ who did not perform creative functions;” and that he had been deprived of the “recognition, prestige, financial and professional benefits attained by only the most successful motion picture producers.”<sup>280</sup> In addition to monetary damages, Yari sought injunctive relief mandating revisions to the producer crediting criteria.<sup>281</sup>

Yari’s complaint was based on a line of California common law decisions known as the *Marinship–Pinsker–Ezekial–Potvin* doctrine, which establishes a right of fair procedure concerning membership in a “gatekeeper organization.”<sup>282</sup> Courts applying the doctrine reason that “the right to practice a lawful trade or profession is sufficiently ‘fundamental’ to require substantial protection against arbitrary administrative interference, either by government or by a private entity.”<sup>283</sup> A corollary of that right holds that the entity’s “decisionmaking ‘must be both substantively rational and procedurally fair.’”<sup>284</sup>

274. *Id.* at 805–06 (explaining that “[t]he Guild is not a labor union and its rules are not the result of a collective bargaining agreement, but [was] created by ‘a small number of individuals’”).

275. *Id.*

276. Verified Second Amended Complaint at ¶¶ 34–35, *Yari v. Producers Guild of Am., Inc.*, 73 Cal. Rptr. 3d 803 (Cal. Ct. App. 2008) (No. BC 348252) (enumerating at least thirty-five specific responsibilities, including securing financing, selecting the director, supervising on-set operations, consulting with the cinematographer, etc.).

277. *Yari*, 73 Cal. Rptr. 3d at 806.

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* (citing *Ezekial v. Winkley*, 572 P.2d 32, 35 (Cal. 1977)).

283. *Ezekial*, 572 P.2d at 35 (citations omitted).

284. *Potvin v. Metro. Life Ins. Co.*, 997 P.2d 1153, 1156–57 (Cal. 2000) (quoting *Pinsker v. Pac. Coast Soc’y of Orthodontists*, 526 P.2d 253, 260 (Cal. 1974) (en banc)).



Originally applied to labor unions, California courts expanded the doctrine to other private organizations that “exert[] upon a person’s right to pursue a particular profession or calling.”<sup>285</sup> But courts have also limited the doctrine to “private decisions which can effectively deprive an individual of the ability to practice a trade or profession.”<sup>286</sup>

Yari tried to satisfy the deprivation prong by alleging that the Guild and Academy had maintained a “virtual monopoly in the specialized field of motion picture producing.”<sup>287</sup> The court was unconvinced, finding that Yari’s “complaint include[d] many general and conclusory allegations about the defendants’ influence, authority, and prestige, but [did] not allege that defendants’ decision about Best Picture producer credit have that power.”<sup>288</sup> Indeed, the facts showed just the opposite: neither the Guild nor the Academy prevented Yari from producing a long resume of financially successful films (including *Crash*), nor did Yari’s failure to qualify as Oscar-eligible for *Crash* prevent him from producing subsequent work in his chosen profession.<sup>289</sup>

Yari’s final argument claimed that the common law right of fair procedure should apply to the Guild and Academy because they operate in the public interest as quasi-public institutions.<sup>290</sup> Other courts had previously applied the doctrine to private entities that were “quasi-public in nature[]” because of “[t]he important products or services which these enterprises provide, their express or implied representations to the public concerning their products or services, their superior bargaining power, legislative recognition of their public aspect, or a combination of these factors.”<sup>291</sup> The court again disagreed, concluding that public enthusiasm for the motion-picture industry did not cloak the Guild or Academy with status as a quasi-public institution because their corporate purposes did not implicate a public interest.<sup>292</sup>

Yari did not prevail in court,<sup>293</sup> but at least his efforts were entirely aboveboard. In contrast, some award contenders have resorted to dishonest tactics to skirt an academy’s nomination eligibility requirements.<sup>294</sup> In 2024, for

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285. *Ezekial*, 572 P.2d at 35 (describing applications of the “principle to the admission practices of professional societies, membership in which is a practical prerequisite to pursuit of a medical or dental specialty, and to access by practicing physicians to staff privileges in private hospitals” (citations omitted)).

286. *Yari*, 73 Cal. Rptr. 3d at 807.

287. *Id.*

288. *Id.*

289. *Id.* at 808.

290. *Id.* at 808–09 (summarizing Yari’s allegation that “[t]he Academy provides numerous important public services to the public, beginning with its Awards, which it holds out to the public as the most significant and most prestigious in the American motion picture industry, if not the entire world”).

291. *Id.* at 809.

292. *Id.*

293. *Id.* at 805, 811.

294. See, e.g., Katie Strang, *ESPN Used Fake Names to Secure Emmys for ‘College GameDay’ Stars*, THE ATHLETIC (Jan. 11, 2024), <https://theathletic.com/5193316/2024/01/11/espn-emmys-fake-names-college-gameday/> [<https://perma.cc/947H-Z2TJ>].

instance, the Television Academy discovered that ESPN had obtained more than thirty Emmy statuettes on behalf of on-air personalities who were ineligible to contend for individual awards.<sup>295</sup> ESPN did so by submitting nomination entries that falsely credited similar but fictional names as sports producers and then re-engraving the statuettes with the names of on-air talent.<sup>296</sup> Once alerted, the Academy banned some of the scheme's participants from future award consideration.<sup>297</sup> ESPN hired outside counsel to conduct an internal investigation, disciplined all individuals involved in the scheme, returned the fraudulently obtained statuettes, and formally apologized for its "misguided" efforts.<sup>298</sup>

### C. Award Selection Procedures

Several weeks before the annual award ceremony, each academy convenes a formal press conference to announce and publicize the year's award nominations.<sup>299</sup> Each academy then distributes ballots to poll its voting membership for the winner of each award category.<sup>300</sup> All completed ballots which are timely returned and deemed valid are then tabulated by an outside accounting firm.<sup>301</sup> Winners, however, are generally not revealed to the public until the live telecast.<sup>302</sup> The longstanding practice of retaining a professional accounting firm to supervise the balloting process dates back to the 1930s, when scandal embroiled the Academy of Motion Pictures in allegations of corruption and insider manipulation.<sup>303</sup>

295. See *id.* (explaining that the scheme allowed on-air personalities to essentially double dip as fictional associate producers in general categories and as themselves in individual hosting categories).

296. *Id.*

297. *Id.*

298. *Id.*

299. See, e.g., ETonline Staff, *Awards Season Guide 2024: Every Date You Need for the Tonys, Emmys, VMAs and More!*, ET, <https://www.etonline.com/awards-season-guide-2023-24-every-date-you-need-for-the-oscars-golden-globes-and-more-196063> [https://perma.cc/82P2-LHUH] (Jan. 4, 2024, 1:02 PM).

300. See TONY AWARDS, *supra* note 231, at 15–19; ACAD. AWARDS, *supra* note 231, at 6–40; GOLDEN GLOBES, *supra* note 230, at 18–21; RECORDING ACAD., *supra* note 230, at 27–31; TELEVISION ACAD., *supra* note 231, at 6–7.

301. See RECORDING ACAD., *supra* note 230, at 24 ("Results of the final voting are not known until the day of the GRAMMY Awards, when Deloitte delivers sealed envelopes with names of the winners."); ACAD. AWARDS, *supra* note 231, at 6 ("[C]ompleted ballots . . . [are] tabulated by a firm of certified public accountants designated by the Academy President."); GOLDEN GLOBES, *supra* note 230, at 18 ("The voting is monitored by an accounting firm and is done in two phases – Nominations and Final Vote.").

302. See GOLDEN GLOBES, *supra* note 230, at 21 ("The final results are known only by the accounting firm and are kept secret until the announcement at the Golden Globe Awards ceremony."); TELEVISION ACAD., *supra* note 231, at 8 ("All votes are tabulated by the accountants, and winners are announced at the Creative Arts Awards and the Telecast."); MASON WILEY & DAMIEN BONA, *INSIDE OSCAR: THE UNOFFICIAL HISTORY OF THE ACADEMY AWARDS* 107 (Gail MacColl ed., Ballantine Books 1986) ("Having gotten burned by the *Los Angeles Times* the previous year when the paper published the voting results before it was supposed to, the Academy decided to have the identities of the winners remain absolutely secret until they were announced at the banquet.").

303. See WILEY & BONA, *supra* note 302, at 55–58.

That public-relations fiasco prompted the Academy to alter its nomination procedures after it had already publicly announced nominations for the 1935 Oscars Awards.<sup>304</sup> The original nomination slate did not include Bette Davis's 1934 breakout performance in *Of Human Bondage*, an omission that shocked Hollywood insiders given the performance's widespread critical acclaim.<sup>305</sup> That snub led commentators to publicly question the integrity of the Academy's internal tabulation procedures.<sup>306</sup> In an effort to mollify critics, the Academy abruptly changed its award eligibility rules weeks before the 1935 award ceremony to allow write-in candidates who were not originally nominated.<sup>307</sup> But changing the rules midstream only made matters worse by further undermining the legitimacy and objectivity of the Academy's nomination procedures.<sup>308</sup> The following year, to restore confidence in its awards selection process, the Academy retained PricewaterhouseCoopers (now "PwC") to supervise the tabulation of ballots.<sup>309</sup>

But PwC itself soon became the center of controversy arising from its practice of sharing an embargoed list of Oscar winners with the media prior to the Academy Awards ceremony.<sup>310</sup> In 1940, the *Los Angeles Times* made the rogue decision to publish the embargoed list prior to the live awards ceremony.<sup>311</sup> That breach of trust led PwC to end its short-lived embargo practice; in its place, PwC adopted the now-familiar protocol of conducting all awards tabulations in strict secrecy until the live opening of the sealed envelope on stage.<sup>312</sup> That protocol proved reliable for decades until a procedural snag in 2017, when Warren Beatty mistakenly opened the wrong envelope and announced *La La Land* as Best Picture, an error for which PwC accepted blame (explaining that a distracted employee had given Beatty the incorrect envelope).<sup>313</sup>

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304. See *id.* at 55.

305. See *id.*

306. See *id.* at 55, 63.

307. See *The 7th Academy Awards Memorable Moments*, OSCARS, <https://www.oscars.org/oscars/ceremonies/1935/memorable-moments> ("On January 16, 1935, the Academy announced that voters could disregard the printed ballot and write in any name.").

308. See Kristin Hunt, *A Surprise 1936 Oscar Win Banned Write-in Campaigns Forever*, VULTURE (Feb. 22, 2019), <https://www.vulture.com/2019/02/a-surprise-1936-oscar-win-banned-write-in-campaigns-forever.html> [<https://perma.cc/GCS2-37AG>].

309. See Olivia B. Waxman, *The Academy Awards Scandal that First Got PwC Its Job Counting Oscars Votes*, TIME (Mar. 2, 2018), <https://time.com/5182902/pwc-academy-awards-oscars-snob/> [<https://perma.cc/7FKL-EES6>].

310. See WILEY & BONA, *supra* note 302, at 98, 100.

311. See *id.*

312. See *id.* at 107.

313. Yohana Desta, *After Huge Oscar Mistake, PricewaterhouseCoopers Goes into Damage Control Mode*, VANITY FAIR (Feb. 27, 2017), <https://www.vanityfair.com/hollywood/2017/02/pricewaterhousecoopers-oscars-mistake-best-picture> [<https://perma.cc/SR4U-62PR>] ("At the end of the day, we made a human error . . . We made a mistake. What happened was, our partner on the left side of the stage . . . handed the wrong envelope to Warren Beatty.").

### III. TELECAST PRODUCTION, VENUE, AND BROADCAST

This Part explores legal aspects relating to telecast production, venue admission, and public broadcast of live awards ceremonies.

#### A. Telecast Production

Show-business veterans describe the production of live entertainment awards telecasts as the “[t]oughest [j]ob in [s]how [b]usiness.”<sup>314</sup> Awards telecasts are notorious for posing formidable technical challenges, entailing months of meticulous planning and coordination, and requiring nimble real-time reactions to unpredictable circumstances unfolding before live audiences in the auditorium and around the world.<sup>315</sup> Some awards-show producers also view their work as thankless given the impossible task of pleasing diverse stakeholders who are often eager to offer vicious criticism.<sup>316</sup> This Section examines the legal aspects of telecast operations, including production contracts and vendor agreements. Before discussing the law, however, we begin with a brief overview of the telecast production process, key personnel, and labor dynamics.

Executive producers, also known as executive producing showrunners, are the highest-ranking organizational leaders in a telecast’s chain of command.<sup>317</sup> Executive producers determine the ceremony’s overall creative vision, select the masters of ceremony (or opt to proceed without them),<sup>318</sup> and supervise the dozens of line producers assigned to various segments and technical components.<sup>319</sup> Next in the hierarchy is the telecast director assigned the task

314. See Merissa Marr, *The Toughest Job in Show Business*, WALL ST. J. (Jan. 24, 2013, 7:01 PM), <https://www.wsj.com/articles/SB10001424127887323485704578258270986598306> [<https://perma.cc/HM7D-C8UG>]; see also Josh Rottenberg, *Oscar Producers Feeling Good About Their Show. It’s About the Emotion . . . the Energy.*, L.A. TIMES (Apr. 13, 2021, 6:00 AM), <https://www.latimes.com/entertainment-arts/awards/story/2021-04-13/oscar-producers-on-mounting-the-academy-awards-in-a-pandemic-year> [<https://perma.cc/FEQ2-QQP2>]. The 2022 Academy Awards, for instance, employed 5,000 production specialists with a wide range of professional expertise. See Ciera Crawford, *Breaking Down What It Takes to Produce the Oscars This Year*, NPR (Mar. 27, 2022, 6:50 PM), <https://www.npr.org/2022/03/27/1089087139/oscars-data-carpet-by-the-numbers-lights-camera> [<https://perma.cc/DSW6-9K36>].

315. See Marr, *supra* note 314.

316. See Nicole Sperling, *#TimesUp, Moonlight Mulligans, and the Very Tall Task of Producing Oscars 2018*, VANITY FAIR (Feb. 7, 2018), <https://www.vanityfair.com/hollywood/2018/02/the-task-of-producing-oscars-2018-timesup> [<https://perma.cc/S9AP-9J8N>] (quoting a former Academy Awards producer, “I call it a pincushion job . . . . You’re in there to be abused by everybody in the world.”).

317. Cf. Press Release, Acad. of Motion Pictures Arts & Scis., Raj Kapoor Tapped as Executive Producer and Showrunner and Katy Mullan as Executive Producer of the 96th Oscars (Oct. 17, 2023), <https://press.oscars.org/news/raj-kapoor-tapped-executive-producer-and-showrunner-and-katy-mullan-executive-producer-96th> [<https://perma.cc/4SAM-J6DU>].

318. See Adam Chitwood, *The Oscars Won’t Have a Host Again This Year — And That’s a Good Thing*, COLLIDER (Mar. 22, 2021), <https://collider.com/who-is-hosting-oscars-2021/> [<https://perma.cc/ZQ37-GQMS>].

319. See Greg Heilman, *How Are Oscars Hosts Chosen and Who Was in Running to Host This Year?*, AS (Mar. 27, 2022, 4:15), [https://en.as.com/en/2022/03/26/latest\\_news/1648330793\\_886985.html](https://en.as.com/en/2022/03/26/latest_news/1648330793_886985.html) [<https://perma.cc/4SAM-J6DU>].

of implementing the showrunner's vision.<sup>320</sup> The director is responsible for a portfolio of pre-production tasks and, most importantly, supervising the control booth during the live telecast.<sup>321</sup> From that cozy perch, the director monitors the numerous simultaneous live camera feeds (sometimes as many as twenty) and decides in real time which camera angles best capture the ceremony's most memorable moments.<sup>322</sup>

Much of the labor employed in awards telecast productions is unionized. For instance, award telecast directors are represented by the Directors Guild of America (DGA).<sup>323</sup> Likewise, the Writers Guild of America (WGA) represents the professional writers responsible for scripting virtually every moment of telecast airtime aside from award acceptance speeches.<sup>324</sup> Scripted segments typically include the opening number, comedic sketches, and preplanned banter read by presenters from the teleprompter.<sup>325</sup> Some academies also maintain an onsite writing team to draft new jokes backstage during the live telecast; they also help select jokes for the host from a large compilation of scripted comedy

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cc/B65Q-4FZF]; see also Pete Hammond, *Oscars Production Team Set*, DEADLINE (Feb. 9, 2023, 10:56 AM), <https://deadline.com/2023/02/oscars-production-team-95th-academy-awards-1235254734/> [https://perma.cc/PW3Q-9UM5]; *Showrunner – Everything You Need to Know*, NASHVILLE FILM INST., <https://www.nfi.edu/showrunner/> [https://perma.cc/LG57-S3DZ] (describing the responsibilities of showrunners).

320. See NASHVILLE FILM INST., *supra* note 319; see also Scott Myers, *Behind the Curtain: TV Director and Showrunner Responsibilities in Episodic TV*, MEDIUM (Feb. 15, 2012), <https://gointothestory.blcklst.com/behind-the-curtain-tv-director-and-showrunner-responsibilities-in-episodic-tv-682ee7ee9ee5> [https://perma.cc/YX25-GST6].

321. See U.S. OFF. OF PERS. MGMT, POSITION CLASSIFICATION STANDARD FOR AUDIOVISUAL PRODUCTION SERIES, GS-1071, at 3 (1992), <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/1000/gs1071.pdf> [https://perma.cc/5JJC-G5PQ].

322. See Jim Moret, *Fine-Tuning the Oscars Broadcast*, CNN (Mar. 21, 2000, 1:59 PM), <https://edition.cnn.com/2000/SHOWBIZ/TV/03/21/oscars.horvitz/> [https://perma.cc/M3ZG-QHA3]; see also Steve Chagollan, *Oscars Go-To Director*, DGA Q., <https://www.dga.org/Craft/DGAQ/All-Articles/1901-Winter-2019/Glenn-Weiss-Oscars.aspx> [https://perma.cc/2QXR-QFRE]. Telecast directors describe their work as “an adrenaline-based job[]” that requires a keen sense of the cultural zeitgeist and a mastery of the production mechanics essential to the productive of live television. See The Academy, *What It Feels Like to Direct the Oscars*, MEDIUM (Feb. 7, 2017), <https://medium.com/art-science/what-it-feels-like-to-direct-the-oscars-7181981a9215> [https://perma.cc/BW2A-ETCW]; see also Jodi Roth, *The 67th Annual Tony Awards 2013 Behind the Scenes – Director on FIRE!*, YOUTUBE (June 12, 2013), <https://www.youtube.com/watch?v=iANalJgqq0N8> [https://perma.cc/K9SF-3LKK].

323. See DIRECTORS GUILD OF AMERICA, FREELANCE LIVE AND TAPE TELEVISION AGREEMENT 27 (2017), <https://www.dga.org/-/media/F474E90F1B8D44D8BB90FA057EFA8E79.pdf> [https://perma.cc/X3W2-WFHT] (“This category shall include specials such as beauty pageants and awards programs.” (emphasis added)), <https://www.dga.org/Contracts/Agreements/FLTTA2017.aspx> [https://perma.cc/X3W2-WFHT]. The DGA has maintained a long history of amicable labor-management relations, having authorized only one industry-wide strike (lasting only four hours) since its founding in 1936. See Aljean Harnetz, *That's Hollywood: The Strike that Never Was*, N.Y. TIMES (Aug. 9, 1987), <https://www.nytimes.com/1987/08/09/business/that-s-hollywood-the-strike-that-never-was.html> [https://perma.cc/8JE9-SEDB].

324. See WRITERS GUILD OF AM., THEATRICAL AND TELEVISION MINIMUM BASIC AGREEMENT 461 (2020), <https://www.wga.org/uploadedfiles/contracts/mba20.pdf> [https://perma.cc/896Y-DBAX]. The Writers Guild of America (WGA) classifies awards-show telecasts as comedy-variety programs. See *id.*

325. See *id.*

material known as the “playbook.”<sup>326</sup> In 2023, the WGA authorized a nearly five-month strike over compensation and employment terms, a labor stoppage that forced the Television Academy to postpone its Daytime and Primetime Emmy Awards.<sup>327</sup> The Broadway League, however, obtained the WGA’s consent to broadcast the Tony Awards without picketing so long as the telecast did not include any scripted material.<sup>328</sup>

Awards telecasts also rely heavily on acting talent supplied by unionized labor from the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA). In July 2023, SAG-AFTRA joined the WGA in calling an industry-wide strike after its own collective bargaining process deadlocked.<sup>329</sup> Strike rules precluded actors from participating in awards campaigns (known as “[f]or your consideration events”) and live awards telecasts.<sup>330</sup> SAG-AFTRA adopted a similar policy during its last strike in 1980, when all but one of fifty-two nominated actors boycotted the 32nd Primetime Emmy Awards.<sup>331</sup> Powers Boothe, the only guild member to attend that year, gave a defiant acceptance speech upon winning the first and only Emmy of his career,<sup>332</sup> remarking that “[t]his is either the most courageous moment of my

326. See Natalie Walters, *Former Head Writer for the Oscars Shares What It’s Like to Write Jokes for the Show*, BUS. INSIDER (Feb. 28, 2016, 1:00 PM CST), <https://www.businessinsider.com/writing-jokes-for-the-oscars-2016-2> [https://perma.cc/Z6RU-AP8C]. The playbook is a binder containing upwards of 300 pages of joke material that producers maintain just offstage to a rich content collection that hosts can consult during breaks to tailor their humor to action unfolding live on stage. See *id.*

327. See Tracy Brown, *How the Writers’ Strike Is Affecting Awards Shows and Entertainment Events*, L.A. TIMES (May 16, 2023, 6:07 PM), <https://www.latimes.com/entertainment-arts/tv/story/2023-05-16/awards-shows-events-canceled-postponed-disrupted-writers-strike> [https://perma.cc/6FZA-4F8V]; see also Paul Grein, *2023 Primetime Emmy Awards to Be Postponed: Reports*, BILLBOARD (July 28, 2023), <https://www.billboard.com/music/awards/2023-emmy-awards-postponed-1235380970/> [https://perma.cc/W9M4-BE3J]. The strike ended on September 25, 2023. See Memorandum of Agreement for the 2023 WGA Theatrical and Television Basic Agreement (Sept. 25, 2023), [https://www.wga.org/uploadedfiles/contracts/2023\\_mba\\_moa.pdf](https://www.wga.org/uploadedfiles/contracts/2023_mba_moa.pdf) [https://perma.cc/QB86-URKM].

328. See Caitlin Huston, *Tonys to Move Forward with Unscripted, Televised Broadcast Amid Writers Strike*, HOLLYWOOD REP. (May 16, 2023, 11:02 AM), <https://www.hollywoodreporter.com/lifestyle/arts/2023-tonys-televised-unscripted-writers-strike-1235492955/> [https://perma.cc/TPX5-JGEA].

329. See *Hollywood Actors Strike: TV and Movie Actors Vote for Biggest Walkout in Four Decades*, N.Y. TIMES (July 13, 2023), <https://www.nytimes.com/live/2023/07/13/business/actors-strike-sag> [https://perma.cc/FT5W-8HJY]. SAG-AFTRA prohibited its members from performing in and promoting productions that failed to meet the union’s contractual demands. See SAG-AFTRA Strike Notice to Members (July 14, 2023), [https://www.sagaftra.org/sites/default/files/sa\\_documents/Strike%20Notice%20to%20Members.pdf](https://www.sagaftra.org/sites/default/files/sa_documents/Strike%20Notice%20to%20Members.pdf) [https://perma.cc/Q9P4-XUQ5].

330. SAG-AFTRA Strike Notice to Members, *supra* note 329, at 2.

331. See Pete Hammond, *A Look Back at Emmy’s Most Notorious Moment as 2023 Campaigns Head to the Wire*, DEADLINE (Aug. 25, 2023, 10:45 AM), <https://deadline.com/2023/08/emmy-campaign-down-to-wire-shows-notorious-moment-powers-boothe-1235527897/> [https://perma.cc/Z9Q5-FJVE].

332. *Id.* (explaining that Boothe won the award for Outstanding Actor in a Movie or Limited Series for his portrayal of Jim Jones in *Guyana Tragedy*).

career or the stupidest, . . . [b]ut I came here because this is America, and one must do what one believes.”<sup>333</sup>

Telecast productions employ relatively few full-time employees, instead relying mostly on independent contractors hired on a temporary basis to supply goods or to perform a particular service.<sup>334</sup> Telecast productions also contract with outside vendors to procure all necessary supplies including flowers, catering, and, of course, the red carpet.<sup>335</sup> The Academy of Motion Pictures, for example, has maintained a longstanding contract with Signature Systems Group to supply 50,000 square feet of burgundy (*not red*) carpet for the Academy Awards.<sup>336</sup> The Academy does not disclose the shade’s precise specifications, but the color known as Academy Red employs a muted dark tone designed to visually complement the A-list actors photographed atop it.<sup>337</sup>

Litigation between entertainment academies and their vendors is rare, but the handful of contract disputes that have required court adjudication offer an interesting glimpse into the business operations of awards telecast production. In 2019, for instance, the Recording Academy filed a civil action against a publishing company it hired to print the official program book for the 61st Annual Grammy Awards.<sup>338</sup> The contract, however, did not obligate the Recording Academy to pay the vendor for printing the programs, but rather, just the opposite: the contract obligated the vendor to pay the Recording Academy \$125,000 for the right to print and sell advertisements inside the official program book (subject to the Academy’s approval).<sup>339</sup> The vendor failed

333. *Id.*; see also KCAL News, *Acclaimed Actor Powers Boothe Dead at 68, Won Emmy for Playing Cult Leader Jim Jones*, CBS L.A. (May 14, 2017, 8:37 PM), <https://www.cbsnews.com/losangeles/news/obit-powers-boothe/> [https://perma.cc/GUH2-HWK8].

334. See R.T. Watson, *How the Academy Behind the Oscars Makes Money*, WALL ST. J. (Apr. 23, 2021, 3:39 PM), <https://www.wsj.com/articles/the-academy-behind-the-academy-awards-by-the-numbers-11619017510> [https://perma.cc/2QHR-33XN]. Among the elite academies, the Academy of Motion Pictures employs the largest staff, 450 full-time employees, but requires 5,000 employees to produce the Oscars. *See id.*

335. See Daniel Miller, *The Red Carpet Isn’t Actually Red, and Other Secrets Underfoot at the Oscars*, L.A. TIMES (Feb. 24, 2017, 3:00 AM), <https://www.latimes.com/business/hollywood/la-fi-ct-oscars-red-carpet-20170224-htmlstory.html> [https://perma.cc/CQ3B-UEPF].

336. *See id.*

337. *See id.*

338. See First Amended Complaint for Damages at ¶ 15, Nat’l Acad. of Recording Arts & Scis, Inc. v. FX Grp, LLC, No. 2:19-cv-10417 (C.D. Cal. filed Dec. 13, 2019). “Attendees [of the Grammy Awards] have traditionally received a program book—a 200-plus-page glossy, celebratory souvenir guide to that year’s GRAMMY Awards ceremony.” *Id.* ¶ 14.

339. *See id.* ¶¶ 16, 19.

Under the terms of their arrangement, the Recording Academy granted Defendant the exclusive right to design, create, manufacture, produce, sell and distribute the GRAMMY Awards program book for that year. The Recording Academy provided intellectual property rights and content to Defendant, and Defendant sold advertising space in the program book. Defendant was entitled to keep all advertising revenue (subject to its payment obligations to the Recording Academy). In exchange, Defendant agreed to deliver the program books to the Recording Academy free of charge, pay the Recording Academy royalties on advertising sales, and pay the Academy a predetermined guaranteed amount, as stipulated in the agreement.

*Id.* ¶ 16.

to pay the entire amount due to the Academy and then defaulted when the Academy filed suit for breach of contract.<sup>340</sup> The dispute in that litigation was legally insignificant, but the case publicly revealed the existence of a contract that demonstrated the Academy's remarkable bargaining power to obtain free goods and services that, in turn, help to minimize its cost of telecast production.<sup>341</sup>

Litigation between the HFPA and the Golden Globes' longstanding production company reveals some of the risks assumed by academies when outsourcing key functions of telecast production to an outside vendor. The relationship that soured in that case began in 1983, when the HFPA contracted with Dick Clark Productions (DCP) "to produce the television production of the Golden Globe Awards show and to help license the rights to a broadcaster for telecast."<sup>342</sup> That contract remained amicably intact for nearly three decades.<sup>343</sup> In 2010, however, the HFPA grew concerned that DCP was exerting too much control over the Golden Globes.<sup>344</sup> That concern led the HFPA to reconsider its relationship with DCP when its agreement expired in 2011.<sup>345</sup>

According to the HFPA, just as the parties were close to reaching an agreement on contract renewal terms, DCP purported to grant NBC an exclusive broadcast license renewable for up to seven years without the HFPA's knowledge or consent.<sup>346</sup> The HFPA claimed that DCP negotiated the licensing agreement with NBC at "well below market rates" for the purpose of securing DCP's contract renewal and that the below-market renewal financially harmed the HFPA.<sup>347</sup> The HFPA alleged that DCP had covertly renewed the NBC contract because DCP was financially stressed and believed it could obtain \$165 million in debt financing by collateralizing intellectual property from the Golden Globes' copyright library.<sup>348</sup> The HFPA sued DCP's corporate parent for trademark infringement, false association, and breach of contract, among other counts.<sup>349</sup>

Following a lengthy bench trial, the district court concluded that DCP's interpretation of the agreement was correct and that DCP had "the right to

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340. See Nat'l Acad. of Recording Arts & Scis., Inc. v. FX Grp., LLC, No. CV 19-10417, 2020 WL 5237752, at \*1 (C.D. Cal. June 1, 2020).

341. See First Amended Complaint for Damages, *supra* note 338, at ¶ 19.

342. See Complaint at ¶ 3, Hollywood Foreign Press Ass'n v. Red Zone Cap. Partners II, L.P., No. CV10-8833 (C.D. Cal. filed Nov. 17, 2010) (alleging that, "[i]n return for its services, dcp received a handsome share of the revenue generated by the show").

343. See *id.* ¶¶ 3–4.

344. See *id.* ¶¶ 35–41.

345. See *id.* ¶ 43.

346. See *id.* ¶ 48.

347. See *id.* ¶ 52.

348. See *id.* ¶ 53.

349. See *id.* ¶¶ 54–126.



license the Golden Globes Award Show to NBC (but not to others) so long as NBC commits to broadcast that show, and [DCP could] do so even without the approval of the Hollywood Foreign Press Association.”<sup>350</sup> In its post-trial factual findings, the court skewered the HFPA for sloppy management practices that led it to grant DCP such sweeping rights in the Golden Globes production:

HFPA suffered from the absence of sound, business-like practices. It also lacked consistent leadership. It elected a new President every year for a one year term, with a maximum of two consecutive terms. Some elections triggered bitter feelings. HFPA members have always been dedicated to the success of the Golden Globes Award Show. But often they succumbed to bouts of pronounced turmoil and personal feuds. In contrast, dcp acted in a consistently business-like fashion, and for almost all of the 27 year relationship it had with HFPA before this suit was filed dcp was represented by one experienced executive who was adept at dealing fairly and effectively with the often amateurish conduct of HFPA.<sup>351</sup>

The court’s factual findings go on to describe transcripts from a pivotal meeting between DCP (including Dick Clark himself) and HFPA to finalize negotiations of the agreement that later devolved into litigation:

[M]any of the HFPA members spent inordinate amounts of time focusing on trivial matters. They fussed about the start time for the broadcasts; the length of the show (2 v. 3 hours); the format (how much entertainment? dinner setting v. theatre?); what day of the week the show would be broadcast; and whether to serve soup or caviar, etc. Moreover, they bickered about whether members were hogging the floor. This unbusiness-like display of misplaced priorities was characteristic of how HFPA often functioned throughout the years, and it is consistent with the inference—which this Court draws—that on September 22, 1993 most of the HFPA members were far less interested in the terms of the dcp-HFPA contract that [DCP executive] La Maina left behind for them to review than they were with the heady prospect of being on NBC.<sup>352</sup>

The central dispute was whether, in executing the 1993 contract, HFPA intended to grant DCP options to produce the Golden Globes after the initial eight-year term if NBC were to extend the term of its telecast agreement.<sup>353</sup> The HFPA claimed that any further extensions were contingent upon its consent, but that interpretation was not supported by the contract’s plain language or any extrinsic evidence.<sup>354</sup> Amazingly, that seemingly simple issue required fifty

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350. See *Hollywood Foreign Press Ass’n v. Red Zone Cap. Partners II*, 870 F. Supp. 2d 881, 884 (C.D. Cal. 2012), *judgment entered sub nom.* *Hollywood Foreign Press Ass’n v. Red Zone Cap. Partners II, L.P.*, No. CV10-8833 AHM (FMOX), 2012 WL 13006255 (C.D. Cal. July 24, 2012).

351. *Id.* at 885 (citations omitted).

352. *Id.* at 891 (footnote omitted).

353. *Id.* at 915.

354. *Id.* at 918, 924.

pages of factual findings and conclusions of law, a judicial burden prompting the court to lament that “[r]esolution of [this] dispute . . . should not have required a trial.”<sup>355</sup>

### B. *Event Premises: Invitations, Tickets, and Press Credentialing*

Tickets to elite entertainment awards are hot commodities and always in short supply.<sup>356</sup> Admission to the most exclusive ceremony, the Oscars, is by invitation only, and most of the 3,400 tickets are distributed to award nominees and their guests, movie-studio executives, telecast sponsors, and various dignitaries.<sup>357</sup> The few hundred remaining tickets are lotteried to Academy members for \$150 to \$750 per ticket depending on seat location.<sup>358</sup> The Grammys are also by invitation only,<sup>359</sup> though its seating capacity for 20,000 renders its venue much more accessible than the Oscars.<sup>360</sup> Grammy ticket prices vary by tier level: platinum (\$2,000), gold (\$1,000), silver (\$375), and bronze (\$250).<sup>361</sup> The Emmys are also by invitation only; complimentary tickets are distributed to nominees while other tickets are available for purchase by Academy members.<sup>362</sup> The Golden Globes occupies the smallest venue of the elite award shows, the Beverly Hilton ballroom, with a seating capacity for only 1,400 invited guests.<sup>363</sup> The Tony Awards, by contrast, is the only major

355. *Id.* at 884.

356. See e.g., Glenn Whipp, *Who Gets Invited to the Oscars?*, L.A. TIMES (Mar. 4, 2018, 3:00 AM), <https://www.latimes.com/entertainment/movies/la-et-mn-oscars-tickets-20180228-story.html> [<https://perma.cc/TU2L-XFMY>]; see also *How Do You Get a Ticket to the Oscars? Here Are the Basics, Minus Begging and Pleading*, L.A. TIMES (Mar. 26, 2022, 6:00 AM), <https://www.latimes.com/entertainment-arts/movies/story/2022-03-26/oscars-2022-tickets-how-to-get-invited-oscars> [<https://perma.cc/KVD6-9L2H>].

357. See Whipp, *supra* note 356; *How Do You Get a Ticket to the Oscars?*, *supra* note 356.

358. See Whipp, *supra* note 356; *How Do You Get a Ticket to the Oscars?*, *supra* note 356; Andrew Pulver, *Costing the Oscars: And Your Bill for the Evening Is . . . \$44m*, THE GUARDIAN (Feb. 26, 2017, 6:04 PM), <https://www.theguardian.com/film/2017/feb/25/oscars-2017-how-much-does-hollywood-biggest-party-cost-earn> [<https://perma.cc/4QUd-PEMX>].

359. Nat’l Acad. of Recording Arts & Scis., Inc. v. On Point Events LP, No. CV 08-0856 DSF, 2009 WL 10671400, at \*1 (C.D. Cal. Aug. 12, 2009); see also Paul Grein, *Sorry, Recording Academy Members: No Official Grammy Afterparty This Year*, BILLBOARD (Feb. 24, 2022), <https://www.billboard.com/music/awards/no-official-grammy-afterparty-2022-1235035699/> [<https://perma.cc/84AK-W56U>].

360. See Paul Grein, *Grammy Awards Set Date, Location for 2023 Show*, HOLLYWOOD REP. (July 14, 2022, 7:52 AM), <https://www.hollywoodreporter.com/news/music-news/2023-grammy-awards-date-location-1235180380/> [<https://perma.cc/439N-Y36C>]; *Crypto.com Arena*, METROLINK, <https://metrolinktrains.com/explore/los-angeles-county/crypto-arena-los-angeles/> [<https://perma.cc/6CGT-KGSU>].

361. See Grein, *supra* note 359.

362. See *Emmy Awards Frequently Asked Questions*, *supra* note 230. Nominees who are members of the Television Academy receive two free tickets while nonmembers receive one with the option to purchase an additional ticket for \$750. See TELEVISION ACAD., *supra* note 231.

363. See Emma Dibdin, *The Golden Globes Has 1400 Guests. Here’s How They Decide Where to Put Them*, ELLE (Jan. 4, 2018, 1:53 PM), <https://www.elle.com/culture/movies-tv/a14516275/golden-globe-awards-2018-seating-chart/> [<https://perma.cc/8M4M-AUFQ>]. Nominees and HFPA receive two complimentary tickets, and the remaining seats are sold to select industry representatives. *Id.*

entertainment awards show to sell tickets to the general public.<sup>364</sup> Tony nominees receive two complimentary tickets, and the rest are sold to league members, industry professionals, and outside purchasers.<sup>365</sup>

Well-settled common law principles delineate the legal rights that belong to a spectator who acquires an event ticket: a ticket is a revocable license to enter an exhibition proprietor's premises.<sup>366</sup> By selling a ticket to a spectator, a proprietor enters into a contract entitling the spectator to admission at the specified time and place.<sup>367</sup> The license is revocable at will, and upon revocation, the spectator becomes a trespasser subject to ejection.<sup>368</sup> When ejected from the event premises, a spectator may recover damages for the ticket price only if the proprietor's refusal to issue a refund constitutes a contractual breach.<sup>369</sup>

A proprietor has broad discretion in regulating admission to exhibitions that are open to the public. As one state supreme court explained:

[T]he proprietor is not bound to admit everybody who presents a ticket—apart from discrimination on account of race or color forbidden by [civil rights laws], and he may attach reasonable restrictions in the use of the tickets and refuse admission to those who pay more than the price printed upon the ticket or who purchase them from a ticket broker or speculator.<sup>370</sup>

In the case of a private exhibition to which the general public is not invited, a proprietor “alone ha[s] the exclusive right to determine who should be permitted to attend.”<sup>371</sup> Thus, because a proprietor has broad discretion to

364. See Matt Levy, *How to Buy Tickets to Attend the Tony Awards 2022 at Radio City Music Hall*, N.J.COM (June 6, 2022, 3:54 PM), <https://www.nj.com/live-entertainment/2022/06/how-to-buy-tickets-to-attend-the-tony-awards-2022-at-radio-city-music-hall.html> [https://perma.cc/R5EH-R68M].

365. Nelson Pressley, *The Tale of the Tight Tony Ticket*, WASH. POST (June 9, 2016), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/06/09/the-tale-of-the-tight-tony-ticket/> [https://perma.cc/ND5J-4WZU]. In 2022, tickets were sold for \$581 (plus fees) with discounted seats made available to New York metro area students for \$250. See Levy, *supra* note 364; see also *Student Rush Tickets Available for the 75th Annual Tony Awards*, TONY AWARDS (June 6, 2022), <https://www.tonyawards.com/press/student-rush-tickets-available-75th-annual-tony-awards/> [https://perma.cc/4NMB-X2ZX]. Ticket prices, however, can run as high as \$1,750. See Pressley, *supra*.

366. See *McCrea v. Marsh*, 78 Mass. (12 Gray) 211, 213 (1858).

367. See *id.*; see also Note, *Rights Under a Theatre Ticket*, 14 HARV. L. REV. 455, 455 (1901) (“[T]he right conferred by a theatre ticket is a contract implied from the sale and delivery of the ticket, which gives the holder a license to enter the theatre and watch the performance.”).

368. See *Burton v. Scherpf*, 83 Mass. (1 Allen) 133, 134 (1861) (“By remaining [on the premises after revocation of the license], and refusing to depart upon request, [the spectator] became a trespasser; and the [venue] had a right to remove him by the use of such degree of force as his resistance should render necessary for that purpose.”); *Ladd v. Uecker*, 780 N.W.2d 216, 221 (Wis. Ct. App. 2010) (“[A] ticket of admission to a place of amusement is simply a license to view a performance that the owner or proprietor may revoke at will.”).

369. See *Marrone v. Wash. Jockey Club of D.C.*, 227 U.S. 633, 636–37 (1913); *Rights Under a Theatre Ticket*, *supra* note 367, at 455 (“[T]he proprietor may exclude any spectator at any time, and be answerable only on the contract for whatever legal damages his breach has caused.”); *Sweeney v. United Artists Theater Cir., Inc.*, 119 P.3d 538, 540 (Colo. App. 2005) (“If a license is revoked, the license holder’s recovery is limited to the purchase price.”).

370. *Foster v. Shubert Holding Co.*, 55 N.E.2d 772, 775 (Mass. 1944) (citations omitted).

371. *MacLeod v. Fox W. Coast Theatres Corp.*, 74 P.2d 276, 278 (Cal. 1937).

regulate admission to an exhibition, “an event sponsor may impose restrictions on the transferability of tickets which it issues.”<sup>372</sup>

To varying degrees, all elite entertainment academies exercise their broad discretion to regulate or prohibit the transferability of award show tickets.<sup>373</sup> Transferability restrictions enable the academies to protect the safety of A-list guests while maintaining tight control over the attendees permitted onto the premises.<sup>374</sup> Award-show ticketholders are required to sign a release that imposes a host of terms and conditions (including nontransferability), violation of which entitles the proprietor to cancel the ticket and eject the violator.<sup>375</sup>

The academies have occasionally attempted to enforce their ticket nontransferability terms in court. For instance, in *Academy of Motion Picture Arts & Sciences v. Olsen*,<sup>376</sup> the ticket-scalping case we mentioned in the Introduction, the Academy of Motion Pictures prevailed on claims against a ticket broker (Mr. Olsen) who resold a pair of Oscar tickets for \$10,000 in violation of the nontransferability condition.<sup>377</sup> Among the court’s rulings against Mr. Olsen was its finding that he had knowingly induced the authorized ticketholder (an Academy member) to breach his own ticketing contract with the Academy.<sup>378</sup> Most importantly for the Academy, the appellate court affirmed the injunction that permanently enjoined Olsen, who was in the business of brokering tickets to high-profile events, from transacting in Academy Award ceremony tickets in the future.<sup>379</sup>

On the heels of the Motion Picture Academy’s litigation success in *Olsen*, the Recording Academy brought a similar complaint against a commercial ticket reseller.<sup>380</sup> Unlike the plaintiff in *Olsen*, which prioritized injunctive relief, the

372. *People v. Waisvisz*, 582 N.E.2d 1383, 1386 (Ill. App. Ct. 1991). For a critique of the proprietor’s right to restrict ticket transferability in the sports-exhibition context, see Alexander P. Frawley, Comment, *Revoking the Revocable License Rule: A New Look at Resale Restrictions on Sports Tickets*, 165 U. PA. L. REV. 433 (2017).

373. *See Nat’l Acad. of Recording Arts & Scis., Inc. v. On Point Events LP*, No. CV 08-0856, 2009 WL 10671400, at \*1 (C.D. Cal. Aug. 12, 2009); *Acad. of Motion Picture Arts & Scis. v. Olsen*, No. B159508, 2004 WL 292134, at \*1 n.1 (Cal. Ct. App. Feb. 17, 2004).

374. *See Olsen*, 2004 WL 292134, at \*1 (“The Academy imposes this restriction for security reasons because the awards ceremony is a target for celebrity stalkers, terrorists, and other persons who might disrupt the annual telecast.”).

375. *On Point Events*, 2009 WL 10671400, at \*1; *see also id.* at \*2 (“The authorized purchaser of the tickets purchased by On Point signed the Ticket Release acknowledging and agreeing to the transfer restrictions.”).

376. *Olsen*, 2004 WL 292134.

377. *See id.* at \*1–2.

378. *Id.* at \*5 (crediting “deposition testimony that Olsen knew of the prohibition on resale”).

379. *Id.* at \*9 (affirming injunction order); *Acad. of Motion Picture Arts & Scis. v. Olsen*, No. BC189905, 2002 WL 34359769 (Cal. Super. Ct. Feb. 6, 2002) (setting forth terms of injunction). However, the Academy’s injunction did not prevent Olsen from attempting to scalp tickets for other events. In 2015, for instance, Olsen filed a class action against the New Jersey Devils seeking to challenge the professional hockey team’s ticket nontransferability policy. *See Amended Class Action Complaint*, *Olsen v. N.J. Devils, LLC*, No. 15-CV-02807 (D.N.J. July 31, 2015). The claim was dismissed. *Order*, *Olsen v. N.J. Devils, LLC*, No. 15-CV-02807 (D.N.J. June 10, 2016).

380. *On Point Events*, 2009 WL 10671400, at \*2.

Recording Academy sought to recover monetary damages with the hope that a significant judgment might deter other would-be ticket resellers.<sup>381</sup> The Recording Academy's strategy of seeking an example-setting damages award, however, required it to offer proof to support its allegations of economic injury.<sup>382</sup>

In 2007, a business known as On Point Events marketed itself as an "independent Grammy Awards travel package and ticket broker" offering VIP tickets to the 2008 Grammys.<sup>383</sup> The Recording Academy sent On Point a cease-and-desist letter in response to the marketing, but On Point nevertheless obtained "two \$800 Gold Level tickets to the GRAMMY Awards and two \$200 tickets to the GRAMMY Celebration Party" from an authorized ticketholder and found a buyer willing to pay \$10,500 for the package.<sup>384</sup> The Recording Academy sued On Point for false advertising and unfair competition under the Lanham Act, in addition to state claims for contractual interference, deceptive trade practices, and inducement to trespass.<sup>385</sup> Although the Recording Academy filed its complaint three days before the 2008 Grammys, it did not prevent On Point's customer from attending the event.<sup>386</sup> At the close of discovery, the court denied both parties' cross-motions for summary judgment.<sup>387</sup>

The heart of the Recording Academy's case were Lanham Act claims that required proof of brand confusion and damages.<sup>388</sup> On its false advertising claim, for instance, the Academy argued that On Point's actions "diminish[ed] the prestige and glamour" of the Grammy Awards as "a private, exclusive[,] and glamorous recording industry event."<sup>389</sup> But the court found that the Academy could not substantiate its allegation "that it had *actually* been damaged."<sup>390</sup> The Academy could not articulate how the practice of ticket reselling undermined the prestige and glamor of its telecast.<sup>391</sup> Indeed, the Academy failed to present

381. *See id.*

382. *Id.* at \*5.

383. *Id.* at \*1 (quoting Statement of Uncontroverted Facts and Conclusions of Law in Support of Plaintiff's Motion for Summary Judgment, or Alternatively, Partial Summary Judgment ¶ 30, Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events LP, No. CV 08-0856 (C.D. Cal. Aug. 12, 2009)).

384. *Id.* at \*2.

385. *Id.*

386. *Id.* The complaint was filed on February 7, 2008. Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP, 256 F.R.D. 678, 679 (C.D. Cal. 2009). The 2008 Grammy Awards were held on February 10, 2008. *On Point Events*, 2009 WL 10671400, at \*1.

387. *Id.*

388. *Id.* at \*3–4.

389. *Id.* at \*4 (second alteration in original). The Academy also claimed that tolerating a secondary market for Grammy tickets would cause a loss of corporate sponsorships, which are often motivated by the ability of sponsors to obtain tickets that are not otherwise publicly available for sale. *Id.*

390. *Id.*

391. The court construed the Academy's argument as claiming "that the attendance of people who bought tickets to the GRAMMY Awards through unauthorized channels damage[d] the exclusivity of the event and therefore harm[ed] the goodwill associated with the GRAMMY Awards." *Id.*

any evidence that it was injured by that harm, so the court found that its “theories never r[o]se above mere plausibility.”<sup>392</sup>

The court was similarly unimpressed by the Academy’s unfair competition claim. The Academy alleged that On Point’s use of the Grammy logo was likely to cause confusion or deceive ticket purchasers into believing that On Point’s tickets were authorized and guaranteed admission to the Grammys.<sup>393</sup> But the Recording Academy provided no evidence that On Point’s customer was *actually* confused about the legal status of the tickets.<sup>394</sup> Moreover, the Academy did, in fact, honor the tickets by seating On Point’s customer, which the court found “could indicate that the Academy eventually approved of On Point’s activities.”<sup>395</sup>

Entertainment academies also tightly restrict media access to the telecast premises to specially credentialed journalists. Each academy maintains its own credentialing procedures and protocols for granting backstage access to the press room where award winners can be interviewed after stepping off stage.<sup>396</sup> The intrusion of uncredentialed paparazzi is a serious breach of security, as one especially persistent photographer learned the hard way.

Ice-cream-store owner and part-time photographer Stephen Winick has been repeatedly ejected from high-profile events, including the Golden Globe Awards, for attempting to gain unauthorized access. At the 2012 Golden Globes, private security at the Beverly Hilton spotted Winick traversing the event ballroom and lobby with a camera.<sup>397</sup> An onsite police officer assigned to patrol the event recognized Winick from a 2008 trespass incident at the same venue.<sup>398</sup> After consulting with the officer on how to perform a citizen’s arrest,<sup>399</sup> the hotel’s operations director instructed his security team to carry out the ejection.<sup>400</sup> The officer then transported Winick to the Beverly Hills Police Department Jail, where Winick was held in custody overnight and later charged with criminal trespass.<sup>401</sup> In the dueling civil actions that followed, a jury awarded the hotel \$1 in damages against Winick for trespass and rejected Winick’s claim for false imprisonment.<sup>402</sup> The court “also permanently enjoined

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392. *Id.* (quoting *Transworld Airlines, Inc. v. Am. Coupon Exch., Inc.*, 913 F.2d 676, 693 (9th Cir. 1990)).

393. *Id.*

394. *Id.*

395. *Id.*

396. *See, e.g.*, Academy Awards Press Credential Application (on file with authors).

397. *See* *Winick v. Hilton Mgmt., LLC*, No. B280774, 2018 WL 5318191, at \*1 (Cal. Ct. App. Oct. 29, 2018).

398. *See id.* at \*2 (noting that at the 2008 “event, [the officer] had chased Winick and cited him for resisting arrest after he was observed ‘where he wasn’t supposed to be’”).

399. *See* CAL. PENAL CODE § 837 (West 1872) (providing that “[a] private person may arrest another[] . . . [f]or a public offense committed or attempted in his presence”).

400. *Winick*, 2018 WL 5318191, at \*2.

401. *Id.*

402. *Id.* at \*3.

Winick from ‘entering that portion of the Hotel’s property where any award show or private event is being held at the Hotel unless [Winick] has a valid ticket, media credential or invitation.’”<sup>403</sup>

In 2014, however, Winick violated the injunction by trespassing at the Golden Globes venue yet again.<sup>404</sup> The venue’s private security firm had placed Winick on its “No-Fly List” of banned persons, but Winick somehow obtained a credential that granted him access to the backstage press room.<sup>405</sup> According to Winick, when event security became aware of his presence, they removed him violently by “lift[ing] him out of his chair by his leg, buttocks, shoulder, and neck[,] and carr[y]ing him out.”<sup>406</sup> A heated exchange then occurred while Winick was detained by event security personnel.<sup>407</sup> Winick subsequently sued the Golden Globe’s production company and its private security firm for false imprisonment, assault, and battery.<sup>408</sup>

Winick lost again but not before scoring at least one rhetorical victory. The appellate court held that the citizen’s arrest was improper because it occurred before anyone told Winick to vacate: “[T]here is no provision that generally makes it a crime to enter private property without permission. Instead, . . . a person generally commits a criminal trespass [on private property] only after the owner . . . asks the person to ‘leave’ the property and the person refuses or fails to do so.”<sup>409</sup> But the defendants ultimately prevailed because the court concluded that Winick *did* commit civil trespass, which “privileged” the security guards to use reasonable force to terminate the intrusion.<sup>410</sup> As one commentator summed up the outcome: “From now on, perhaps it would be a good idea for Stephen Winick to stick to selling ice cream.”<sup>411</sup> Other uncredentialed paparazzi would be well-advised to do the same.

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403. *Id.* (alteration in original).

404. *See* Winick v. Noble LA Events, Inc., No. B305697, 2022 WL 152410, at \*1 (Cal. Ct. App. Jan. 18, 2022).

405. *Id.*

406. *Id.* at \*3.

407. *Id.* at \*4 (noting Winick’s testimony that he sustained bruises from the defendants’ physical removal but did not seek medical attention or document his injuries with any photos “even though he worked as a photographer”).

408. *Id.* at \*1.

409. *Id.* at \*7.

410. *Id.* at \*8. The court concluded that “substantial evidence supported the trial court’s finding [the security guards] used reasonable force to remove Winick from the press room.” *Id.* at \*9.

411. Maureen Rubin, *Paparazzi Photographer Can Be Detained for Gate-Crashing Golden Globe Awards*, LAW COMMENT. (Feb. 4, 2022), <https://www.lawcommentary.com/articles/paparazzi-photographer-can-be-detained-for-gate-crashing-golden-globe-awards> [<https://perma.cc/9PU5-9TP6>].

### C. FCC Broadcast Regulations

Federal law regulates the transmission of radio signals, in part, by requiring all broadcasters to obtain a license from the FCC.<sup>412</sup> Licensure requires an applicant to satisfy various FCC-prescribed requirements “as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station.”<sup>413</sup> The FCC may also consider the public interest.<sup>414</sup> A broadcast license confers the licensee an exclusive right to operate an assigned transmission franchise in the public domain.<sup>415</sup> That exclusive right, however, is “burdened by enforceable public obligations”<sup>416</sup> that require compliance with, among other rules, federal bans against “utter[ing] any obscene, indecent, or profane language by means of radio communication” between the hours of 6:00 a.m. and 10:00 p.m.<sup>417</sup> To redress cases of noncompliance, the FCC’s enforcement authority includes the power to impose civil fines and to revoke or deny a broadcast license.<sup>418</sup>

The FCC’s first foray into the regulation of entertainment awards telecasts dates back to 1968, when viewers complained to the agency that NBC’s broadcast of the Golden Globe Awards “contained substantial misrepresentations as to the procedures followed in selecting the winners and

412. See 47 U.S.C. § 151 (establishment of the FCC to regulate “communication by wire and radio”); *id.* § 301 (broadcast licensure requirement); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 505–06 (2009) (describing the Communications Act of 1934 as “establish[ing] a system of limited-term broadcast licenses subject to various ‘conditions’ designed ‘to maintain the control of the United States over all the channels of radio transmission’” (quoting 47 U.S.C. § 301)).

413. 47 U.S.C. § 308(b); see also *id.* § 310 (establishing foreign-ownership restrictions).

414. See *id.* § 309(a), (k) (including “public interest” among factors to be considered by the FCC in granting or renewing a broadcast license); see also *Philco Corp. (Philco) v. FCC*, 293 F.2d 864, 868 (D.C. Cir. 1961) (noting that “competitive practices may make an applicant unworthy whether or not they violate the antitrust laws” and that “[t]he purpose of the protest section of the [Communications] Act ‘is to search out the public interest’” (first citing *Mansfield J. Co. (FM) v. FCC*, 180 F.2d 28, 33 (D.C. Cir. 1950); and then quoting *Hall v. FCC*, 237 F.2d 567, 571 (D.C. Cir. 1956))). The FCC’s reference materials state that it “is responsible for seeing that stations . . . meet their obligations to the community. It considers complaints by members of the community against a station and before issuing or renewing a broadcast station license, must find that its action will serve the public interest, convenience, and necessity.” *Broadcast Procedure Manual*, 49 F.C.C.2d 1, 2 (1974).

415. *CBS, Inc. v. FCC*, 453 U.S. 367, 395 (1981).

416. *Id.*

417. 18 U.S.C. § 1464 (“Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.”); *Action for Children’s Television v. FCC*, 58 F.3d 654, 669–70 (D.C. Cir. 1995) (limiting FCC authority to enforce indecency ban to programs broadcast between 6:00 a.m. and 10:00 p.m.); 47 C.F.R. § 73.3999 (prohibiting radio and television licensees from broadcasting any obscene material and from broadcasting indecent material between 6:00 a.m. and 10:00 p.m.). In 1960, in the wake of the notorious quiz-show scandal, Congress also declared it unlawful to broadcast “contests of knowledge, skill, or chance” in which rigged outcomes are prearranged “with intent to deceive the listening or viewing public.” See 47 U.S.C. § 509; see also Note, *Regulation of Program Content by the FCC*, 77 HARV. L. REV. 701, 701 (1964) (describing the FCC’s actions “against broadcasters of spurious public contests”).

418. See 47 U.S.C. §§ 503(b)(1), 309(k), 312(a)(6).



the basis on which they were chosen.”<sup>419</sup> The FCC conducted a field investigation, which revealed that the broadcast “contained substantial misrepresentations to the public by references to ‘secrecy’ as to the identity of winners and through the ritual of opening of sealed envelopes to disclose the names of winners.”<sup>420</sup> It also revealed that “winners of the World Film Favorite awards prior to 1968 were not, as announced on the air, chosen on the basis of surveys of the readers of foreign publications, but were chosen basically by the HFPA’s board of directors,” and that the actual voting procedures differed from those announced to the public.<sup>421</sup> The FCC thus found that NBC had failed to comply with its federal regulatory obligations.<sup>422</sup> The FCC ultimately concluded that NBC’s broadcast of the Golden Globes did not disqualify its Los Angeles affiliate from receiving a broadcasting license.<sup>423</sup> But the following year, NBC declined to broadcast the awards ceremony, thus marking the start of a turbulent decade for the HFPA during which the Golden Globes were televised only sporadically.<sup>424</sup>

During the last few decades of the twentieth century, the FCC seemed to relax its enforcement of federal indecency regulations, at least with respect to entertainment awards telecasts. At the 1974 Academy Awards, for instance, just as the Oscars host was about to introduce Elizabeth Taylor, a nude intruder streaked across the stage.<sup>425</sup> Using off-the-cuff humor to diffuse the interruption, the host quipped, “[I]sn’t it fascinating to think that probably the only laugh that man will ever get in his life is by stripping off and showing his shortcomings?”<sup>426</sup> The broadcaster which televised the spectacle appears to have escaped the incident without any publicly noticed enforcement action by the FCC.

As noted in our Introduction, however, under the George W. Bush Administration, the FCC adopted a markedly stricter enforcement policy regarding indecency and obscenity. Until 2004, federal indecency policy had remained mostly unchanged in the period following the landmark case of *FCC*

419. Inquiry into Hollywood Golden Globe Awards as to Program Resp., 12 F.C.C.2d 778, 778 (1968).

420. *Id.* at 779–80.

421. *Id.*

422. *Id.* at 780 (“[W]e believe that your Golden Globe Award broadcasts prior to 1968 substantially misled the public as to the basis on which winners were chosen and the procedures followed in choosing them, and that you were seriously delinquent in this respect, particularly in view of the fact that even routine inquiry would have revealed most of the facts set forth herein.”).

423. Applications of Nat’l Broad. Co., Inc. for Renewal of Broad. License, 24 F.C.C.2d 218, 220–21 (1970) (concluding that “NBC’s conduct did not rise to that level prohibited by the Communications Act” so the conduct did not “warrant the possible disqualification of NBC to be a licensee”).

424. See O’NEIL, *supra* note 31, at 796–97.

425. See Lawrence M. Friedman & Joanna L. Grossman, *A Private Underworld: The Naked Body in Law and Society*, 61 BUFF. L. REV. 169, 192 (2013) (describing the “celebrated incident” when “Robert Opel ran naked across the stage before a television audience of seventy-six million”).

426. See Alex Heigl, *The Life and Tragic Death of Infamous Oscars Streaker Robert Opel*, N.Y. POST (Feb. 9, 2020, 4:44 PM), <https://nypost.com/2020/02/09/the-life-and-tragic-death-of-infamous-oscars-streaker-robert-opel/> [<https://perma.cc/2TJM-DEN2>].

*v. Pacifica Foundation*,<sup>427</sup> which upheld the FCC's enforcement of indecency regulations against a New York radio station for its mid-afternoon broadcast of George Carlin's prerecorded satirical monologue entitled "Filthy Words."<sup>428</sup> In *Pacifica*, the FCC stopped short of labeling Carlin's material as obscene, but argued that, in certain contexts (such as a daytime broadcast accessible by children), the monologue's mature content could cause harm analogous to a nuisance.<sup>429</sup> The Supreme Court explained that "[w]ords that are commonplace in one setting are shocking in another."<sup>430</sup> The Court upheld the FCC's sanction while emphasizing the "narrowness" of its holding: "This case does not involve a two-way radio conversation between a cab driver and a dispatcher, or a telecast of an Elizabethan comedy. We have not decided that an occasional expletive in either setting would justify any sanction or, indeed, that this broadcast would justify a criminal prosecution."<sup>431</sup>

In 2004, however, the FCC used its Golden Globes Order to announce a bold policy change: "While prior Commission and staff action have indicated that isolated or fleeting broadcasts of the 'F-Word' . . . are not indecent or would not be acted upon, . . . today we conclude that any such interpretation is no longer good law."<sup>432</sup> It found that Bono's fleeting expletive at the Golden Globes ran afoul of the FCC's new policy because it "describe[d] sexual . . . activities . . . in terms patently offensive as measured by contemporary community standards for the broadcast medium."<sup>433</sup> The FCC rejected NBC's claim that Bono had used the expletive as an "intensifier" rather than as a sexual reference.<sup>434</sup> The FCC cautioned further that "the mere fact that specific words or phrases are not sustained or repeated does not mandate a finding that material that is otherwise patently offensive to the broadcast medium is not indecent."<sup>435</sup>

In 2006, responding to a sharp rise in indecency complaints (from fifty in 2000 to 1.4 million in 2004), the FCC broadened its indecency crackdown in a sweeping ruling that found that multiple awards telecasts had violated the new

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427. *FCC v. Pacifica Found.*, 438 U.S. 726 (1978).

428. *Id.* at 748 (explaining that, under the First Amendment, "a broadcaster may be deprived of his license and his forum if the Commission decides that such an action would serve 'the public interest, convenience, and necessity'").

429. *Id.* at 731–32 (stating the FCC's position that "the concept of 'indecent' is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs at times of the day when there is a reasonable risk that children may be in the audience." (quoting *A Citizen's Complaint Against Pacifica Foundation Station WBAI (FM)*, 56 F.C.C.2d 94, 98 (1975))).

430. *Id.* at 747.

431. *Id.* at 750.

432. *Golden Globes Order*, *supra* note 20, at 4980.

433. *Id.* at 4977, 4982.

434. *Id.* at 4978 ("[W]e believe that, given the core meaning of the 'F-Word,' any use of that word or a variation, in any context, inherently has a sexual connotation, and therefore falls within the first prong of our indecency definition.").

435. *Id.* at 4980.

federal broadcasting standards.<sup>436</sup> In an order adjudicating dozens of indecency and obscenity complaints (including fines in some cases), the FCC did not assess any financial penalties in connection with the awards telecast complaints because the contested material was broadcast prior to the FCC's announcement of its fleeting-expletives policy.<sup>437</sup> Nonetheless, that flurry of enforcement activity generated litigation that reached the Supreme Court twice.

In the first major round of litigation, the Second Circuit held that the FCC's enforcement actions were invalid as arbitrary and capricious under the Administrative Procedure Act (APA).<sup>438</sup> More specifically, "the Commission provide[d] no reasonable explanation for why it has changed its perception that a fleeting expletive was not a harmful 'first blow' [entitled to per se exemption from enforcement action] for the nearly thirty years between *Pacifica* and *Golden Globes*."<sup>439</sup> That holding under the APA mooted the broadcasters' constitutional challenges, which the Second Circuit declined to decide, but in dicta the panel expressed doubt that the FCC's fleeting-expletive policy could withstand scrutiny under the First Amendment.<sup>440</sup> On appeal, however, the Supreme Court reversed, finding that FCC's enforcement actions were not arbitrary or capricious under the APA.<sup>441</sup> According to the Court, the FCC had justified its fleeting-expletive policy as necessary to protect minor children from the harmful effects of profanity, and the APA did not require the agency to support its policy with empirical evidence that is difficult, if not impossible, to obtain.<sup>442</sup>

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436. See Complaints Regarding Various Television Broadcasts. Between Feb. 2, 2002 & Mar. 8, 2005, 21 FCC Rcd. 2664, 2665 (2006). Specifically, the FCC found that Cher's statement at the 2002 Billboard Music Awards ("People have been telling me I'm on the way out every year, right? So f\*\*\* 'em") was "vulgar, graphic and explicit." *Id.* at 2690–91; see also Sean Warren, *Cher - 2002 Billboard Awards (Uncensored)*, YOUTUBE, at 6:25 (July 25, 2020), <https://www.youtube.com/watch?v=Kzp6qtceeCE> [<https://perma.cc/QAM8-BRW3>]. The FCC also found that Nicole Richie's statement at the 2003 Billboard Music Awards ("Have you ever tried to get cow s\*\*\* out of a Prada purse? It's not so f\*\*\*ing simple.") was "explicit," "shocking," "gratuitous," and "patently offensive under contemporary community standards for the broadcast medium." Complaints Regarding Various Television Broadcasts. Between Feb. 2, 2002 & Mar. 8, 2005, 21 FCC Rcd. at 2692–94; see also Sean Warren, *Paris Hilton & Nicole Richie Present Award @ 2003 Billboard Awards (Uncensored) (Dec. 10, 2003)*, YOUTUBE, at :20 (Nov. 6, 2022), [https://www.youtube.com/watch?v=-iRg\\_7cua1U](https://www.youtube.com/watch?v=-iRg_7cua1U) [<https://perma.cc/C3DG-TE5D>]. Both telecasts were broadcast live by Fox Television Network.

437. Complaints Regarding Various Television Broadcasts. Between Feb. 2, 2002 & Mar. 8, 2005, 21 FCC Rcd. at 2690.

438. *Fox Television Stations, Inc. v. FCC (Fox I)*, 489 F.3d 444, 462 (2d Cir. 2007), *rev'd*, 556 U.S. 502 (2009).

439. *Id.* at 458 (finding further that "the 'first blow' theory b[ore] no rational connection to the Commission's actual policy regarding fleeting expletives").

440. *Id.* at 462–63.

441. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 517 (2009).

442. *Id.* at 519 ("If enforcement had to be supported by empirical data, the ban would effectively be a nullity."); see also *id.* at 529–30 ("The Commission could reasonably conclude that the pervasiveness of foul language, and the coarsening of public entertainment in other media such as cable, justify more stringent regulation of broadcast programs so as to give conscientious parents a relatively safe haven for their children.").

On remand, the Second Circuit answered the constitutional question that it avoided the first time, holding that “the FCC’s indecency policy is unconstitutional [under the First Amendment] because it is impermissibly vague.”<sup>443</sup> The FCC’s guidance memorandum provided incomplete standards and inconsistent examples that precluded broadcasters from knowing ahead of time which profane words would violate the indecency ban.<sup>444</sup> That vagueness, in turn, created a risk that the FCC could enforce its policy in a discriminatory manner or in ways that “reflect the officials’ subjective biases.”<sup>445</sup> On appeal, the Supreme Court affirmed but on narrower grounds. Because the 2004 Golden Globes Order constituted the FCC’s first pronouncement of its fleeting-expetives policy, any objectionable material broadcast prior to that order (including the allegedly indecent 2002 and 2003 Billboard Awards broadcast by Fox) could not be sanctioned for lack of fair notice of the agency’s policy change.<sup>446</sup> By resolving the case on due process grounds, the Court declined to address the fleeting-expetive policy’s constitutionality under the First Amendment.<sup>447</sup> Thus, as we noted in the Introduction, broadcasters today continue to maintain control-room protocols that enable producers to censor potentially indecent content on a real-time basis.

#### IV. INTELLECTUAL PROPERTY AND OTHER PROPERTY RIGHTS

Intellectual property ranks among the most valuable assets for elite entertainment academies, which rely on copyright and trademark laws to protect their iconic symbols and branding. This Part examines the academies’ use of copyright, trademark, and other property laws to protect proprietary interests in their award statuettes and trade branding.<sup>448</sup>

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443. *Fox Television Stations, Inc. v. FCC (Fox II)*, 613 F.3d 317, 327 (2d Cir. 2010), *vacated*, 567 U.S. 239 (2012).

444. *Id.* at 330 (“For instance, while the FCC concluded that ‘bulls\*\*\*’ in a ‘NYPD Blue’ episode was patently offensive, it concluded that ‘dick’ and ‘dickhead’ were not.”).

445. *Id.* at 332.

446. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254 (2012).

447. *Id.* at 258. The momentary nudity standard still appeared to be intact as of 2015 when the FCC assessed a \$325,000 penalty against a CBS affiliate in Roanoke, Virginia, for airing a sexually explicit clip during a news broadcast. *See* WDBJ Television, Inc., 30 FCC Rcd. 3024, 3024 (2015) (Notice of Apparent Liability for Forfeiture).

448. Entertainment academies are also major licensees of intellectual property because they must obtain legal clearance to use or include copyrighted work in the production of awards-show telecasts. Copyrighted work incorporated into the telecast production often includes music and video excerpted in the clip packages of work nominated for an award. In 1989, for instance, Disney sued the Academy of Motion Pictures for copyright infringement and dilution of business reputation after the Oscars incorporated an unlicensed (and unflattering) live-action performance of Snow White into its opening number. Disney voluntarily dismissed the lawsuit after the Academy issued a formal apology. *See* Stuart Heritage, *How Snow White and Some Coconuts Killed 1989’s Oscars*, THE GUARDIAN (Feb. 18, 2019, 6:01 AM), <https://www.theguardian.com/tv-and-radio/2019/feb/18/how-snow-white-and-some-coconuts-killed-1989s-oscars> [https://perma.cc/3AFX-D8HZ].

### A. Protection of Award Statuettes

Trophy “statuettes” are the tangible, prestigious symbols bestowed by entertainment academies to recognize an award winner’s outstanding achievement.<sup>449</sup> With keen appreciation for the powerful symbolism associated with award statuettes, academies devote exacting attention to the design and fabrication of their trophies. According to one origin story, during a 1926 Academy board meeting, an MGM art director named Cedric Gibbons drew a knight stabbing a crusader’s sword into a roll of film, a sketch that would inspire the design of the original 1928 Oscar statuette.<sup>450</sup> The Academy of Motion Pictures now touts the Oscar as “the most recognized trophy in the world.”<sup>451</sup> The other major awards, though perhaps less recognizable, are notable for their own distinctive features. The Grammy, for instance, is cast in the shape of a gramophone from a special metal alloy called “grammium,” which is finished in 24-karat gold plating.<sup>452</sup> The Tony features symbols from ancient Greek theater: comedy and tragedy masks cast onto a dual-sided, rotatable medallion.<sup>453</sup> The Emmy, designed by a television engineer who modeled the

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449. See ANTHONY HOLDEN, *BEHIND THE OSCAR: THE SECRET HISTORY OF THE ACADEMY AWARDS* 83 (1993), see also David Hajdu, *What the Oscars Represent: Meritocracy Without Merit*, THE NATION (Mar. 8, 2023), <https://www.thenation.com/article/culture/oscar-wars-michael-schulman/> [<https://perma.cc/A3PB-LUAM>].

450. See HOLDEN, *supra* note 449. While the moniker’s origin is debated, a popular strand of oral history holds that an academy librarian coined the name upon remarking that the statuette “resembled her Uncle Oscar.” *Oscar Statuette*, ACAD. OF MOTION PICTURE ARTS & SCIENCES, <https://www.oscars.org/oscars/statuette> [<https://perma.cc/CL4A-X7BW>]. The Academy did not officially adopt the “Oscar” moniker for its Academy Award of Merit until 1939. *Id.*

451. *Id.*

452. Tamara Best, *How the Grammy Awards Are Made: 4 Craftsmen and ‘Grammium’*, N.Y. TIMES (Feb. 7, 2017), <https://www.nytimes.com/2017/02/07/arts/music/grammy-award-maker-john-billings.html> [<https://perma.cc/44QS-TTC6>]. As of 2020, the cost to produce a Grammy was only \$15 per award (plus extra manufacturing costs) compared to \$400 per award to produce an Oscar. Gabrielle Olya, *Here’s What an Oscar and Other Award Statues Are Actually Worth*, YAHOO! FINANCE (Jan. 23, 2020), <https://finance.yahoo.com/news/oscar-other-award-statues-actually-100052043.html> [<https://perma.cc/Y7ET-387A>].

Commentators have observed that statuettes are not taxed as income to award recipients, unlike valuable gift baskets, which certainly are. See, e.g., Robert W. Wood, *Oscars ‘Free’ Gifts Draw \$46k Tax Bill from IRS + \$16k From California*, FORBES (Mar. 12, 2023, 11:22 AM), <https://www.forbes.com/sites/robertwood/2023/03/12/oscars-free-gifts-draw-46k-tax-bill-from-irs-16k-from-california/> [<https://perma.cc/UER7-FPP6>]. But the taxability of award statuettes may be more of an open question. See 26 U.S.C. § 74(d)(1) (“[t]he value of any medal awarded in[] . . . competition in the Olympic Games or Paralympic Games” is excluded from gross income, but no comparable exemption exists for performing arts awards); see also 26 C.F.R. § 1.74-1(a)(2) (2025) (“If the prize or award is not made in money but is made in goods or services, the fair market value of the goods or services is the amount to be included in income.”). As explained below, the academies’ award statuettes are subject to a right of first refusal to repurchase them for a de minimis amount. See *infra* text accompanying notes 491–528. It remains to be seen whether that de minimis repurchase price constitutes the statuette’s value for tax purposes.

453. See TONY AWARDS: A COMPLETE LISTING, *supra* note 70, at xxi; see also *Tony Awards: Facts & Trivia*, 78TH TONY AWARDS, <https://www.tonyawards.com/history/facts-and-trivia/> [<https://perma.cc/UD57-2AUF>]. Awarded in a small presentation case in 1947, the spinnable medallion was later mounted on a black pedestal for the first televised Tony Awards ceremony in 1967. See Erik Piepenburg, *Tony Gets a Mini-Makeover*, N.Y. TIMES (June 10, 2010, 5:29 PM), <https://archive.nytimes.com/artsbeat.blogs.nytimes.com/2010/06/10/tony-gets-a-mini-makeover/> [<https://perma.cc/2H44-WEC2>].

statuette's winged woman after his wife, features her outstretched hands holding an atom to symbolize the Television Academy's focus on both television arts and sciences.<sup>454</sup>

For decades, Chicago-based design firm R.S. Owens & Co. (Owens) enjoyed the privileged status of exclusive fabricator for both the Oscar and Emmy statuettes.<sup>455</sup> In 2000, the company made headlines when it scrambled to manufacture a replacement batch of Oscars after the original shipment of fifty-five statuettes was stolen from a Los Angeles shipping warehouse during transit.<sup>456</sup> But Owens's exclusivity would not last forever. Circumstances began to change in 2005 when Owens contracted with a supplier that outsourced fabrication of the Emmys to China.<sup>457</sup> That outsourcing contract, in turn, triggered a chain of events that ultimately led the Television Academy to accept a competing bid for a much lower price.<sup>458</sup> Owens tried to salvage its incumbency by matching the competing bid and increasing its donations to the Television Academy but to no avail.<sup>459</sup> Shortly thereafter, however, Owens sued its own outsourcing subcontractor for breach of contract and tortious interference upon learning that the Television Academy's new vendor had hired Owens's former subcontractor to outsource Emmy fabrication to China.<sup>460</sup> The court, however, ruled against Owens on all counts, finding that Owens was the victim of competition, not tortious interference or contractual breach.<sup>461</sup> In 2016, Owens also lost its fabrication contract for the Oscars when the Academy of Motion Pictures restored the statuette to its original bronze-core design.<sup>462</sup> Owens could not fabricate the new design specifications, so the Academy contracted with a New York-based foundry instead.<sup>463</sup>

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454. See Sandra Parker, *History of the Emmy Statuette*, TELEVISION ACAD. (Aug. 12, 2013), <https://www.emmys.com/academy/about/statuette> [<https://perma.cc/5A8N-XJHR>]. The Emmy's moniker is a morphology of "immy," a slang term used by television technicians for an early projection component known formally as an image orthicon camera tube. *Id.*

455. See *Owens Trophies, Inc. v. Bluestone Designs & Creations*, No. 12 C 7670, 2017 WL 514178, at \*1 (N.D. Ill. Feb. 7, 2017); Jeffrey Bonior, *Oscar Has a New Maker, but the Statuette Is Still Made in America*, ALL. FOR AM. MFG. (Feb. 24, 2017), <https://www.americanmanufacturing.org/blog/oscar-has-a-new-maker-but-the-statuettes-is-still-made-in-america/> [<https://perma.cc/8YVY-FHMQ>].

456. See Scott Johnson, *The Truth Behind the Infamous 2000 Oscar Heist*, HOLLYWOOD REP. (Feb. 21, 2017, 7:30 AM), <https://www.hollywoodreporter.com/news/general-news/truth-behind-infamous-2000-oscar-heist-977085/> [<https://perma.cc/M4GQ-FN8S>]; see also *Hart v. Parks*, 450 F.3d 1059, 1072 (9th Cir. 2006) (affirming conviction of defendant charged in the heist).

457. *Owens Trophies*, 2017 WL 514178, at \*1.

458. *Id.*

459. *Id.*

460. *Id.*

461. *Id.* (entering summary judgment against Owens on breach of contract claim); see also *Owens Trophies, Inc. v. Bluestone Designs & Creations, Inc.*, No. 12 C 7670, 2014 WL 5858261, at \*1 (N.D. Ill. Nov. 12, 2014) (granting motion to dismiss tortious interference claims).

462. See Bonior, *supra* note 455.

463. *Id.*

The academies invest heavily to promote their statuette design as a core element of brand identity.<sup>464</sup> According to the Television Academy, for instance, “The EMMY Statuette is integral to [its] overall corporate identity” because “[a]s a result of substantial promotional efforts, the EMMY Statuette has achieved widespread public recognition.”<sup>465</sup> Indeed, witnesses for the Television Academy have testified that the Academy’s “economic existence depends on the exclusivity and achievement symbolized by possession of an Emmy statuette.”<sup>466</sup> Those considerations have prompted the academies to exercise vigilance in protecting their statuette designs under copyright and trademark laws.<sup>467</sup> The academies have also invoked principles of property and contract law to restrict the transferability of statuettes bestowed to award recipients.<sup>468</sup>

The Academy of Motion Pictures has led the industry in developing an intellectual property law strategy for preserving exclusive rights in its statuette design, though its journey has not been entirely smooth.<sup>469</sup> In the late 1980s, the Academy initiated a seemingly garden-variety civil action to enforce its copyright and trademark rights, but the litigation brought the organization to the brink of imperiling its intellectual property rights in the Oscar design. In

464. As one court observed, “[T]he general public strongly associates the Oscar with the Academy and the Academy Awards. With approximately a billion viewers of the annual awards ceremony, the Oscar may be the most well-known award in the world.” *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 728 F. Supp. 1442, 1449 (C.D. Cal. 1989); *see also* *Juarez v. Ward*, 304 Cal. Rptr. 3d 811, 818 (Cal. App. 2023) (describing the Motion Picture Academy’s expenditure of “millions of dollars to promote the ‘Oscar’” so that “[t]he prestige associated with receiving an ‘Oscar’ is unparalleled by any other award of its kind”).

465. Complaint at ¶¶ 20–21, *Nat’l Acad. of Television Arts & Scis., Inc. v. Multimedia Sys. Design, Inc.*, No. 20-CV-07269 (S.D.N.Y. Sept. 4, 2020).

466. *Acad. of Television Arts & Scis. v. Julien’s Auctions LLC*, No. CV 20-6272, 2020 WL 5440563, at \*4 (C.D. Cal. July 16, 2020).

467. *See Regulations*, ACAD. OF MOTION PICTURE ARTS & SCIS., <https://www.oscars.org/legal/regulations> [<https://perma.cc/J27J-L84B>] (“The Award of Merit statuette, commonly known as the ‘Oscar,’ is the copyrighted property and registered trademark and service mark of the Academy of Motion Picture Arts and Sciences . . . .”); *Copyright & Trademark Policies*, THE EMMYS, <https://theemmys.tv/trademarks/> [<https://perma.cc/FU99-MCKF>] (“[T]he Emmy statuette [is] the trademarked property of the National Academy of Television Arts & Sciences (‘NATAS’) and The Television Academy (‘TVA’).”); *Conditions of Use*, HOLLYWOOD FOREIGN PRESS ASS’N GOLDEN GLOBE AWARDS, <https://www.goldenglobes.photography/conditionsfuse.php> [<https://perma.cc/3LEG-722Z>] (“The Golden Globes[] statuette design . . . [is a] registered trademark[] . . . of the Hollywood Foreign Press Association.”); *Copyright Information*, 78TH TONY AWARDS, <https://www.tonyawards.com/copyright/> [<https://perma.cc/HBM6-HXGW>] (“The American Theatre Wing owns the following registered trademarks: the Tony Award®, Tony®, the Tony Award® logo, and the Tony Award® medallion.”).

468. *See Julien’s Auctions*, 2020 WL 5440563, at \*4.

469. In the early days, from 1929 to 1941, the Academy relied on common law copyrights to protect the Oscar design. *See Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1449 (9th Cir. 1991). During that period, the Academy bestowed 158 Oscars bearing the name of each recipient, but the statuettes “did not display any statutory copyright notice.” *Id.* In 1941, the Academy registered the Oscar design for a statutory copyright “as an unpublished work of art not reproduced for sale,” and following registration, all Oscars included a statutory copyright notice. *Id.* In 1975, the Academy registered the Oscar design for federal trademark protection. OSCAR STATUETTE, Registration No. 1028635.

*Academy of Motion Picture Arts & Sciences v. Creative House Promotions*, the Academy sued a tchotchke manufacturer (Creative House) for manufacturing certain specialty knickknacks which it sold for advertising and promotional use.<sup>470</sup> The Academy claimed specifically that Creative House had infringed its copyrights and trademarks by marketing a product branded as the “Star Award,” a gold statuette whose design closely resembled the Oscar.<sup>471</sup> But in a stunning defeat for the Academy, the district court held that the Academy’s common law copyright in the Oscar design had reverted to the public domain before the Academy’s 1941 statutory copyright registration and that its trademark was not infringed.<sup>472</sup> That ruling surprised legal observers and sent shockwaves throughout the industry.<sup>473</sup>

In the copyright dispute, the pivotal facts transpired between 1929 and 1941, the period during which the Academy relied on the common law to protect the Oscar design.<sup>474</sup> Under the common law of copyrights, a work entered the public domain through general publication when it was “made available to members of the general public without regard to who they are or what they propose to do with it.”<sup>475</sup> According to the district court, general publication could occur when the author allowed others to exploit the work for their own commercial benefit.<sup>476</sup> It thus found that the Academy had exposed its work to copyright-divesting general publication by allowing award “recipients to advertise the Oscar for their own commercial benefit.”<sup>477</sup> The court also held that Creative’s use did not infringe the Academy’s trademark under the Lanham Act because, even though a market survey showed that consumers associated the Oscars with the Star Award, Creative House’s product was unlikely to cause confusion regarding the Star Award’s source.<sup>478</sup>

On appeal, the Ninth Circuit reversed, holding that pre-1941 publication of the statuette design was limited rather than general because the Academy had strictly restricted distribution of the Oscar to award winners and never sold a

470. See *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 728 F. Supp. 1442, 1445 (C.D. Cal. 1989).

471. *Id.* (describing Creative’s product as “a streamlined, abstract rendering of a naked, muscular male much like the Oscar, only two inches shorter and holding a star instead of a sword” and noting that “[b]oth the Oscar and [Creative’s] Star Award have a gold finish and are cast in solid metal and stand on a circular gold cap mounted on a cylindrical base”).

472. *Id.* at 1448–49.

473. See, e.g., Daniel Cerone, *Academy Loses Lawsuit over Oscar Look-Alike*, L.A. TIMES (Nov. 10, 1989, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1989-11-10-ca-1190-story.html> [<https://perma.cc/8FFH-M98V>] (announcing that the court’s ruling would “allow anyone to use the Oscar likeness without the approval of the Academy of Motion Picture Arts and Science[s]”).

474. *Creative House Promotions*, 728 F. Supp. at 1444. In 1941, the Academy’s common law copyright was superseded by its registration of a statutory copyright. *Id.*

475. *Id.* at 1446.

476. *Id.* at 1447 (citing *Brown v. Tabb*, 714 F.2d 1088 (11th Cir. 1983)).

477. *Id.* at 1447–49.

478. *Id.* at 1451. When survey participants were asked what came to mind when they saw the Star Award, 70% responded the Oscar. *Id.*



statuette for pecuniary gain.<sup>479</sup> The appellate court further found that, while “the Academy did not expressly prohibit recipients from selling or disposing of their Oscars” prior to 1941, such restrictions on redistribution were implied.<sup>480</sup> The Ninth Circuit also reversed the trademark noninfringement ruling, finding that the district court had disregarded actual evidence of consumer confusion.<sup>481</sup> And just like that, the Academy narrowly averted an intellectual property disaster.

The HFPA also found itself ensnared in an intellectual property quandary in 2009, when it attempted to modernize the design of its Golden Globe statuette, whose original design dates back to its first awards ceremony in 1945.<sup>482</sup> The HFPA’s original copyrighted design featured a golden globe encircled by a cascading filmstrip rising from a rectangular marble base (see figure 2).<sup>483</sup> The 2009 modification stylistically altered, but did not replace, the original design.<sup>484</sup> Thus, the remodel constituted a derivative work for which only new authorial contributions were eligible for separate copyright protection.<sup>485</sup> The HFPA had to demonstrate that its revised statuette contributed a “sufficient nontrivial expressive variation . . . to make it distinguishable from the [preexisting] work in some meaningful way.”<sup>486</sup> The new material had to “recast, transform, or adapt . . . [the] preexisting work,” reflecting original creativity beyond simple rearrangements of nonprotectable

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479. *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1453 (9th Cir. 1991) (noting that “[t]he fact that Oscar winners are permitted to advertise the *fact* they won their award, or display pictures of it, does not amount to a distribution”).

480. *Id.*; see also *id.* at 1454 (noting that “neither the Academy nor any living Oscar recipient has ever offered to transfer an Oscar to the general public” and that “[e]ach Oscar trophy is personalized with the name of the individual winner, reflecting the Academy’s expectation that the trophy will belong to the recipient alone”).

481. *Id.* at 1456 (noting a newspaper article mistakenly describing a Star Award as an Oscar, Academy members who believed that Star Award recipients had been given Oscars, and that survey evidence of product association was “sufficient to show a likelihood of confusion among consumers”).

482. See generally Letter from U.S. Copyright Rev. Bd. to David Grace, Esq., Counsel for Hollywood Foreign Press Ass’n (July 23, 2021), <https://www.copyright.gov/rulings-filings/review-board/docs/golden-globe.pdf> [<https://perma.cc/3EUS-JPCZ>] (regarding a second request for reconsideration for refusal to register the Golden Globe statuette in 2018). The Golden Globes statuette was designed in 1945 by former HFPA president Marina Cisternas as part of an organization-wide contest. See *New Look for Golden Globe Statuette*, CBS NEWS (Jan. 8, 2009, 1:29 PM), <https://www.cbsnews.com/news/new-look-for-golden-globe-statuette/> [<https://perma.cc/FS97-CF83>].

483. Letter from U.S. Copyright Rev. Bd. to David Grace, Esq., *supra* note 482, at 2.

484. *Id.* at 1–2.

485. *Id.* at 6–7; see also *id.* at 5 (quoting 17 U.S.C. §§ 101 (“A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a ‘derivative work.’”); 103(b) (“The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.”); and 101 (“A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a ‘derivative work.’”).

486. Letter from U.S. Copyright Rev. Bd. to David Grace, Esq., *supra* note 482, at 5 (quoting *Schrock v. Learning Curve Int’l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009)).

elements.<sup>487</sup> But the Copyright Review Board found that the reboot failed to meet that standard:

The only differences between the [new derivative] Work and the Prior Statuette are: (1) that the Work's gold is matte whereas the Prior Statuette's is shiny; (2) the Work's cone-shaped base is hollow, with the letters "HFPA" more apparent; (3) the base upon which the cup shape rests is gold and cylindrical in the Work but stone and rectangular cube-shaped in the Prior Statuette; and (4) the words "Hollywood Foreign Press Association" are etched into the bottom of the Work's base.<sup>488</sup>

The Copyright Review Board thus denied the HFPA's application because "a derivative work that adds only noncopyrightable elements to a prior work is not entitled to copyright registration."<sup>489</sup>



**Figure 2**

Original Golden Globe, 1945 (left); Redesigned Statuette, 2009 (right)<sup>490</sup>

The academies exercise further control over their statuettes by restricting the alienation of trophies after they are bestowed to award recipients. Since 1951, for example, the Academy of Motion Pictures has expressly prohibited award recipients and their heirs from selling Oscar statuettes to third parties without first offering the Academy a right of first refusal to repurchase the trophy for a nominal sum.<sup>491</sup> All major academies have adopted similar policies,

487. *Id.* (quoting U.S. COPYRIGHT OFF., COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 311.1 (3d ed. 2021) (citing H.R. REP. NO. 94-1476, at 57 (1976))).

488. *Id.* at 6.

489. *Id.* at 7.

490. *Id.* at 2; see also Tim Nudd, *How R/GA Redesigned the Golden Globe Trophy Inside and Out*, MUSE BY CLIOS (Jan. 10, 2019, 2:53 PM), <https://musebycli.io/film-tv/how-rga-redesigned-golden-globe-trophy-inside-and-out> [<https://perma.cc/Z8LN-9W5K>].

491. See *Juarez v. Ward*, 304 Cal. Rptr. 3d 811, 814 (Cal. Ct. App. 2023) (summarizing the Academy's 1951 bylaw amendments mandating a right of first refusal); *Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 728 F. Supp. 1442, 1447 (C.D. Cal. 1989) (tracing the Academy's sale prohibition to 1941). But see *Welles v. Acad. of Motion Picture Arts & Scis.*, No. CV 03-05314, 2004 U.S. Dist. LEXIS

which they are often able to enforce informally without resorting to litigation.<sup>492</sup> In one recent case, for example, the Recording Academy successfully enforced its repurchase rights for a Grammy awarded to James Brown after administrators of the late singer's estate proposed to liquidate the trophy to pay for probate expenses.<sup>493</sup> The auction "was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf."<sup>494</sup> The estate administrators appear to have complied with the Recording Academy's demand without contesting the validity of the Grammy alienation restriction.<sup>495</sup>

Within the last decade, however, a growing number of alienation disputes have spilled into the court system. *Juarez v. Ward*, for example, involved a creditor's attempt to enforce a judgment award against screenwriter David Ward, who won the 1974 Oscar for best screenplay (for *The Sting*, starring Paul Newman and Robert Redford).<sup>496</sup> In exchange for receiving the Oscar statuette, Ward signed the following "winner's agreement":

I hereby acknowledge receipt from you of replica No. 1659 of your copyrighted statuette, commonly known as 'Oscar', as an Award for Best Story and Screenplay - ['The Sting']. I acknowledge that my receipt of said replica does not entitle me to any right whatever in your copyright of said statuette and that only the physical replica itself shall belong to me. In consideration of your delivering said replica to me, I agree to comply with your rules and regulations respecting its use and not to sell or otherwise dispose of it, nor permit it to be sold or disposed of by operation of law, without first offering to sell it to you for the sum of \$10.00. You shall have thirty days after any such offer is made to you within which to accept it. This agreement shall be binding not only on me, but also on my heirs, legatees, executors, administrators, Estate,

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5756, at \*18–19 (C.D. Cal. Mar. 4, 2004) (finding that the Academy's inalienability policy did not apply to a misplaced 1942 Oscar that was found after the Academy had already issued a duplicate Oscar to the winner's daughter).

492. See *Regulations*, *supra* note 467 (Copyrights and Trademarks, Rule 10); RECORDING ACAD., 67TH GRAMMY AWARD RULES & GUIDELINES 43 (2024), [https://naras.a.bigcontent.io/v1/static/67\\_Rulebook\\_06.26](https://naras.a.bigcontent.io/v1/static/67_Rulebook_06.26) [<https://perma.cc/JV7W-MFMA>]; GOLDEN GLOBES, 82ND GOLDEN GLOBE AWARDS ELIGIBILITY AND CONSIDERATION RULES 21–22 (2024), [https://goldenglobes.com/wp-content/uploads/2024/11/Golden\\_Globe\\_Awards\\_-82nd\\_-2024-2025\\_Eligibility\\_and\\_Consideration\\_Rules\\_111124-FINAL.pdf](https://goldenglobes.com/wp-content/uploads/2024/11/Golden_Globe_Awards_-82nd_-2024-2025_Eligibility_and_Consideration_Rules_111124-FINAL.pdf) [<https://perma.cc/88U5-XE8Y>]; TELEVISION ACAD., PRIMETIME EMMY® AWARDS RULES & PROCEDURES 2022–2023, at 8, <https://www.televisionacademy.com/files/assets/Downloads/2023-rules-procedures-v5a.pdf> (2023) [<https://perma.cc/2P5B-FS3B>]; TONY AWARD PRODS., TONY AWARDS® RULES AND REGULATIONS 2023–2024, at 22 (2023), [https://www.tonyawards.com/documents/18/2023-2024\\_Tony\\_Rules\\_and\\_Regulations.pdf](https://www.tonyawards.com/documents/18/2023-2024_Tony_Rules_and_Regulations.pdf) [<https://perma.cc/G3SZ-ZZEZ>].

493. See *Bauknight v. Pope*, No. 2022-UP-346, 2022 WL 3641848, at \*3 (S.C. Ct. App. Aug. 24, 2022).

494. *Id.* (quoting *Wilson v. Dallas*, 743 S.E.2d 746, 766–67 (S.C. 2013)).

495. See *Wilson*, 743 S.E.2d at 767.

496. *Juarez v. Ward*, 304 Cal. Rptr. 3d 811, 813 (Cal. Ct. App. 2023); see also *THE STING* (Universal Pictures 1973).

successors and assigns. My legatees and heirs shall have the right to acquire said replica if it becomes part of my Estate, subject to this agreement.<sup>497</sup>

In 2020, a creditor named Maira Juarez “obtained a judgment against Ward for unpaid wages” and filed a petition to compel delivery of Ward’s Oscar for public sale.<sup>498</sup> The Academy of Motion Pictures intervened to enforce its repurchase right.<sup>499</sup> Juarez objected, claiming that the Academy’s contractual restriction was unenforceable as an unreasonable restraint on sale (and also as a voidable transfer from an insolvent debtor), and if the Academy were to exercise the repurchase right, it would become liable for paying Ward’s outstanding judgment.<sup>500</sup>

The California state court opened its analysis by attempting to characterize the Academy’s interest in Ward’s statuette. It construed the Academy’s policy of prohibiting the resale of Oscar statuettes, as codified in the Academy’s bylaws, as creating a covenant that the transferor (the Academy) could enforce as an equitable servitude in personal property.<sup>501</sup> The court explained that, while most equitable servitudes in other contexts involve real property, “[a] servitude may be enforced if personal property is subject to a written agreement imposing a reasonable restriction, and a later owner has notice of the restriction.”<sup>502</sup> In *Juarez*, the restriction was clearly in writing and provided to the owner, but the question presented was whether the resale restriction was reasonable.<sup>503</sup>

Formulation of a reasonableness standard has vexed courts for centuries, as the common law grappled with how to fashion a workable rule to govern alienation restraints. Early American common law decisions generally disfavored alienation restraints as contrary to public policy that sought to promote the freedom of disposition,<sup>504</sup> though that policy seemed to apply less forcefully to personal property and commercial transfers.<sup>505</sup> Courts were concerned that a preemptive provision imposed by a transferor who reserved a fixed-price right of first refusal would impose a disabling or forfeiture restraint if there were “[g]reat discrepancies between [the] market value and option

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497. *Juarez*, 304 Cal. Rptr. 3d at 813–14.

498. *Id.* at 814.

499. *Id.*

500. *Id.*

501. *See id.* at 817–18 (“The doctrine makes enforceable, in equity, a covenant relating to property that might be otherwise unenforceable.”).

502. *Id.* at 817.

503. *See id.* at 817–18.

504. *See, e.g.,* *Brace v. Black*, 144 A.2d 385, 389–90 (N.J. Super. Ct. App. Div. 1958) (“All restraints on alienation run counter to the policy of freedom of alienation so that to be upheld they must in some way be justified.”).

505. *See, e.g.,* CAL. COM. CODE § 8204 (1997) (validating a “restriction on transfer of a security imposed by the issuer” if the “security is certificated and the restriction is noted conspicuously on the security certificate”); *see also* RESTATEMENT (SECOND) OF PROP.: DONATIVE TRANSFERS § 4.1 rep.’s note 10 (AM. L. INST. 1983).

price.”<sup>506</sup> Such a restraint was therefore generally enforceable only if deemed reasonable in light of the transferor’s reasons for imposing the restriction.<sup>507</sup>

In *Juarez*, the court had to reach back to 1959 precedent in *Nadell & Co. v. Grasso* to assess the reasonableness of the Academy’s alienation restraint.<sup>508</sup> *Nadell* involved a food dealer that had acquired a large supply of damaged containers of Kraft fruit salad, which it then sold to a second dealer under the condition that no fruit would be marketed to consumers in the damaged Kraft-branded packaging.<sup>509</sup> The second dealer, in turn, resold the supply to a third dealer who insisted on selling the fruit salad in the damaged Kraft-branded packaging on grounds that it was not party to the transaction imposing the repackaging condition.<sup>510</sup> *Nadell* held that, despite the lack of privity, the original dealer could enforce the repackaging condition against the third dealer as an equitable servitude, and the restrictive covenant was reasonably necessary to protect the first dealer’s goodwill.<sup>511</sup>

Relying on *Nadell*, the *Juarez* court sided with the Academy: A business may “enforce a restriction on sale to ensure [its] prestige and good name” and to protect its “goodwill . . . against destruction by others who have no interest in it except to use it in a misleading way.”<sup>512</sup> Applying that principle, the *Juarez* court found that liquidating Ward’s statuette to satisfy his outstanding judgment would injure the Academy’s goodwill:

[The Academy of Motion Pictures (AMPAS)] “has spent millions of dollars to promote the ‘Oscar’” so that “[t]he prestige associated with receiving an ‘Oscar’ is unparalleled by any other award of its kind.” Each statuette is “one of a kind,” not available to the public nor intended “to be treated as an article of trade.” If Juarez places Ward’s Oscar on sale, AMPAS and its members will be irreparably harmed by the diminution in value of all Oscars, the Academy Award ceremony, “and the prestige of the Oscar in general.”<sup>513</sup>

*Juarez* thus reached the same decision as *Academy of Motion Picture Arts & Sciences v. Briarbrook Auctions*, a 2015 unpublished opinion adjudicating the Academy’s lawsuit to enforce its repurchase rights against a collector who had acquired a 1943 Oscar at public auction for \$79,200.<sup>514</sup> In *Briarbrook*, the trial

506. See RESTATEMENT (SECOND) OF PROP.: DONATIVE TRANSFERS, *supra* note 505, § 4.4 rep.’s note 4(a) (noting that courts “have frequently” invalidated “fixed price preemptions as restraints on alienation”).

507. See *id.* § 4.2 rep.’s note 10 (noting the reasonableness of a stock-transfer restriction as “allow[ing] stockholders to maintain control over the management of the affairs of a close corporation”); see also Lorie M. Graham & Stephen M. McJohn, *Resale Restrictions on Art Works*, 19 VA. SPORTS & ENT. L.J. 147, 169 (2020) (analyzing enforceability of alienation restraints under the common law and the Uniform Commercial Code).

508. *Juarez*, 304 Cal. Rptr. 3d at 817–18.

509. *Nadell & Co. v. Grasso*, 346 P.2d 505, 507 (Cal. Dist. Ct. App. 1959).

510. See *id.* at 507–08.

511. *Juarez*, 304 Cal. Rptr. 3d at 817 (citing *Nadell*, 346 P.2d at 512).

512. *Id.* (quoting *Max Factor & Co. v. Kunsman*, 55 P.2d 177, 181 (Cal. 1936)).

513. *Id.* at 818 (quoting AMPAS’s Horn).

514. *Acad. of Motion Picture Arts & Scis. v. Briarbrook Auctions, LLC*, No. BC550383, 2015 WL 5923326, at \*1 (Cal. Super. Ct. July 13, 2015).

court denied the collector's motion for summary judgment against the Academy seeking to declare the inalienability policy unenforceable as a matter of law.<sup>515</sup> The court further held that equitable servitudes in personal property were enforceable under California law and that the Academy's right of first refusal was not an unreasonable alienation restraint.<sup>516</sup>

In 2020, the Television Academy filed a similar complaint against an auction house to restrain the sale of four Emmy statuettes awarded in the early 1970s to actress Valerie Harper for performances in the *Mary Tyler Moore Show* and *Rhoda*.<sup>517</sup> The Television Academy's longtime vice president described his organization's inalienability policy, which differed slightly from the contract litigated in *Juarez*:

The Television Academy *retains title* to the statuettes awarded to Emmy recipients and lends a copy of the Emmy statuette to artists, such as Valerie Harper, for their achievements. The Television Academy permits all artists so honored to retain possession of an Emmy statuette copy for life, and permits the artists' heirs and successors in interest to retain custody of the copies to symbolize the achievements of the deceased honorees.<sup>518</sup>

He testified that the policy had been "policy that was communicated to all award recipients since at least 1971."<sup>519</sup>

The auction house refuted the Academy's claim about the timing of the policy's implementation, contending that the policy either did not exist or was not effective until 1978 when the Academy adopted its longstanding practice of affixing the policy to the base of each statuette (see Figure 3).<sup>520</sup> The auctioneer claimed that, if true, then the inalienability policy did not apply to Emmys bestowed to Harper between 1971 and 1975, and the Academy's delivery of Emmy statuettes to Ms. Harper constituted gifts governed by the law of donative transfers.<sup>521</sup> In preparing to sell Harper's Emmys, the defendant spent \$15,000 on advertisements for the auction.<sup>522</sup>

The court found that the Academy raised serious questions as to the merits of its claims, enough to satisfy the "[l]ikelihood of [s]uccess on the [m]erits" element for a temporary restraining order (TRO) against the auctioneer.<sup>523</sup> On

515. *Id.* at \*7–8.

516. *Id.* at \*9 ("[V]alid business and artistic reasons . . . justify the restraint on the commercial sale of Oscars imposed by the right of first refusal.").

517. *See Acad. of Television Arts & Scis. v. Julien's Auctions LLC*, No. 20-6272, 2020 WL 5440563, at \*1–2 (C.D. Cal. July 16, 2020).

518. *Id.* at \*2 (emphasis added).

519. *Id.*

520. *Id.* at \*2–3; *see also* Andy Lewis, *What's Written on the Bottom of an Emmy?*, HOLLYWOOD REP. (Sept. 20, 2015, 6:01 PM), <https://www.hollywoodreporter.com/tv/tv-news/emmys-whats-written-bottom-statette-825347/> [<https://perma.cc/X86T-2FEN>].

521. *See Julien's Auctions*, 2020 WL 5440563, at \*2–3.

522. *Id.* at \*6.

523. *Id.* at \*1, \*6.

the element of irreparable harm, the court credited the Academy's sworn declaration:

The Television Academy will suffer irreparable harm if the auction takes place and the Harper Statuettes are sold to the highest bidder. The value of the Television Academy's rights in the copyrighted Emmy statuette depends on the prestige and rarity of the statuettes. The statuette symbolizes the highest level of achievement in the television industry and receiving an Emmy statuette is such an honor precisely because they signify the pinnacle of one's career in television. The inherent value in the statuettes will be damaged, along with the Television Academy's reputation, if the public can freely buy and sell statuettes.<sup>524</sup>

The court granted the Academy's TRO application.<sup>525</sup> We suspect that the auction house abandoned its plan to sell the Emmys because the parties never returned to litigate the preliminary injunction.<sup>526</sup>

For us as researchers, the most notable fact to emerge from this litigation came from trial testimony about the underground market for award statuettes. According to the auctioneer, at least 130 Emmy statuettes have been sold at auction, including three statuettes sold by the defendant's own auction house and another twenty-eight pre-1978 statuettes sold between 1999 and 2019.<sup>527</sup> Those claims, if true, suggest that alienation restrictions are routinely violated, either without the academies' knowledge or because of their unwillingness to initiate litigation in every instance. On occasion, however, entertainment moguls have incurred great personal expense to carry out the goal of restraining alienation without litigation. Steven Spielberg and Kevin Spacey, for instance, anonymously bid hundreds of thousands of dollars at auction to purchase and donate estate-sale Oscars back to the Academy of Motion Pictures.<sup>528</sup>

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524. *Id.* at \*4 n.8.

525. *Id.* at \*6.

526. *Cf. id.* at \*7 (ordering defendant within five days to show cause "why a preliminary injunction should not be issued").

527. *Id.* at \*5 n.9.

528. See LEVY, *supra* note 30, at 29. Meanwhile, Whoopi Goldberg's Oscar for *Ghost* was found inside an airport trashcan after someone intercepted the statuette while in transit for restoration. UPS returned the trophy to the Academy, which returned it to Ms. Goldberg. *Id.*



**Figure 3**  
Base of an Emmy Statuette<sup>529</sup>

### *B. Brand and Reputation Protection*

The academies rely on trademarks to protect their exclusive right to brand themselves by using recognizable names and expressions that have become defining hallmarks of their institutional identities.<sup>530</sup> The academies have registered trademarks for all of their marquee names and phrases, including their award names (Oscar, Emmy, Grammy, Tony, Golden Globe), academy names, and related abbreviations.<sup>531</sup> Indeed, entertainment academy trademarks have a long and storied history that predates the modern era of federal trademark law, which began in 1946 with the passage of the Lanham Act.<sup>532</sup> Notable trademark litigation involving the academies stretches back nearly a century.

In 1937, for instance, the Academy of Motion Pictures sued the owner of an upstart acting school for marketing itself under the name “The Hollywood

529. See Lewis, *supra* note 520; see also vervecovers, *The Ownership Information on the Bottom of an Emmy*, REDDIT (June 16, 2017, 5:42 AM), [https://www.reddit.com/r/mildlyinteresting/comments/6hla9/the\\_ownership\\_information\\_on\\_the\\_bottom\\_of\\_an\\_emmy/](https://www.reddit.com/r/mildlyinteresting/comments/6hla9/the_ownership_information_on_the_bottom_of_an_emmy/) [<https://perma.cc/3B9G-K6LN>].

530. A trademark is a “word, name, symbol, or device . . . which a person has a bona fide intention to use in commerce . . . to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” 15 U.S.C. § 1127.

531. See, e.g., *Regulations*, *supra* note 467; *Conditions of Use*, *supra* note 467.

532. 15 U.S.C. §§ 1051–1141n.



Motion Picture Academy.”<sup>533</sup> The school’s owner adopted the new moniker after previously operating the business under her own name.<sup>534</sup> The Academy claimed that the defendant had exploited the Academy’s goodwill for the purpose of deceiving the public and inducing prospective students into believing that the school was associated with the Academy.<sup>535</sup> The Academy did not sue for trademark infringement but rather “based [its claim] on the distinctive or secondary meaning which its name has acquired and on the [defendant’s] unfair and deceptive use of that meaning,” which damaged the Academy by causing “confusion and deceit in relation to the public generally.”<sup>536</sup>

The school owner prevailed before the trial court, which dismissed the Academy’s complaint and denied leave to amend.<sup>537</sup> But on appeal, the state supreme court reversed both rulings, explaining that parties need not be direct competitors for the deceptive use of a name to cause economic harm by confusing consumers.<sup>538</sup> Generic words that describe a place (such as “academy”) are not subject to exclusive appropriation, but the Academy’s use of the phrase “Motion Picture Academy” had acquired a secondary meaning, which entitled it to prevent others, including noncompetitors, from exploiting that secondary meaning.<sup>539</sup>

The academies were also among the earliest victims of a practice that is described in modern parlance as “trolling.” Trolling is a capacious term for the acquisition of litigation rights for the purpose of exacting settlements for infringement claims.<sup>540</sup> In 1946, a trademark troll (who was also a licensed New York attorney) filed a battery of seventeen trademark applications for various “Academy Award” products, including cigarettes, jewelry, silverware, and firearms.<sup>541</sup> Each application contained a false sworn statement that the applicant used the trademark in connection with the sale of specifically described products.<sup>542</sup> A few years later, unrelated to the trademark troll’s application activity, the Academy of Motion Pictures licensed the Academy’s name to Bulova for \$120,000 for the watchmaker’s use in manufacturing a line

533. See *Acad. of Motion Picture Arts & Scis. v. Benson*, 104 P.2d 650, 651 (Cal. 1940).

534. *Id.*

535. *Id.* at 653.

536. *Id.* at 652.

537. *Id.* at 650.

538. *Id.* at 652–53. Unfortunately, the California Supreme Court’s opinion did not explain the trial court’s reason for dismissing the Academy’s claim, and we were not able to locate the trial court’s opinion.

539. *Id.*

540. Compare *GS Holistic, LLC v. Vaportoke Inc.*, No. 23-cv-01513, 2023 WL 6438558, at \*1 (D. Colo. Aug. 22, 2023) (describing a party as a “trademark ‘troll’” for “filing . . . fifty-plus nearly identical copy-cat [trademark] lawsuits . . . a means of litigation blackmail”), with Matthew Sag, *Copyright Trolling, an Empirical Study*, 100 IOWA L. REV. 1105, 1108 (2015) (“Defining exactly what makes an individual or an organization a troll is inevitably controversial.”).

541. *Acad. Award Prods. v. Bulova Watch Co.*, 129 F. Supp. 780, 783 (S.D.N.Y. 1955).

542. *Id.*

of luxury watches (see Figure 4).<sup>543</sup> That agreement, in turn, ensnared Bulova and the Academy in the intellectual property infringement trap that had been carefully set by the New York trademark troll.<sup>544</sup> But the litigation ultimately came to a head after the trademark troll's death, and his estate abandoned efforts to prove infringement once confronted with the fraudulent trademark filings.<sup>545</sup> Bulova then successfully countersued for fraudulent registration under the Lanham Act.<sup>546</sup>



**Figure 4**  
The Bulova “Academy Award Watch”<sup>547</sup>

Another form of intellectual property exploitation known as cybersquatting may pose a more difficult trademark challenge for the entertainment academies.<sup>548</sup> Since 1999, federal law has imposed civil liability for “cyberpiracy,” which occurs when a person registers or uses a domain name that “is identical or confusingly similar” to another mark with “a bad faith intent

543. David Ehrenstein, *When the Oscars Gifted Winners with Watches*, HOLLYWOOD REP. (Nov. 29, 2013, 9:00 AM), <https://www.hollywoodreporter.com/movies/movie-news/oscars-winners-received-watches-1949-660388/> [<https://perma.cc/P7MA-NH5Y>] (“The [Academy’s] directors felt a reluctance to commercialize our name and symbol, . . . but our reluctance was softened by the [licensing fees], which will enable us to cancel the indebtedness on our Academy building.”).

544. See *Bulova Watch Co.*, 129 F. Supp. at 783.

545. See *id.* at 782–84.

546. *Id.* at 782 (citing 15 U.S.C. § 1120). The watches were subsequently provided to Academy Award winners from 1949–52 and sold to the public for upwards of \$115. Ehrenstein, *supra* note 543; see also J.E. Vizzusi, *Bulova Academy Award L-O (1950) Model w/ Case - Tag*, COLLECTORS WKLY., <https://www.collectorsweekly.com/stories/83153-bulova-academy-award-l-o-1950-model-w> [<https://perma.cc/MZ69-RMGR>].

547. See Ehrenstein, *supra* note 543.

548. Cybersquatting is “the deliberate, bad faith, and abusive registration of distinctive marks as Internet domain names with the intent to profit from the marks’ goodwill.” Sue Ann Mota, *The Anticybersquatting Consumer Protection Act: An Analysis of the Decisions from the Courts of Appeals*, 21 J. MARSHALL J. COMPUT. & INFO. L. 355, 355 (2003).

to profit from that mark.”<sup>549</sup> In 2010, the Academy of Motion Pictures sued leading domain registrar GoDaddy.com for the “parking” of 293 allegedly infringing website domain names on behalf of other registrants; the contested domain names included “AcademyAwards.net,” “2011Oscars.com,” “VoteOscars.com,” and other similar monikers.<sup>550</sup> Yet, despite five years of discovery and multiple rounds of summary judgment proceedings, the district court found that the Academy failed to produce any evidence that GoDaddy had subjectively acted with bad-faith intent to profit from the Academy’s marks.<sup>551</sup> The court explained that GoDaddy did not attempt to divert customers from the organization, never offered to “sell back” the domain names, and many of the sites were created through an automated process that produced more than 18 million domain names and involved no GoDaddy personnel directly.<sup>552</sup> The court concluded that, “[a]bsent some independent information that would have put GoDaddy on notice that the registrant misrepresented his or her rights in the domain name, GoDaddy is entitled to rely on its registrants’ certifications and the accompanying licenses to use the domains for the purpose of advertising.”<sup>553</sup>

\* \* \*

In sum, court records show that efforts by the entertainment academies to protect their intellectual property through civil litigation are somewhat of a mixed bag. Courts like the Central District of California in *Creative House* have enforced copyrights in the design of award statuettes, but every civil action for infringement poses a risk that the infringer’s defense might invalidate the asserted copyright. Courts like the California Court of Appeal in *Juarez* and the Superior Court of California in *Briarbrook* have enforced alienation restrictions on the transfer of award statuettes, but it remains to be seen how courts will consider the growing number of underground auctions that the academies have failed to detect or enjoin. And finally, courts have enforced trademark claims asserted directly against infringing parties, but the cybersquatting litigation illustrates the difficulty of imposing liability on third parties who facilitate infringement.

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549. 15 U.S.C. § 1125(d)(1)(A).

550. Acad. of Motion Picture Arts & Scis. v. GoDaddy.com, Inc., No. CV 10-03738, 2015 WL 5311085, at \*11 (C.D. Cal. Sept. 10, 2015).

551. *Id.* at \*51 (describing “five years of vigorous litigation, a docket approaching 800 entries, multiple rounds of summary judgment, thousands of exhibits, and a week of testimony”).

552. *Id.* at \*40, 44–45.

553. *Id.* at \*52.

## CONCLUSION

Our descriptive account of Oscar Law has revealed that the law plays a singularly pivotal role in protecting and regulating the entertainment awards industry. This detail-laden survey is enriched by dozens of specific anecdotes that cannot be reduced to a short summary, but we offer the following high-level concluding observations.

All elite award-granting academies avoid federal income taxation by bifurcating their operations between nonprofit business leagues to produce their awards telecasts and charitable nonprofit organizations for their philanthropic activities. The business-league form, as an entity structure, enables market competitors to collaborate for purposes of awards-show operations, but such collaboration risks running afoul of antitrust law's prohibitions against anticompetitive conduct. Individuals aggrieved by a rejection from academy membership or a failure to secure an award nomination have cited the anticompetitive effects of the business-league form in litigation challenging decisions that would otherwise be regulated solely by each academy's internal corporate-governance procedures.

The academies are relatively thinly staffed by full-time employees, so they rely heavily on subcontractors to perform the monumental task of producing the live annual telecast. A television production company usually takes the lead, but when an academy delegates too much authority to its producing partners, it can lose control over key strategic decisions (as the Hollywood Foreign Press Association discovered when outsourcing production of the Golden Globes). Academies have sweeping powers to control admission to the telecast venue premises, including the imposition of legally binding transferability restrictions on event tickets, although winning significant monetary damages against ticket brokers who violate those restrictions has proven to be a steeper challenge. When broadcasting over public airwaves, however, academies must ensure that all content transmitted to television viewers complies with federal decency regulations.

Intellectual property and goodwill associated with institutional branding rank among each academy's most valuable assets. Iconic award statuettes are the most powerful symbols of brand identity, so the academies invest heavily to promote their design and public image. The academies have largely succeeded in protecting copyrights and trademarks associated with the design of their statuettes, although the Academy of Motion Pictures narrowly averted a trial court's finding that the Oscar design had reverted to the public domain. The academies also have been generally successful in enforcing alienation restrictions that prohibit award recipients from giving or selling their statuettes to third parties, though evidence that emerged from litigation suggests that the academies have failed to detect a booming underground market for secondhand statuettes.

Taken together, these observations begin to illustrate the extent to which law pervades nearly every aspect of the entertainment awards industry. We hope that this descriptive account of Oscar Law will be useful to legal and nonlegal audiences alike and will inspire future academy inquiry into this fascinating corner of the law.