

# A Review of Catherine L. Fisk's

## *Writing for Hire: Unions, Hollywood and Madison Avenue*

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By Marc D. Alexander

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**D**on Draper, meet Dalton Trumbo. Draper, the mythical madman of Madison Avenue, highly-paid, hard-charging, creative, alcohol-addled, and alienated. Trumbo, the iconic screenwriter, victim of the blacklist, writer of Roman Holiday,

Johnny Got His Gun, Exodus, also an alcoholic. Who was the most satisfied with work and work relationships? Answer: clearly,

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Matthew Weiner, Don Draper's creator, producer of one of the most successful television shows ever, beneficiary of a high income, cre-

*Unions, Hollywood, and Madison Avenue* (Harvard University Press 2016), Catherine L. Fisk, Chancellor's Professor of Law at



ative control, an outstanding reputation, residuals, and unionization.

In her excellent study, *Writing for Hire*:

UCI, plunges into the history of Hollywood and Madison Avenue writers' employment relationships. The subtitle of Professor

Fisk's book, "Unions, Hollywood, and Madison Avenue," signals that she will favor the advantages of the Hollywood labor relations model, because Hollywood had unions to which actors and writers belong, whereas Madison Avenue did not unionize.

If you were ever curious about the arcana of Hollywood accounting, separated rights, royalties, residuals, script fees, bonuses, profit sharing, sequel rights, and character rights, *Writing for Hire* is guaranteed to satisfy that curiosity. Even more interesting, however, is Professor Fisk's exploration of how legal employment relationships shape the writer's own feelings about professionalism, control, autonomy, loyalty, dignity, craftsmanship, recognition, public responsibility, security, social standing, and self-worth.

Beginning with the legal premise that an author and a writer are not the same, *Writing for Hire* spins out that premise in all its intricacies. The copyright system has developed the elaborate fiction that a writer who works for hire is not ultimately the author of the work: the employer, typically a corporation, becomes the author of a work for hire, owning the copyright. Divorced from ownership of their work, and the control that comes with ownership, Hollywood writers could easily fall prey to exploitation by the bygone studio factory model.

Accepting their status as employees may have been disparaging to the self-image of writers as creative and independent professionals. But affixing the legal label of "employee" upon Hollywood writers meant they could legally unionize, for unless they were employees, they could be treated as conspirators in violation of anti-trust laws when they bargained collectively. Unionization became "a necessary trade-off

for the loss of intellectual property rights."

Enter the union model, and a lengthy, sometimes bitter struggle by writers to claw

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back some of the bundle of rights that are part of copyright ownership. In the 1930's, during the surge of Popular Front politics and labor solidarity, Hollywood writers organized to obtain screen credit for their

anonymous work, some modicum of control over the use of their work, decent compensation, and security. The unionization of

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*‘ A number of writers  
whose voices are heard  
in Writing for Hire  
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about autonomy  
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than about salaries. ’*

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Hollywood writers eventually resulted in the Minimum Basic Agreement, providing basic

rights and protections for Hollywood writers.

Writers’ struggles to obtain attribution through the assignment of screen credits, and eventually to obtain residuals, are key parts of the story. Professor Fisk’s insight is that a deep understanding of employment relations in the industry cannot look only at the formal development of statutory and common law. Instead, one must look at labor relations, evolving collective bargaining agreements, and thus to an ongoing process that is both legal and social.

The dramatic climax of the story is the blacklist: a time when many writers who had been the staunchest supporters of unions found themselves branded as communists or fellow-travelers, and ended up with their careers in shambles. The Screen Writers Guild performed a juggling act, purging its Executive Committee of communist sympathizers, maintaining that it was not a political organization, insisting that writers’ politics were irrelevant to their work, and protecting members from rumors that they were communists. Studios enforced the blacklist through the “morals clause” in studio contracts, and “the blacklist nearly destroyed the Guild’s contractual right to determine screen credit for those screenwriters who continued to write and sell scripts.” Nevertheless, the Guild muddled through, attempting to adhere to legal processes. Credit corrections were made even decades after the blacklist had ended.

In sharp contrast with Hollywood, the advertising industry did not unionize. Instead, it developed its own professional norms and labor practices. Sponsors owned the work (and originally their advertising agencies even wrote the shows). The copywriter, part of a professional team and hopefully well-paid, remained anonymous, and television commercials did not credit the

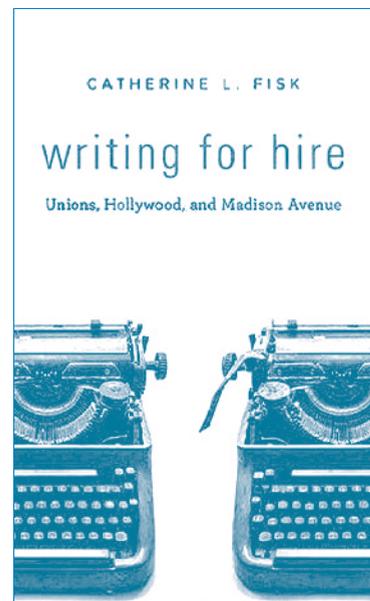
writers who dreamt up slogans to sell drugs, cars, laxatives, and soft drinks. Recognition came in the form of industry awards, bonuses, and in-house memos. Those who wrote for Madison Avenue became symbols of alienated labor: pencils for hire, men in gray flannel suits.

The labor model in our own profession is closer to the Madison Avenue model: fealty to the client who owns the file, no fretting by the individual lawyer about copyright ownership in court filings, and no unions. But the legal profession also differs from Madison Avenue, because lawyers do sign their names on briefs, and make public appearances, probably making the attribution of credit where credit is due something less of an issue for us—though sometimes it is the person at the bottom of the signature block who wrote the brief, rather than the person at the top, who is the client contact.

A number of writers whose voices are heard in *Writing for Hire* express their view that they were more concerned about autonomy and self-respect than about salaries. Yet the bargain made by Madison Avenue copywriters suggests that writers, like most workers, must care about their income: the copywriters received good salaries in exchange for the loss of public recognition, creative control, and self-respect. Except for occasional comments that some writers were well-paid, *Writing for Hire* does not provide a basis for comparing the effects of unionization upon the incomes of Madison Avenue and Hollywood writers.

Highly skilled writers working in film and radio have had to face the prospect of short-term jobs, punctuated by periods of unemployment. As Professor Fisk explains, those are also characteristics of employment in today's expanding "gig economy." However, any bet that workers in today's gig economy

can recreate the labor solidarity that motivated Hollywood writers to bargain collectively is a longshot. In fact, union workers comprise a small and plummeting percentage of the workforce, from nearly one third of the workforce 50 years ago, to less than one in ten *workers today*. (See Swanson, *The Incredible decline of American unions, in one animated map*, Washington Post, Feb. 24, 2014 ([https://www.washingtonpost.com/news/wonk/wp/2015/02/24/the-incredible-decline-of-american-unions-in-one-animated-map/?utm\\_term=.a32dcd303c00](https://www.washingtonpost.com/news/wonk/wp/2015/02/24/the-incredible-decline-of-american-unions-in-one-animated-map/?utm_term=.a32dcd303c00))) Certainly without that solidarity, workers in the gig economy cannot look forward to the recognition, respect, compensation, and benefits achieved for employees by the Guild.



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