

# RUFFLING FEATHERS: AN EVALUATION OF ANIMAL PROTECTIONS IN HOLLYWOOD

By *Aamina Mariam\**

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## INTRODUCTION

Our scene opens on a soundstage flooded with bright lights. People chatter excitedly as they wait to catch a glimpse of King. King isn't an actor; he's a tiger. A living, breathing tiger. And today is the day the *Life of Pi* film crew will shoot the scene of him falling off the boat. But don't worry, King must be completely safe. Right?

From King to Toto, animals of all shapes and sizes have made their way onto the silver screen. However, behind the scenes, their lives

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are often anything but glamorous. This Note explores the regulatory landscape of animal protections in Hollywood from two standpoints: that of the government and of the American Humane Association (AHA).<sup>1</sup> It analyzes the strengths and weaknesses of both regimes to determine whether current regulations sufficiently protect animals in the film industry and explores possible alternatives.

Part I recounts the historical context behind modern government regulations before diving into the Endangered Species Act, Animal Welfare Act, and state anti-cruelty laws. The Endangered Species Act is fairly limited in scope, while the Animal Welfare Act is plagued by enforcement and legal standing problems. State anti-cruelty laws are helpful, but they were not designed with animal actors in mind and do not properly address the problems these animals face.

Part II assesses the role of the AHA in protecting animals in films. In particular, it examines the criticisms levied against the organization. Such criticisms include the ambiguity behind the AHA's famous "No Animals Were Harmed" certification, its lack of thorough enforcement, and the organization's questionable relationship with industry elites. After reviewing the regulatory systems at play, it is clear that these frameworks do not adequately protect animal actors. As such, Part III discusses possible reforms to strengthen animal protections in Hollywood.

## I. GOVERNMENT REGULATIONS (OR THE LACK THEREOF)

### A. Historical Background

In order to grasp the full context of present-day regulations, it is important to understand the policy choices and cases that led to their creation. Criticisms over the content of films began as early as the first screening of a modern film in April 1896.<sup>2</sup> Some called the film's two-second depiction of a kiss "absolutely disgusting" and called for "police interference" to protect society's morality.<sup>3</sup> Shortly thereafter, cities and states began issuing censorship laws in an attempt to curtail these

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<sup>1</sup> The organization will be referred to as the AHA throughout this piece, but note that the organization has undergone several name changes over the years; sources may reference the AHA, Humane Hollywood, American Humane, or the American Humane Society. All such names refer to the same entity.

<sup>2</sup> Mary Pickford, *Early Movie Audiences*, PBS: AM. EXPERIENCE, <https://www.pbs.org/wgbh/americalexperience/features/pickford-early-movie-audiences/> [<https://perma.cc/5RJC-9JGA>].

<sup>3</sup> THE KISS, Library of Congress, at 00:26–00:28 (1896), <https://publicdomainreview.org/collection/the-kiss-1896-film/>; John Sloan, *Notes*, CHAP-BOOK, July 15, 1896, at 239–40.

supposedly harmful influences.<sup>4</sup> The statutes granted government officials or censorship boards the power to review films prior to public release, much to theatre-operators' chagrin.<sup>5</sup>

In *Mutual Film Corporation v. Industrial Commission of Ohio*, the Supreme Court held that films were not protected under the First Amendment, characterizing the exhibition of movies as “a business, pure and simple.”<sup>6</sup> Just as states could regulate a “circus” without intruding upon one’s freedom of expression, it was within states’ power to approve only certain films for showings.<sup>7</sup>

Empowered by the Supreme Court’s approval, state censorship boards proliferated.<sup>8</sup> But every board had different criteria, creating two critical issues. First, moral attitudes varied widely between states, leading to inconsistent standards across the country. For example, cities like New York regularly hosted topless showgirls—something that would have made the Christian women of the Kansas censorship board clutch their pearls.<sup>9</sup> Hollywood executives soon faced strong backlash from the conservative public for failing to hold films to a common standard of decency and instead producing films that could lead Americans “down a dark path.”<sup>10</sup> Second, these conflicting requirements across states made it practically impossible for studios to determine whether a given movie would achieve any form of widespread release without editing.<sup>11</sup> With lost revenue due to forced edits and the public pushing for stricter censorship, studios quickly formed the Motion Picture Producers and Distributors of America (now known as the Motion Picture Association or MPA), which established a system of self-regulation to assuage public concerns while maintaining control over the guidelines.<sup>12</sup>

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<sup>4</sup> Claire Piepenburg, *Not Yet Rated: Self-Regulation and Censorship Issues in the U.S. Film Industry*, 25 UCLA ENT. L. REV. 97, 99 (2018).

<sup>5</sup> *See id.* at 100.

<sup>6</sup> 236 U.S. 230, 244 (1915), *overruled by* *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

<sup>7</sup> *Id.* at 243.

<sup>8</sup> Jane M. Friedman, *The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry*, 73 COLUM. L. REV. 185, 187 (1973).

<sup>9</sup> GERALD R. BUTTERS, JR., BANNED IN KANSAS: MOTION PICTURE CENSORSHIP, 1915-1966, at 187 (2007); Mary Feighny, *First Amendment Follies: Forbidden Films and the Kansas State Board of Review*, J. KAN. BAR ASS'N, Nov./Dec. 2019, at 21–23.

<sup>10</sup> Feighny, *supra* note 9, at 21; *see also* Piepenburg, *supra* note 4, at 101; Bob Mondello, *Remembering Hollywood's Hays Code, 40 Years On*, NPR (Aug. 8, 2008, 5:58 PM), <https://www.npr.org/2008/08/08/93301189/remembering-hollywoods-hays-code-40-years-on> [<https://perma.cc/GT4G-XPQ9>].

<sup>11</sup> Friedman, *supra* note 8, at 187.

<sup>12</sup> Piepenburg, *supra* note 4, at 101.

This system—dubbed the Hays Code—provided an exhaustive list of content that was “habitually condemned” by censorship boards or the public generally.<sup>13</sup> Initially, the framework was ineffective, as it only provided guidance; without the weight of legal authority or an enforcement agency, filmmakers did not face immediate repercussions for defying the code and creating “some of the most sin-filled movies in Hollywood history.”<sup>14</sup> As calls for censorship grew louder every day, producers recognized that if studios did not clean up their act, the government would intervene with harsher restrictions.<sup>15</sup>

Thus, in 1934, the MPA established the Production Code Administration (PCA) to actually enforce the Hays Code.<sup>16</sup> This new organization issued seals of approval for Code-compliant films, with many theatres refusing to show unapproved films.<sup>17</sup> Additionally, the PCA could fine non-compliers up to \$25,000 for each Code violation.<sup>18</sup>

Up until this point, the Code focused on traditional moral concerns (e.g., sex). It would not address animals until 1939, when filmmakers forced a horse to climb a slippery, tilted platform and recorded as it tumbled off the side of a cliff to its death.<sup>19</sup> The news caused an uproar and prompted the MPA to invite the AHA to monitor animal welfare on sets.<sup>20</sup> These enforcement mechanisms gave the Hays Code teeth, and filmmakers fell in line.<sup>21</sup>

Much of the Code’s success can be attributed to five prominent movie studios’ vertically integrated monopoly over the box office. These studios—all of which were MPA members—handled the production, distribution, and exhibition of many films.<sup>22</sup> They controlled seventy percent of the theatres permitted to show a movie during the exclusive first-run in major cities.<sup>23</sup> Thus, if filmmakers did not abide by

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<sup>13</sup> *Id.*

<sup>14</sup> Alexandra Gil, *Great Expectations: Content Regulation in Film, Radio, and Television*, 6 DENV. SPORTS & ENT. L.J. 31, 46 (2009).

<sup>15</sup> *Id.* at 47–48.

<sup>16</sup> *Id.* at 48.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Gary Baum, *Animals Were Harmed*, HOLLYWOOD REP. (Nov. 25, 2013), <https://www.hollywoodreporter.com/news/general-news/animals-were-harmed-hollywood-reporter-investigation-on-set-injury-death-cover-ups-659556/> [https://perma.cc/39V3-PZ58?type=image].

<sup>20</sup> *Id.*

<sup>21</sup> See Friedman, *supra* note 8, at 188–89.

<sup>22</sup> *Id.* at 189.

<sup>23</sup> *United States v. Paramount Pictures*, 334 U.S. 131, 167 (1948). First-runs were a “highly profitable” part of the business. *Id.*

the Code, they would have trouble successfully releasing their movies in theatres.

This is precisely why the Supreme Court's decision in *United States v. Paramount Pictures* marked the beginning of the end of the Hays Code. In 1948, the Court found that the companies' anticompetitive practices unlawfully restrained trade, leading to the separation of the studios from their theatres.<sup>24</sup> The downfall of this monopoly allowed independently-owned theatres to flourish,<sup>25</sup> giving filmmakers an avenue to showcase their edgier, more controversial movies, notwithstanding their lack of the PCA seal of approval.<sup>26</sup> Notably, Justice Douglas stated (albeit, in dicta) that the Court had "no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment."<sup>27</sup> Four years later, in *Joseph Burstyn, Inc. v. Wilson*, the Supreme Court officially overturned its decision in *Mutual Film Corporation* and held that films are indeed protected under the First Amendment.<sup>28</sup> In subsequent years, Supreme Court decisions concerning free speech made the conclusion clear: states could no longer ban films prior to release based on their subjectively immoral content.<sup>29</sup>

With increased pushback from filmmakers and no legal support, the Hays Code finally crumbled.<sup>30</sup> The industry returned to self-regulation, a regime that continues to this day, with the exception of narrow state laws regarding patently offensive content, particularly in reference to young audiences.<sup>31</sup> But, while Hollywood had won the battle against sweeping censorship, it came at a cost.

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<sup>24</sup> Friedman, *supra* note 8, at 189.

<sup>25</sup> The divestment of these major studios was collectively known as the "Paramount Decrees," which was formally repealed in August 2020. G. Vaughn Joy, *The Paramount Decrees and the Deregulation of Hollywood Studios*, PROMARKET (Dec. 12, 2022), <https://www.promarket.org/2022/12/12/the-paramount-decrees-and-the-deregulation-of-hollywood-studios/> [<https://perma.cc/GY5S-K6RZ>]. For a discussion of how this may affect the industry, see *id.*

<sup>26</sup> Piepenburg, *supra* note 4, at 108 n.79 (discussing how films such as *Some Like It Hot* (1959) received critical acclaim despite failing to meet Hays Code standards).

<sup>27</sup> 334 U.S. at 166.

<sup>28</sup> 343 U.S. 495, 502 (1952).

<sup>29</sup> Friedman, *supra* note 8, at 190–91.

<sup>30</sup> *The Hays Code Explained: History of Hollywood's Hays Code*, MASTERCLASS (Sep. 2, 2021), <https://www.masterclass.com/articles/hays-code-explained>. The Code was replaced by the rating system we know today. *Id.*

<sup>31</sup> See, e.g., CAL. PENAL CODE § 313(a) (West 2025) (prohibiting the exhibition of "harmful matter" to minors, defined as matter that "depicts . . . in a patently offensive way sexual conduct and which, taken as whole, lacks serious literary, artistic, political, or scientific value for minors."). Notably, there is an exception for artistic value, an allowance that the previous censorship regimes lacked.

Without the backing of the Hays Code, the AHA lacked any genuine authority to monitor the welfare of animal actors, leading to many animal injuries and fatalities on sets.<sup>32</sup> Things reached a fever pitch when the nation learned of the atrocities that took place during the filming of *Heaven's Gate* (1980). Filmmakers had placed explosives under a horse's saddle (eventually resulting in the horse's euthanization), intentionally bled horses to use their blood in lieu of fake blood, decapitated chickens, and disemboweled cattle.<sup>33</sup> The incident prompted producers to add a clause in their contracts with the Screen Actors' Guild (SAG) granting the AHA a right to be present on their sets.<sup>34</sup> Today, this right remains intact in all SAG contracts.

### *B. The Endangered Species Act*

There are a few federal laws concerning the treatment of animals that may apply to film productions. The least useful of these laws is the Endangered Species Act (ESA).<sup>35</sup> The ESA primarily focuses on species conservation, not the prevention of animal abuse.<sup>36</sup> The law restricts the trade of endangered animals and criminalizes the "taking"—defined as the "harass[ment], harm, pursu[it], hunt[ing], shoot[ing], wound[ing], kill[ing], trap[ping], capture, or collect[ion]"—of such animals without a permit.<sup>37</sup> Filmmaking likely falls within the definition of taking, as courts tend to define the term broadly.<sup>38</sup> The ESA's most significant weakness is its limited scope.<sup>39</sup> While its targeting of only endangered and threatened species already leaves most animals out of scope, the ESA's distinction between endangered and threatened animals further diminishes its effectiveness.

An endangered species is one that "is in danger of extinction," whereas a threatened species is one that "is likely to become an

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<sup>32</sup> Juliet Iacona, *Behind Closed Curtains: The Exploitation of Animals in the Film Industry*, 12 J. ANIMAL & NAT. RES. L. 25, 29–30 (2016) (describing the deaths of nearly 100 horses during the filming of *Ben-Hur* (1959) and an orangutan on the set of *Any Which Way You Can* (1980)).

<sup>33</sup> *Id.* at 31; *No Animals Were Harmed in the Making of This Blog*, THE WEBINAR VET: VETTALK, <https://thewebinarvet.com/blog/no-animals-harmed-making-blog> [https://perma.cc/25A7-9MXQ].

<sup>34</sup> Andrea J. Rivera, "A Dog's Purpose": *Animals Working in the Film and Entertainment Industry*, 19 W. MICH. U. COOLEY J. PRAC. & CLINICAL L. 315, 319 (2018).

<sup>35</sup> 16 U.S.C. §§ 1531–1544.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 1532.

<sup>38</sup> *See, e.g.,* Ctr. for Biological Diversity v. Marina Point Dev. Assocs., 434 F. Supp. 2d 789, 790–91 (C.D. Cal. 2006) (holding that construction of a condominium constituted a taking as it harassed the area's bald eagle population).

<sup>39</sup> 16 U.S.C. § 1533(h).

endangered species within the foreseeable future.”<sup>40</sup> Only endangered species are automatically protected against takings.<sup>41</sup> For threatened species, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service may issue special rules prohibiting specific activities on an individual basis.<sup>42</sup> Without the robust list of protections afforded to endangered species, threatened species are left exposed to exploitative practices, including use in entertainment. This restricts the applicability of an already narrow law.

Moreover, these special rules can undermine the protections that are afforded to threatened species and allow otherwise forbidden activities to take place.<sup>43</sup> For example, in 1990, wild chimpanzees were declared endangered, but captive chimpanzees were listed as threatened.<sup>44</sup> This so-called “split listing” allowed captive chimpanzees to be used for biomedical experiments, entertainment, and the pet trade.<sup>45</sup> After years of pressure from animal rights activists, the Fish and Wildlife Service labelled all chimpanzees as endangered, granting them full protection under the ESA.<sup>46</sup>

### C. *The Animal Welfare Act*

The Animal Welfare Act (AWA) is much wider in scope than the ESA and directly addresses the humane treatment of animals.<sup>47</sup> Filmmakers are also more clearly implicated in this statute, as the term “exhibitor” is defined as any public or private person who “exhibit[s] any animals . . . to the public for compensation.”<sup>48</sup> However, it excludes many animals commonly used in films, including cold-blooded animals (e.g., snakes) and horses.<sup>49</sup>

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<sup>40</sup> *Id.* § 1532.

<sup>41</sup> *See id.* § 1538.

<sup>42</sup> *Id.* § 1533(d).

<sup>43</sup> *See* Lorraine L. Fischer, Comment, “No Animals Were Harmed.”: Protecting Chimpanzees from Cruelty Behind the Curtain, 27 HASTINGS COMM’NS & ENT. L.J. 405, 430–32 (2005) (discussing how one such “special rule” stripped chimpanzees of their protections under the ESA).

<sup>44</sup> *Endangered vs. Threatened*, PROJECT R&R, <https://releasechimps.org/laws/regulations/endangered> [<https://perma.cc/BJ8H-25Z3>].

<sup>45</sup> *ALL Chimpanzees Now Considered Endangered*, SAVE THE CHIMPS, <https://savethechimps.org/all-chimpanzees-now-considered-endangered/> [<https://perma.cc/3Z5C-5HS5>].

<sup>46</sup> Press Release, U.S. Fish & Wildlife Serv., U.S. Fish and Wildlife Service Finalizes Rule Listing All Chimpanzees as Endangered Under the Endangered Species Act (June 12, 2015), <https://www.fws.gov/press-release/2015-06/us-fish-and-wildlife-service-finalizes-rule-listing-all-chimpanzees> [<https://perma.cc/PDY4-L2NT>].

<sup>47</sup> 7 U.S.C. §§ 2131–60.

<sup>48</sup> *See id.* § 2132(h).

<sup>49</sup> *Id.* § 2132(g).

The statute gives the Secretary of Agriculture broad authority to institute minimum standards regarding, inter alia, feeding, sanitation, shelter, and veterinary care for the proper treatment of animals by dealers (those who provide the animals)<sup>50</sup> and exhibitors.<sup>51</sup> Under §§ 2133 and 2134 of the Act, both exhibitors and dealers must obtain licenses from the Secretary, who may not grant such licenses until the parties “have demonstrated that [their] facilities comply with the standards.”<sup>52</sup> After receiving a license, entities should expect “[r]outine, unannounced compliance inspections” to ensure they are continuing to adhere to these standards.<sup>53</sup> The frequency of these inspections depends on “several factors, including an entity’s compliance history.”<sup>54</sup>

### 1. Enforcement Issues

The United States Department of Agriculture (USDA) is tasked with the enforcement of these provisions,<sup>55</sup> but its track record is far from ideal. As noted by the Office of the Inspector General, issues in the USDA’s enforcement practices include “failures to promptly inspect facilities; renewal of licenses following documented violations without reinspections; cooperation with facilities that deny inspectors access; and failure to pursue collection of penalties.”<sup>56</sup> In previous years, one of the primary complaints against the USDA was its practice of “rubber-stamping.”<sup>57</sup> Despite the AWA’s seeming assurance that the Secretary would only issue licenses after an entity demonstrated that it met facility standards, the USDA allowed renewal applicants to simply self-certify that they were in compliance with the standards.<sup>58</sup> Allowing renewals without an inspection of the premises meant facilities violating AWA standards continued to hold valid licenses, even when the USDA was aware of inadequate conditions.<sup>59</sup>

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<sup>50</sup> *Id.* § 2132(f).

<sup>51</sup> *Id.* § 2143(a)(1)–(2).

<sup>52</sup> *Id.* §§ 2133–34.

<sup>53</sup> *AWA Inspection and Annual Reports*, USDA (Jan. 11, 2026), <https://www.aphis.usda.gov/awa/annual-inspection-reports> [<https://perma.cc/LX5Y-D6QB>].

<sup>54</sup> *Id.*

<sup>55</sup> 7 U.S.C. § 2132(b).

<sup>56</sup> Deawn A. Hersini, Comment, *Can't Get There from Here... Without Substantive Revision: The Case for Amending the Animal Welfare Act*, 70 UMKC L. REV. 145, 148 (2001).

<sup>57</sup> See, e.g., Emily Jenks, *The Bear Necessities: Why Captive Exhibited Animals Need Stronger Regulation Based on Their Species-Specific Biological Needs*, 2019 MICH. ST. L. REV. 1081, 1093–94 (2019).

<sup>58</sup> *Id.*

<sup>59</sup> See *Animal Legal Def. Fund, Inc. v. Perdue*, 872 F.3d 602, 618 (D.C. Cir. 2017) (discussing how the USDA renewed a zoo’s license on the same day it documented eleven violations, including “numerous repeat violations.”).

The USDA attempted to remedy the issue in 2020 by substituting the annual license renewal procedure with a process wherein the applicant must apply for a brand-new license (requiring a pre-license inspection) every three years.<sup>60</sup> However, applicants have up to three chances to pass inspections.<sup>61</sup> Moreover, these inspections are planned in advance, giving entities the opportunity to conceal any deficiencies prior to an inspector's arrival.<sup>62</sup> The USDA only considers violations found during pre-licensing inspections when determining whether to issue a new license; violations found during prior unannounced visits, regardless of their seriousness, do not factor into the agency's decision.<sup>63</sup> Therefore, while inspectors are still encouraged to carry out unannounced visits, they may not deem such visits essential.<sup>64</sup>

This indifferent attitude would be consistent with the USDA's history of failing to discipline violators. The USDA is allowed to issue penalties under § 2149, including civil fines and the revocation of licenses.<sup>65</sup> However, audits found that the agency "routinely discounted penalties so steeply that they are treated as a 'cost of doing business' by the regulated community," defeating any purpose of deterrence.<sup>66</sup> And while the USDA sometimes exercises its authority to revoke licenses, it typically does so only after numerous citations.<sup>67</sup> This leniency is a result of the lack of specificity in the agency's regulations, as its inspection guidelines do not identify a limit on the number of citations an entity can receive before its license is revoked. In fact, the guidelines provide only one scenario warranting revocation, explaining that "[a] facility will be referred . . . for *possible* license revocation after the fourth Attempted [but denied] Inspection."<sup>68</sup> The USDA's apathetic

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<sup>60</sup> Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs, 85 Fed. Reg. 28772 (May 13, 2020) (codified at 9 C.F.R. pts. 1–3).

<sup>61</sup> *Id.*

<sup>62</sup> *USDA Steps Up—And Steps Back—With New License Renewal Rules*, ANIMAL WELFARE INST. Q. (Summer 2020), <https://awionline.org/awi-quarterly/summer-2020/usda-steps-and-steps-back-new-license-renewal-rules>.

<sup>63</sup> *Id.*

<sup>64</sup> Maya G. Sanaba, *USDA vs. AZA: Playing with Tiger Cubs Isn't All It's Cracked Up to Be*, 48 J. CORP. L. 407, 419 (2023).

<sup>65</sup> 7 U.S.C. § 2149.

<sup>66</sup> Delcianna J. Winders, *Administrative License Renewal and Due Process—A Case Study*, 45 FLA. ST. U. L. REV. 539, 582 (2018).

<sup>67</sup> See, e.g., Kitty Block & Sara Amundson, *USDA Permanently Revokes License of Breeder Where Our Animal Rescue Team Saved 110 Cats*, HUMANE WORLD FOR ANIMALS, <https://www.humanesociety.org/blog/usda-revokes-cat-breeder-puppy-mill-virginia> [<https://perma.cc/V7BN-QRA8>] (explaining that the USDA finally revoked the license of a breeder who had over fifty AWA violations in less than a year).

<sup>68</sup> See USDA, ANIMAL WELFARE INSPECTION GUIDE § 4.3.5. (2025) (emphasis added), <https://www.aphis.usda.gov/sites/default/files/animal-care-inspection-guide.pdf>.

approach allows animals to continue suffering in abusive conditions for years while facilities flout animal welfare standards.<sup>69</sup> Therefore, in addition to being poorly enforced, the regulations in place are facially inadequate, as they do not create a proper framework that ensures compliance.

## 2. Standing Issues

The AWA does not provide a private right of action, meaning both administration and enforcement are left to the discretion of the USDA. As such, plaintiffs often attempt to bring suit against the USDA itself under the Administrative Procedure Act (APA)<sup>70</sup> on the grounds that the agency's administrative processes failed to sufficiently protect the relevant animal(s), causing the plaintiffs emotional offense.<sup>71</sup> These suits have limited success, as it is difficult for plaintiffs to establish standing. This type of claim has not been brought in the film context, but such a suit would likely suffer a similar fate.

To establish standing in a federal court case, a plaintiff must plausibly allege at least three elements: injury-in-fact, causation, and redressability.<sup>72</sup> In some courts, this is followed by a separate evaluation of whether the plaintiff's claim falls within the "zone of interests" (i.e., the right type of plaintiff and/or right type of injury) contemplated by the statute.<sup>73</sup> Causation is relatively straightforward, as the plaintiff need only demonstrate that the agency's practices enabled "the conduct that allegedly caused the plaintiff's injuries."<sup>74</sup> In the context of an injured animal actor, a plaintiff could claim that the USDA's failure to promulgate adequate rules for protecting animals on sets allowed the animal to be placed in unsafe conditions, resulting in the relevant injury.

The other elements prove more difficult, especially for ordinary plaintiffs in a film setting. The injury-in-fact evaluation consists of its own three elements: the injury must be particularized to the plaintiff (rather than shared by most or all members of the public), be actual or imminent, and affect a concrete interest.<sup>75</sup> Unless the individual works on the set of the movie (or, perhaps, has definitive plans to visit the

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<sup>69</sup> See, e.g., *Animal Legal Def. Fund, Inc. v. Perdue*, 872 F.3d 602, 608 (D.C. Cir. 2017) (detailing how plaintiffs reported witnessing disturbing scenes of animal cruelty at the defendants' "mobile zoo" in 2012 and 2013, including "lions and wolves covered with flies," yet the USDA renewed the defendants' license renewal in 2014).

<sup>70</sup> 5 U.S.C. §§ 551–59.

<sup>71</sup> See *id.* § 702; see, e.g., *Sierra Club v. Morton*, 405 U.S. 727 (1972).

<sup>72</sup> U.S. CONST. art. III, § 2, cl. 1.

<sup>73</sup> See, e.g., *Animal Legal Def. Fund, Inc. v. Espy*, 29 F.3d 720, 723 (D.C. Cir. 1994).

<sup>74</sup> *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440 (D.C. Cir. 1998).

<sup>75</sup> *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

movie set),<sup>76</sup> they could not claim that the injuries are personal to them based solely on their special interest in animal protection.<sup>77</sup> It would also be challenging to allege an actual or imminent injury. The public typically only learns of abuse that occurred on set after the fact; to establish an actual injury based on a previous incident, the plaintiff must show “continuing, present adverse effects” separate from the emotional offense of having learned or witnessed the event.<sup>78</sup>

Most plaintiffs would have trouble establishing redressability for similar reasons. Other plaintiffs who have prevailed on the redressability element simply contended that “more exacting regulations” would remedy their continuing emotional or “aesthetic” injury, as the offensive third party (e.g., the zoo in *Animal Legal Defense Fund v. Glickman*) would be unable to continue its objectionable activities.<sup>79</sup> Here, if the movie has already completed filming and/or the relevant animal has already suffered the injury, then the average plaintiff could not claim that stricter regulations would provide relief, as the regulations would have no effect on an injury that has already occurred. A professional who regularly works on sets with animals may be able to claim that witnessing the improper treatment of animals over the course of their career would cause continuing emotional harm, then argue that enjoining the agency would prevent “professional and aesthetic injury in the future.”<sup>80</sup> Nevertheless, these plaintiffs may still lose, as a court may find that the APA was not intended to serve this class of private citizens and/or that this type of emotional harm was not an injury contemplated by the statute, thereby failing the zone of interests test.<sup>81</sup> Thus, it is unlikely that most private citizens could establish standing and bring a valid suit against the USDA under the APA.

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<sup>76</sup> Compare *Glickman*, 154 F.3d at 431 (holding that the plaintiff, who had “regularly visited and plan[ned] to keep visiting” the zoo at issue had a valid interest in “observing animals living under humane conditions”), with *Lujan*, 504 U.S. at 564 (finding that individuals’ plans to go back to the area “some day,” were too conjectural to constitute an imminent injury).

<sup>77</sup> See *Sierra Club v. Morton*, 405 U.S. 727, 736–40 (1972) (holding that an organization’s special interest in land conservation, without a showing that its members would suffer actual injury, is not sufficient to establish an injury in fact).

<sup>78</sup> *Lujan*, 504 U.S. at 564 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). Perhaps a plaintiff could demonstrate continuing adverse effects by adequately pleading present emotional distress. However, case law in other areas cuts against this argument. See, e.g., *FAA v. Cooper*, 566 U.S. 284 (2012) (holding that emotional distress alone does not constitute actual damage under the Privacy Act).

<sup>79</sup> 154 F.3d at 443–44.

<sup>80</sup> *Alternatives Rsch. & Dev. Found. v. Glickman*, 101 F. Supp. 2d 7, 12–13 (D.D.C. 2000) (referencing *Animal Legal Def. Fund, Inc. v. Espy*, 23 F.3d 496, 505 (D.C. Cir. 1994) (Williams, J., concurring in part)).

<sup>81</sup> *Id.* at 502.

#### D. State Laws

While a few states have enacted laws preventing the portrayal of animal cruelty, most states do not directly address the welfare of animal actors.<sup>82</sup> All states have laws preventing animal cruelty.<sup>83</sup> At first blush, it may seem that these laws cover problematic filmmakers. The statutes often utilize broad language, targeting any intentional infliction of pain on an animal or general neglect.<sup>84</sup> Presumably, then, these laws would apply to directors who attach dynamite to horses.<sup>85</sup> However, these statutes are ineffective in practice, at least in the film context, due to under-reporting and under-enforcement.

First, the problems on sets are not limited to when the cameras are rolling; a key issue is the lack of appropriate care for animals when they are *not* filming. Under these circumstances, the few state laws banning the depiction of animal cruelty would not apply, and the laws banning animal cruelty in general are only effective if the abuse is exposed. Unless an animal welfare monitor is present on set or whistleblowers step up, the treatment of animals behind the scenes may go unreported. For example, whistleblowers on the set of *The Hobbit: An Unexpected Journey* (2012) alleged that as many as twenty-seven animals died from dehydration, exhaustion, or drowning at the unmonitored farm where the animals were housed and trained.<sup>86</sup> The deaths on the set of *The Hobbit* gained international attention and brought the purported abuse to light,<sup>87</sup> but that won't always be the case. With no one to hold them accountable and ratings hanging in the balance, studios have every incentive to muzzle allegations of abuse. Without comprehensive monitoring procedures in place, there is no way to ensure animal abuse is reported to authorities for prosecution under state anti-cruelty laws.<sup>88</sup>

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<sup>82</sup> Vincent Rizzo, *Detailed Discussion of the Legal Protections of Animals in Filmed Media*, MICH. ST. UNIV.: ANIMAL LEGAL & HIST. CTR. (2012), <https://www.animallaw.info/article/detailed-discussion-legal-protections-animals-filmed-media> [<https://perma.cc/7CFC-R7QF>].

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* (citing WASH. REV. CODE § 16.52.205 (2006) and MINN. STAT. § 343.21 (2010)).

<sup>85</sup> See discussion of *Heaven's Gate*, *supra* Section I.A.

<sup>86</sup> Baum, *supra* note 19.

<sup>87</sup> See, e.g., *The Hobbit: And Some Unexpected Cruelty? '27 Animals Died During Filming of Hollywood Blockbuster'*, HUFFINGTON POST UK (Jan. 27, 2014), [https://www.huffingtonpost.co.uk/2013/11/27/the-hobbit-animal-cruelty-filming\\_n\\_4349741.html](https://www.huffingtonpost.co.uk/2013/11/27/the-hobbit-animal-cruelty-filming_n_4349741.html) [<https://perma.cc/WN5H-L5WB>].

<sup>88</sup> The simple presence of monitors on set, without stringent reporting guidelines and oversight, is not sufficient. *Cf.* Baum, *supra* note 19 (describing how a CASR on the set of *Life of Pi* sent an email telling a colleague not to mention the near-death of the tiger on set "TO ANYONE, ESPECIALLY THE OFFICE!" as she "downplayed the f— out of it.").

Relatedly, anti-cruelty laws are under-enforced. Law enforcement officials have historically refused to take animal cruelty offenses seriously, often reticent to charge even “obvious offenders.”<sup>89</sup> The fact that many states lack a private right of action compounds this issue, as—similar to the flaws of the AWA—this leaves enforcement solely at the discretion of a disinterested group.<sup>90</sup>

Several state statutes also include language that weakens their effectiveness. For instance, the New York anti-cruelty statute defines “torture or cruelty” in terms of “*unjustifiable* physical pain, suffering or death.”<sup>91</sup> This opens the door for defendants to assert their actions were necessary in order to achieve a justifiable end.<sup>92</sup> California’s anti-cruelty statute does not qualify the type of pain suffered, though it creates liability only for those who “maliciously and intentionally” harm an animal,<sup>93</sup> with the state defining “maliciously” as “a wish to . . . injure.”<sup>94</sup> But many instances of animal injuries on sets do not involve an overt intent to injure an animal. Consider the crewmembers of Disney’s *Pirates of the Caribbean: The Curse of the Black Pearl* (2003), who detonated special-effects explosions in the ocean, causing dead fish and squid to wash ashore for days.<sup>95</sup> The crewmembers reportedly did not take any precautions because they did not believe the explosions would harm marine life, showing a lack of intent to harm the animals.<sup>96</sup> The requirement of malicious intent therefore serves as a barrier to proper prosecution. But even if states successfully prosecute violators, the resulting penalties are relatively minor.<sup>97</sup> These inconsequential punishments suggest that legislatures do not view

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<sup>89</sup> Fischer, *supra* note 43, at 433.

<sup>90</sup> *Id.* at 433–34.

<sup>91</sup> N.Y. AGRIC. & MKTS. LAW § 350 (McKinney 1999) (emphasis added).

<sup>92</sup> Fischer, *supra* note 43, at 434.

<sup>93</sup> CAL. PENAL CODE § 597(a) (West 2024).

<sup>94</sup> *Id.* § 7(4) (West 2024). The definition also includes the “intent to do a wrongful act,” but the anti-cruelty statute’s explicit incorporation of the phrase “*and intentionally*,” presumably indicates that malice in this context is distinct from simple intent to commit a “conscious and voluntary” act. *Id.* § 597(a) (emphasis added); Fischer, *supra* note 43, at 434.

<sup>95</sup> Clint Davis, *10 Popular Movies That Faced Claims of Animal Abuse*, NBC 26 (Jan. 20, 2017, 12:47 PM), <https://www.nbc26.com/news/national/10-popular-movies-that-faced-claims-of-animal-abuse> [<https://perma.cc/9U9Z-9J94>].

<sup>96</sup> *Id.* It should be noted that the AHA’s current Guidelines state that productions may only use underwater explosives after providing the organization with detailed information and documented approval from government agencies. AM. HUMANE ASS’N, GUIDELINES FOR THE SAFE USE OF ANIMALS IN FILMED MEDIA 35 (2021), <https://www.americanhumane.org/app/uploads/2015/08/AH-Full-Guidelines-2021.pdf> [<https://perma.cc/7W9X-BNAS>] [hereinafter 2021 GUIDELINES].

<sup>97</sup> Fischer, *supra* note 43, at 433.

animal abuse as particularly reprehensible and negate any deterrent effects of the statutes.

## II. SELF-REGULATION UNDER THE AHA

### A. Jurisdiction

As discussed in Section I.A., the AHA has a long history with the world of film. While there are other advocacy groups that target animal welfare in the media, these groups operate on a voluntary basis, meaning studios must invite the group to monitor the set.<sup>98</sup> The AHA has the *sole right* to monitor animal treatment, at least with respect to SAG film sets.<sup>99</sup> SAG film productions are required to register with the AHA's "No Animals Were Harmed" program and provide the organization with a copy of their script, animal handler and veterinarian details, and set locations.<sup>100</sup> Because the AHA's authority is rooted in its SAG contract, the organization's legal right to be present on sets is exclusively limited to domestic SAG film productions. International and non-SAG productions are, of course, permitted to request monitoring from the AHA, but many decline assistance.<sup>101</sup>

### B. Criticisms

#### 1. Vague Certification System & Lack of Transparency

The AHA is the only organization that may issue the official "No Animals Were Harmed" disclaimer for use in film credits.<sup>102</sup> In addition to the disclaimer, the AHA publishes a breakdown online of animal scenes for every film that receives some level of certification.<sup>103</sup> To receive the certification, productions must allow a Certified Animal Safety Representative (CASR) from the AHA to be on set and send the

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<sup>98</sup> See, e.g., MOVIE ANIMALS PROTECTED, <https://movieanimalsprotected.com/> [<https://perma.cc/4FNZ-GYLB>].

<sup>99</sup> Rivera, *supra* note 34, at 319, 325.

<sup>100</sup> AM. HUMANE ASS'N, NO ANIMALS WERE HARMED: A CERTIFICATION PROGRAM OF AMERICAN HUMANE ASSOCIATION 1 (2016), [https://www.sagaftra.org/files/aha\\_working\\_with\\_animals\\_guidelines.pdf](https://www.sagaftra.org/files/aha_working_with_animals_guidelines.pdf) [<https://perma.cc/Q8N4-XVSP>]; SAG & AMPTP, PRODUCER-SCREEN ACTORS GUILD CODIFIED BASIC AGREEMENT OF 2014, at 111 (2014), [https://amptp.org/wp-content/themes/amptp/assets/pdf/SAG-AFTRA/2014%20Codified%20Basic%20Agreement%20\("CBA"\).pdf](https://amptp.org/wp-content/themes/amptp/assets/pdf/SAG-AFTRA/2014%20Codified%20Basic%20Agreement%20() [<https://perma.cc/HPC7-HGLB>].

<sup>101</sup> Baum, *supra* note 19.

<sup>102</sup> 2021 GUIDELINES, *supra* note 96, at 4.

<sup>103</sup> *Id.*

final cut of the film to the organization for screening.<sup>104</sup> Beyond these two logistical requirements, the evaluative measures used to grant certifications are largely unknown.<sup>105</sup> Though the AHA publishes a comprehensive set of guidelines regarding standards for veterinary care, cast/crew protocols, costumes/make-up, location, special effects, stunts, and specific species (including reptiles, horses, and fish),<sup>106</sup> the degree of compliance necessary to earn the certification is unclear.<sup>107</sup>

The AHA's practices have only become less transparent over the years. Prior to 2021, the AHA used a rating system, with a film's rating appearing alongside the breakdown of animal scenes.<sup>108</sup> This rating system consisted of six categories: Monitored: Outstanding (meaning a CASR was present for all relevant scenes), Monitored: Acceptable (meaning a CASR was not present for all animal scenes, but the AHA feels confident the production followed guidelines), Monitored: Special Circumstances (see discussion below), Monitored: Unacceptable (meaning the production failed to follow guidelines, and an animal injury occurred), Not Monitored: Production Compliant (meaning the production requested a CASR, but one was not provided), and Not Monitored (meaning production did not request the AHA's approval).<sup>109</sup> By 2024,<sup>110</sup> the AHA had implemented a trimmed-down certification system with four new labels: Full Certification, Modified Certification, Not Monitored, and Special Circumstances.<sup>111</sup>

If a production requested a CASR and the AHA was unable to send one, the film team could still request a "Not Monitored, Production Compliant" status letter (though this was listed separately from the

<sup>104</sup> *How to Certify a Production*, AM. HUMANE, <https://www.americanhumane.org/what-we-do/certify-humane-treatment/no-animals-were-harmed/certify-your-production/> [<https://perma.cc/NB9Y-DXY7>].

<sup>105</sup> See Baum, *supra* note 19 ("The AHA does not explain why the films get the ratings they do . . .").

<sup>106</sup> See generally 2021 GUIDELINES, *supra* note 96 (providing guidance for the various categories).

<sup>107</sup> See *supra* quote accompanying note 105.

<sup>108</sup> It is unclear when the association switched to the later limited rating system, but the old AHA website listed movies with release dates as late as 2020 using the old rating system. See, e.g., *Birds of Prey*, Review, AM. HUMANE, <https://web.archive.org/web/20231207031758/http://old.humanehollywood.org/index.php/movie-archive/item/birds-of-prey>.

<sup>109</sup> *An Explanation of Our Certification*, AM. HUMANE, <https://web.archive.org/web/20240506223604/https://old.humanehollywood.org/index.php/on-the-set/certification-definition>.

<sup>110</sup> See discussion *supra* note 108.

<sup>111</sup> *Certified Productions*, HUMANE HOLLYWOOD, <https://web.archive.org/web/20240507000018/https://humanehollywood.org/certified-productions/>.

explanation of the certification levels, and films with this designation were not listed on the website, as was previously the case).<sup>112</sup> Oddly, one page of the website (and particular movie reviews) displayed another classification titled “Special Circumstances,” but the site gave no clear explanation as to what this meant.<sup>113</sup> If this aligned with the old rating system’s “Monitored: Special Circumstances” label, it indicated that, despite the production’s adherence to guidelines, an animal accident occurred, with no “negligence or malice on the part of the production or animal suppliers.”<sup>114</sup> Notably, the AHA stopped listing “unacceptable” films that failed to follow the guidelines, resulting in harm to the animals on set.

As of 2026, the AHA only provides for “Full Certification and “Modified Certification.”<sup>115</sup> “Full Certification” aligns with the previous definition of “Monitored: Outstanding,” indicating that a CASR monitored safety throughout the production, and filming “met or exceeded” guidelines.<sup>116</sup> “Modified Certification” similarly aligns with the previous definition of “Monitored: Acceptable,” indicating that a CASR was unable to monitor every animal scene but “oversaw significant animal action filmed in compliance with [their guidelines].”<sup>117</sup> The AHA does not define “significant.” By issuing a modified certification, the AHA “acknowledge[s] that the filmmakers have cooperated fully with [the AHA’s] process” based on the supervised scenes and submission of the final cut for screening.<sup>118</sup>

The change in grading systems demonstrates the AHA’s shift in priorities over the years. The present system focuses on promoting certified films rather than informing the public of animal treatment on all applicable film sets. The AHA does not release the titles of films that failed to adhere to protocols, nor are those films required to disclose their failure.<sup>119</sup> When searching through reviews online, users may only filter the list based on whether films received Full or Modified Certifications; users cannot search for films categorized as Not

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<sup>112</sup> *Receiving Certification*, HUMANE HOLLYWOOD, <https://web.archive.org/web/20240622071410/https://humanehollywood.org/working-with-us/receiving-certification/>.

<sup>113</sup> *Certified Productions*, *supra* note 111.

<sup>114</sup> *An Explanation of Our Certification*, *supra* note 109.

<sup>115</sup> *Certified Productions*, AM. HUMANE, <https://www.americanhumane.org/what-we-do/certify-humane-treatment/no-animals-were-harmed/certified-productions/> [<https://perma.cc/Y3V6-2YNK>].

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Telephone Interview with Stephanie Gourley, Pre-Production Manager, Am. Humane (May 6, 2024).

Monitored or Special Circumstances unless they search for a specific title that happens to bear that label, and that is if the AHA has chosen to list the movie at all.<sup>120</sup> For example, King—who we met in the introduction of this Note—almost drowned while filming the boat scene.<sup>121</sup> The CASR on set warned a colleague not to disclose the event to anyone, as she “downplayed the f— out of it.”<sup>122</sup> Despite the presence of a CASR and an animal’s near-death, *Life of Pi* (2012) is nowhere to be found on the AHA website. The concealment of unmonitored films and films that resulted in animal injury or death significantly hinders the public’s ability to learn of problematic productions. Thus, the lack of definition and transparency regarding evaluations renders AHA certification a merely performative gesture.

The iconic disclaimer provides the public with false reassurance, as many assume it guarantees no animals were harmed *at any point* over the course of filming. In reality, AHA monitoring practices ignore many serious abuses. Most significantly, the AHA does not acknowledge offset or unintentional (though preventable) harm in its evaluation.<sup>123</sup> For example, at least fourteen horses were pulled from the set of *The Chronicles of Narnia: Prince Caspian* (2008) due to lameness and injuries, yet the film received certification because “none of the injuries were serious and none were due to intentional harm.”<sup>124</sup>

These vague standards affect the statistics the organization advertises. Though the AHA boasts a 99.98% safety rating,<sup>125</sup> this number is inflated by including scores of (innumerable) insects,<sup>126</sup> while excluding animals who died when cameras were not rolling. This number also does not reflect all animal actors. The AHA monitors only seventy percent of “known animal action in film and television,” meaning over one-quarter of animal actors are left out of the safety rating calculation.<sup>127</sup> The percentage of monitored action would likely be

<sup>120</sup> *Certified Productions*, *supra* note 115.

<sup>121</sup> Baum, *supra* note 19.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* (“[The AHA] do[es]n’t have jurisdiction for animals in transit or those in holding facilities.”) (quoting Dr. S. Kwane Stewart, Previous Director of American Humane’s “No Animals Harmed” Program).

<sup>124</sup> *Id.*

<sup>125</sup> Am. Humane Ass’n, *American Humane Association Responds to The Hollywood Reporter*, PR NEWswire (Nov. 25, 2013, 9:12 AM), <https://www.prnewswire.com/news-releases/american-humane-association-responds-to-the-hollywood-reporter-233398221.html> [<https://perma.cc/A2XP-EEYR>] [hereinafter *AHA Response*].

<sup>126</sup> Baum, *supra* note 19.

<sup>127</sup> *Humane Hollywood Initiative*, AM. HUMANE, <https://web.archive.org/web/20240317123934/https://www.americanhumane.org/initiative/no-animals-were-harmed/>.

smaller if it included animals in non-SAG productions and productions that move internationally to escape the possibility of AHA scrutiny.<sup>128</sup>

## 2. Lack of Comprehensive Enforcement

Underenforcement further erodes the credibility of the AHA's stamp of approval. As mentioned above, the AHA sets fairly narrow boundaries for itself. While CASRs take precautions to ensure animals are not over-worked or working in extreme weather conditions,<sup>129</sup> they "only monitor animals when they are on the set," leaving animals with considerably less protection off-set.<sup>130</sup> Though the guidelines mention safe transportation practices, the AHA's primary concern is on-set action,<sup>131</sup> and the organization has demonstrated a willingness to overlook events that occur after cameras stop rolling.<sup>132</sup>

Moreover, the AHA's authority over this limited range of activities is essentially rendered moot given the organization's lack of effective enforcement tools. Though certain guidelines use commanding language,<sup>133</sup> they are just that: guidelines. At this time, the only consequence filmmakers may face is denial of the "No Animals Were Harmed" credit.<sup>134</sup> Reminiscent of the early days of the Hays Code, the absence of significant repercussions diminishes the AHA's influence, leaving it to rely on voluntary compliance. Make no mistake: the AHA's ability to grant the disclaimer is possibly its strongest power. But the organization's ineffective framework weakens its influence.

The AHA fails to properly leverage the credit for greater compliance. Ultimately, Hollywood needs the AHA in order to avoid public backlash and government regulation. Consider the reason producers granted the AHA the right to be on sets in the first place: had the animal abuse of Old Hollywood continued, the government inevitably would

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<sup>128</sup> Cf. Iacona, *supra* note 32, at 41.

<sup>129</sup> See 2021 GUIDELINES, *supra* note 96, at 51; see also Jennifer Chen, *Thomas Edling Helps Keep Hollywood's Animals Safe*, JOHNS HOPKINS MAG., Winter 2021, <https://hub.jhu.edu/magazine/2021/winter/no-animals-harmed-edling/> (describing an instance where a CASR "stood over [a] pig with a huge umbrella" to provide shade between takes).

<sup>130</sup> AHA Response, *supra* note 125.

<sup>131</sup> Telephone Interview with Stephanie Gourley, *supra* note 119. When asked if a production today could receive full certification if, for example, an incident occurred during transportation, Ms. Gourley did not respond affirmatively or negatively, providing only that certification would depend on the specific circumstances. *Id.*

<sup>132</sup> AHA Response, *supra* note 125 (disclaiming responsibility for a horse who died "post-production and [in] transit.").

<sup>133</sup> See, e.g., 2021 GUIDELINES, *supra* note 96, at 19 ("If native animals are not to remain on the set, they *must* be carefully removed, relocated, properly housed, cared for and then safely returned to their habitat after filming.") (emphasis added).

<sup>134</sup> Cf. Iacona, *supra* note 32, at 33–35.

have stepped in, destroying the self-regulation system.<sup>135</sup> Today, government intervention would involve federal inspectors on sets—funded by taxes on the productions—publishing detailed reports that the public could easily access.<sup>136</sup> Certification comes with other benefits too, including protection against negative press from zealous animal rights groups.<sup>137</sup> But rather than use this leverage to insist on comprehensive safety measures, the AHA actively aids violators. By suppressing the names of films that do not adhere to guidelines, the AHA minimizes the amount of publicity the abuses receive and, in turn, the likelihood that the production will be held accountable by the general public.<sup>138</sup>

Furthermore, the AHA does not utilize the limited police powers granted to humane organizations, despite having the unique opportunity to combine the industry’s self-regulation practices with government enforcement mechanisms. The AHA is not directly affiliated with the government, but it claims to support the enforcement of state and federal laws.<sup>139</sup> Thirty-seven states in the U.S. have granted humane societies some degree of police power<sup>140</sup> to prevent cruelty against animals.<sup>141</sup> Though these statutes authorize humane officers to write citations or, in some states, even arrest offenders,<sup>142</sup> the AHA has never used these powers.<sup>143</sup> The AHA functions only as another component of

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<sup>135</sup> See discussion *supra* Section I.A.

<sup>136</sup> Gary Baum, *Is This Hollywood’s Most Dangerous Co-Dependent Relationship?*, HOLLYWOOD REP. (Nov. 25, 2013), <https://www.hollywoodreporter.com/tv/tv-news/is-hollywoods-dangerous-dependent-relationship-1120187/> [<https://rb.gy/b74e3h>].

<sup>137</sup> Baum, *supra* note 19.

<sup>138</sup> Cf. Ralph Frammolino & James Bates, *Questions Raised About Group That Watches Out for Animals in Movies*, L.A. TIMES (Feb. 9, 2001, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2001-feb-09-mn-23161-story.html> [<https://perma.cc/S9BU-GXXB>] (explaining that the public attention given to the AHA’s then-new website gave “the group leverage over producers,” as they were now publicly held accountable).

<sup>139</sup> See 2021 GUIDELINES, *supra* note 96, at 15 (explaining that many of the AHA’s Guidelines “evolved from federal, state, and/or local laws,” and that those laws “are applicable and can override the[] Guidelines if they are more stringent.”).

<sup>140</sup> For a breakdown of the different approaches, see Christopher A. Pierce, *Detailed Discussion of Humane Societies and Enforcement Powers*, MICH. ST. UNIV. ANIMAL LEGAL & HIST. CTR. (2011), <https://www.animallaw.info/article/detailed-discussion-humane-societies-and-enforcement-powers> [<https://perma.cc/5YMF-7QRP>].

<sup>141</sup> *Law Governing Deputizing Humane Officers*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/humane-officer-certification/> [<https://perma.cc/T6BU-PTEB>]; see also Cynthia F. Hodges, *Table of Enforcement Powers Granted to Humane Societies by State*, MICH. ST. UNIV. ANIMAL LEGAL & HIST. CTR. (2012), <https://www.animallaw.info/topic/table-humane-society-enforcement-powers> [<https://perma.cc/7QS3-WDK2>].

<sup>142</sup> See, e.g., CAL. CORP. CODE § 14502 (West 2021).

<sup>143</sup> Telephone Interview with Stephanie Gourley, *supra* note 119. When asked about these powers, Ms. Gourley refuted the claim that they are available to the organization, simply stating,

the film industry's self-regulation framework. The organization has the means to flex its muscle and demand strict compliance, rather than simply "encourage" it—it simply chooses not to.<sup>144</sup>

### 3. *In the Pocket of Hollywood*

The AHA's uninterested attitude towards stronger enforcement makes sense considering its dependence on Hollywood. The organization relies on two sources of income: financial support from the Industry Advancement and Cooperative Fund (a fund set up by SAG and the Alliance of Motion Picture and Television Producers) and direct payment from productions.<sup>145</sup> Is it a surprise, then, that the AHA doesn't want to bite the hand that feeds it? After all, the certification has become more of a performative badge than a guarantee of any high standards. If the AHA were to come down too hard on studios, productions could run to another animal welfare organization offering monitoring services while giving audiences the same peace of mind.<sup>146</sup> There is no reason SAG's union contract must continue to grant the AHA the exclusive right to be on sets.

Rumors of the inappropriate relationship between the AHA and Hollywood have run rampant for years.<sup>147</sup> Because the AHA is not a government entity, it is not subject to public disclosure laws; it is accountable only to Hollywood. The lack of obligatory transparency, some allege, has allowed dubious practices to flourish. Some are more innocent, such as the AHA's habit of creating marketing promotions for movies before filming has wrapped; the AHA explains that this is done to build relationships, and "[i]t's made very clear that that promotion is not going to happen if that end credit is not granted."<sup>148</sup>

But other purported practices are more suspect, with assertions that the AHA will go to great lengths not to upset big studios. Injuries and/or deaths are often downplayed out of fear of the "public relations

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"The AHA doesn't have any legal enforcement powers." *Id.* But see Fischer, *supra* note 43, at 420 n.65 (quoting the AHA's then-Coordinator of Communications Karen Rosa as stating, "We've threatened to [use the statutory police powers], and that's the end of the discussion right there," indicating that the organization was aware of these powers and its ability to use them in 2000).

<sup>144</sup> See 2021 GUIDELINES, *supra* note 96, at 15.

<sup>145</sup> Baum, *supra* note 136; Baum, *supra* note 19.

<sup>146</sup> See, e.g., *About Us*, MOVIE ANIMALS PROTECTED, <https://movieanimalsprotected.com/aboutus> [<https://perma.cc/YTP9-B98V>]. Movie Animals Protected (MAP) is a competing entity that offers animal monitoring services on sets. Compliant productions earn an end credit stating "Animal Action Monitored and Certified by Movie Animals Protected." *Id.*

<sup>147</sup> See, e.g., Frammolino & Bates, *supra* note 138.

<sup>148</sup> Baum, *supra* note 19 (quoting Mark Stubis, spokesperson for American Humane).

problems [major studios would face] if criticized.”<sup>149</sup> For instance, despite a cable severing a horse’s leg (resulting in its death) and several other dangerous incidents on the set of Disney’s *The 13th Warrior* (1999), the AHA concluded that “no cruelty occurred” and awarded the film a “believed acceptable” rating.<sup>150</sup> Over the course of several years, various staffers have claimed concerns are swept under the rug in the interest of not “stirr[ing] up” drama.<sup>151</sup> Productions or the AHA itself supposedly arrange for particular CASRs they know won’t ruffle any feathers to be on certain sets.<sup>152</sup> Many of these allegations are reinforced by the wrongful termination lawsuit brought by Barbara Casey against the AHA.<sup>153</sup> Casey, a former executive with the AHA, alleged that the organization fired her after she pushed for better animal safety on the set of the HBO horse-racing series *Luck*, where several horses died.<sup>154</sup> She eventually reached a settlement with the organization for an undisclosed amount.<sup>155</sup>

Admittedly, the AHA has taken steps to improve. Following the backlash brought by *Luck* and an in-depth exposé by *The Hollywood Reporter*, the AHA established new policies. These measures included “[t]he creation of a Scientific Advisory Committee, . . . hir[ing] licensed veterinarians to serve as our Certified Safety Representatives, . . . [and] a policy that if any animal is seriously injured or dies on set [the AHA will] commission an independent, third-party investigation.”<sup>156</sup> While these actions are a step in the right direction, they do not fix the underlying issues: a lack of transparency, the absence of an effective enforcement structure, and a biased relationship.

### III. ARE GREATER PROTECTIONS POSSIBLE?

All hope is not lost for the furry (or scaly) stars of Hollywood; legislation offers a myriad of possible solutions. Though enforcement mechanisms differ between the proposed amendments, there are

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<sup>149</sup> Frammolino & Bates, *supra* note 138.

<sup>150</sup> *Id.*

<sup>151</sup> *See id.*; Baum, *supra* note 19.

<sup>152</sup> Baum, *supra* note 19 (“Reps are only ‘good’ if they’re not making any waves . . . Reps who get complaints from a trainer are pulled from a set.”); *see also* Frammolino & Bates, *supra* note 138 (describing an incident where an investigation was taken away from a monitor after he raised concerns and given to a “less-experienced” official).

<sup>153</sup> Baum, *supra* note 19.

<sup>154</sup> Austin Siegemund-Broka, *Hollywood Docket: ‘Luck’ Horse Deaths Lawsuit Settled*, HOLLYWOOD REP. (Dec. 9, 2014, 4:21 PM), <https://www.hollywoodreporter.com/business/business-news/hollywood-docket-luck-horse-deaths-755612/> [<https://perma.cc/TA2F-P8K8>].

<sup>155</sup> *Id.*

<sup>156</sup> *AHA Response*, *supra* note 125.

common features among them. One of the most glaring issues of the AHA's current regime is its limited definition of cognizable injuries. As such, solutions must consider all harms that occur due to a lack of proper protections, regardless of intent or location. In addition to this form of strict liability, violations should result in significant civil penalties as an added deterrent. Determining the right entity to enforce a given regulation is crucial for its effectiveness. Seeing as how the government presently does not enforce the relevant federal regulations to a sufficient degree, proposed solutions must also confer enforcement powers to private parties. Finally, these changes must take place on a federal level to avoid inconsistent standards and/or filmmakers escaping to lenient states.

#### A. *Qui Tam Provision*

Qui tam provisions give private parties the right to sue on behalf of the government.<sup>157</sup> This type of action removes the burden of demonstrating a particularized injury, as the harm is to the government.<sup>158</sup> A qui tam provision under the AWA would resemble state laws granting police powers to humane organizations by allowing private entities to step into the shoes of the state when filmmakers violate anti-cruelty provisions.<sup>159</sup> To ensure the privacy of film sets and limit lawsuits, only licensed humane officers should be able to exercise this power. Similar to the applicable California statute, officers must meet certain training standards.<sup>160</sup> This arrangement could also help monitor more sets. Since the AHA has the legal right to be on SAG sets, collaboration is key. The AHA could have local humane officers function as substitute CASRs; by teaming up, the local officers would now have the legal right to be present on set. These officers, operating as "state actors,"<sup>161</sup> could then directly bring suit against filmmakers who engage in animal cruelty.

#### B. *Citizen-Suit Provision*

In contrast to qui tam actions, citizen-suit provisions under the AWA would empower private parties to bring suit for *personal* injuries. To

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<sup>157</sup> See, e.g., *State ex rel. Leibowitz v. Family Vision Care, LLC*, 128 N.E.3d 422, 429 (Ill. App. Ct. 2019).

<sup>158</sup> *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 774–75 (2000).

<sup>159</sup> See discussion *supra* Section II.B.2.

<sup>160</sup> CAL. CORP. CODE § 14502 (West 2021).

<sup>161</sup> See *Brunette v. Humane Soc'y of Ventura Cnty.*, 294 F.3d 1205, 1208 (9th Cir. 2002) (finding that, under the California statute (§ 14502), "[t]he Humane Society and its officers are state actors for the purposes of § 1983 [lawsuits].").

avoid opening the floodgates of litigation, the class of plaintiffs should be limited to humane officers and/or professionals who regularly work with animals on sets. There are two forms of citizen suits: one that permits direct enforcement against violators and one that compels agencies to perform their mandatory duties.<sup>162</sup> The former would allow humane officers or professionals on set to bring suit against filmmakers in a fashion similar to the *qui tam* action. The latter would allow these parties to sue the USDA for its failure to promulgate adequate animal protection laws, mirroring the suits plaintiffs currently attempt to bring under the APA.<sup>163</sup> The provision would serve as an explicit approval from Congress, allowing plaintiffs to now easily satisfy the zone of interests test (provided they can establish the other standing elements).<sup>164</sup> Congress has twice proposed a bill of this nature; while the bills did not pass, there were a significant number of co-sponsors on both occasions, indicating that such a bill could come to fruition under the right circumstances.<sup>165</sup>

### C. *Animal-Suit Provision*

The previously discussed approaches focused on reframing the injury inquiry. Some suggest that, rather than redefine the injury, lawmakers should create a separate provision that allows humans to sue on behalf of animals in order to enforce the act.<sup>166</sup> Proponents use the same logic that underlies actions brought on behalf of minors: because the living being at the center of the statute does not have the capacity to bring suit, another competent individual should have the ability to serve as their proxy.<sup>167</sup> The problem arises when one asks, “Who should serve as the proxy?” In the film context, it may not be effective to entrust owners or trainers with this responsibility, as they are often the cause of or complicit in the abuse, given their relationship with the industry. This framework may need to follow the structure of child abuse cases, wherein the state brings suit and appoints a guardian ad litem to

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<sup>162</sup> Hersini, *supra* note 56, at 161–62.

<sup>163</sup> See discussion *supra* Section I.C.2.

<sup>164</sup> Hersini, *supra* note 56, at 162; see discussion of elements *supra* Section I.C.2.

<sup>165</sup> Hersini, *supra* note 56, at 165.

<sup>166</sup> See, e.g., Katherine A. Burke, *Can We Stand for It? Amending the Endangered Species Act with an Animal-Suit Provision*, 75 U. COLO. L. REV. 633, 635 (2004).

<sup>167</sup> Hersini, *supra* note 56, at 168; see also *What are the Rights of Nature?*, GLOB. ALL. FOR THE RTS. OF NATURE, <https://www.garn.org/rights-of-nature/> [<https://perma.cc/EN3U-U3RC>] (discussing the Rights of Nature movement, which posits that all ecosystems (including the animals inside them) possess legal rights, and humans have a responsibility to serve as a legal proxy to enforce these rights).

advocate on the child's behalf.<sup>168</sup> A parallel enforcement structure under the AWA would have the USDA bring a claim and appoint one of their own legal officers to represent the animal. But the USDA already has the power necessary to protect these animals. Given that the USDA currently fails to adequately enforce the AWA with respect to animal actors, it is doubtful that granting the agency the right to bring a claim under an animal-suit provision would lead to greater protection.

#### *D. Alternatives to Using Animals*

Of course, none of the above provisions would be necessary if Hollywood stopped using animal actors altogether. Films have long utilized movie magic to shoot scenes with faux animals, and the realism of artificial imagery has improved exponentially in recent years. Groups such as PETA advocate for the exclusive use of CGI for animals in media.<sup>169</sup> However, if Congress were to pass such a sweeping statute, lawmakers would need to take care to avoid intruding upon First Amendment rights, lest it meet the same fate of the Hays Code. Considering laws in several states already forbid the depiction of animal cruelty,<sup>170</sup> a broad ban may be possible if legislators were to find that the use of animals in media, regardless of precautionary measures, constitutes cruelty.

#### CONCLUSION

The laws surrounding animals in the media have evolved over time to provide better safeguards. But we still have far to go. Government regulation alone is insufficient, as the USDA has failed to promulgate acceptable standards for animal treatment in the film industry thus far. Reliance on self-regulation under the AHA is also inadequate. The AHA does not serve animals' best interests, as evidenced by its concealing of violative films and poor enforcement practices. Legislative reforms granting limited rights of action can strengthen animal protections. Hopefully, one day, there will be measures in place that guarantee the safety of King and all the other animals of the silver screen.

Fade to black. Roll credits.

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<sup>168</sup> Hersini, *supra* note 56, at 168.

<sup>169</sup> Carolyn Englar, *Hey, Ryan Murphy: Animals Don't Belong in Film and TV!*, PETA (Nov. 30, 2022), <https://www.peta.org/blog/peta-germany-gorilla-video-cgi-ryan-murphy/> [https://perma.cc/6JX8-4KT2].

<sup>170</sup> See, e.g., ME. REV. STAT. ANN. tit. 17, § 1013 (1997).