



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

NOTICE OF POLICY DECISION AND PUBLIC MEETING

GENERAL PROVISIONS—COPYRIGHT RESTORATION OF CERTAIN BERNE AND WTO WORKS

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 95-1]

General Provisions—Copyright Restoration of Certain Berne and WTO Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Policy Decision and Public Meeting.

SUMMARY: The Copyright Office publishes this notice to inform the public about its obligations concerning restoration of certain copyrights under the Uruguay Round Agreements Act (URAA) signed into law on December 8, 1994. This Act restores copyright in certain works effective January 1, 1996, and requires the Copyright Office to establish procedures for filing notices of intent to enforce copyright and for registering works in which copyright has been restored. This notice summarizes the Act's copyright restoration provisions and informs the public that there will be an open meeting to solicit information and discuss implementation of the copyright provisions on March 20, 1995.

DATES: A public meeting will be held in Room 414 of the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., on March 20, 1995, beginning at 10:00 a.m. Interested parties should send a statement of interest and issues list to the address given below by March 10, 1995.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Acting General Counsel, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION

I. Background

On December 8, 1994, President Clinton signed the Act which may be cited as the "Uruguay Round Agreements Act" (URAA), Pub. L. No. 103-465, 108 Stat. 4809. On December 15, 1993, the General Agreement on Tariffs and Trade (GATT) negotiators concluded the Uruguay Round which included an agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs). President Clinton signed on to the World Trade Organization Agreement (WTO Agreement) on April 15, 1994. The URAA was introduced on September 27, 1994.

The URAA is a complex and lengthy document covering many areas of United States trade. Title V, sections 501-534, of this Act contains several significant copyright amendments. They amend the software rental provision found in 17 U.S.C. 109(b) by eliminating the expiration or sunset date (October 1, 1995), amend Titles 17 and 18 to create civil and criminal remedies for "bootlegging" sound recordings of live musical performances and music videos, and add a new 17 U.S.C. 104A to restore copyright in certain foreign works.

II. Restoration of Copyright of Eligible Works

Section 514 of the URAA restores copyright protection in certain foreign works still under protection in a source country but in the public domain in the

United States. It also grants protection to sound recordings fixed prior to February 15, 1972.¹ Copyrights in eligible foreign works are restored automatically from the "date of restoration." Since restoration is automatic, the owner of the restored copyright does not have to register this work. To qualify for restoration, a work must be an original work of authorship that is protected under subsection (a), is not in the public domain in the source country through expiration of the term of protection, and is in the public domain in the United States because of noncompliance with formalities, lack of subject matter protection in the case of a sound recording fixed before February 15, 1972, or lack of national eligibility. A further requirement to qualify is that, at the time the work was created, at least one author or rightholder (in the case of a sound recording) must have been a national or domiciliary of an eligible country; and if the work is published, it must not have been published in the United States within 30 days of first publication in the eligible country. Amended sec. 104A(h)(6).

An eligible country is one, other than the United States, that is a member of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or a member of the World Trade Organization (WTO) or is subject to a presidential proclamation that extends copyright restoration to works of that country on the basis of reciprocal treatment to the works of United States nationals or domiciliaries.

¹ URAA, title V, "Intellectual Property," sec. 514, "Restored Works." Further references to this section will be to the amended 104A.

III. Effective Date of Restoration

Section 514(a) of the URAA provides that the initial date of restoration of a restored copyright is "the date on which the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the [URAA] enters into force with respect to the United States." Although questions have been raised about the actual date of copyright restoration established under section 514(a), in light of the entire URAA, the Statement of Administrative Action (SAA), the TRIPs Agreement, and other legislative history-related materials, the effective date of copyright restoration is January 1, 1996.

The SAA accompanying the legislation provides, in relevant part, that copyright will be restored on the date "when the TRIPs Agreement's obligations take effect for the United States."² The TRIPs Agreement states that no Member, including the United States, "shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Agreement Establishing WTO."³ Since the WTO came into effect on January 1, 1995, the TRIPs Agreement's obligations take effect for the United States on January 1, 1996. Consequently, January 1, 1996, is the date on which copyright will be restored under the URAA.

This conclusion is amply supported by the legislative history of the URAA and the practical necessities surrounding implementation of the restoration provision. The Joint Report on the Senate version of the URAA bill specifically states that the "bill would automatically restore copyright protection for qualifying works . . . one year after the WTO comes into being."⁴ Furthermore, the Justice Department predicated its memorandum to the General Counsel to the United States Trade Representative as to the constitutionality of the restoration provisions on the date of restoration being January 1, 1996.⁵ Finally, the URAA requires the Copyright Office to publish

rules governing the filing of notices of intent to enforce a restored copyright 90 days before the day that copyright restoration takes place.⁶ Because this publishing requirement would have been impossible to accomplish if the effective date were January 1, 1995, the only reasonable interpretation of the URAA is that the effective date of restoration is January 1, 1996.

IV. Notification to Reliance Parties

Concern for Reliance Parties.

Congress was concerned about the effect of restoring copyrights to works already in the public domain; some of which are being actively and legally exploited in the United States. The URAA refers to the businesses and individuals using such works as reliance parties and immunizes them for their acts prior to the date of automatic copyright restoration. Reliance parties must stop reproducing any work in which a copyright is restored and must not prepare new derivative works that reproduce significant elements of a work on the date these parties have effective notice that an owner intends to enforce the restored work. This effective notice date is either the date the Copyright Office publishes in the **Federal Register** the list identifying the works on which notices of intent to enforce have been filed or the date the reliance party received actual notice of the owner's intent to enforce the restored copyright.

Filing Notices of Intent to Enforce Copyright.

The URAA gives copyright owners of restored copyrights two ways to serve notice of their intent to enforce the copyright on reliance parties. They may file an intent to enforce the restored copyright in the work with the Copyright Office or they may serve actual notice of the intent to enforce the restored copyright against a particular reliance party. If they choose the second way, they will have to notify each reliance party who may have used a work and identify the use. Consequently, it seems possible that many owners of copyright in restored works will choose to file notices of intent to enforce copyright with the Copyright Office. Based on the notices received, the Office will publish lists of notices of intent to enforce restored works beginning in May 1996 and continuing at regular intervals not to exceed four months thereafter.

The URAA specifies the minimum content of the notices of intent to enforce. It requires that the notice be signed by the owner or the owner's agent.⁷ In addition to the signature, it must contain the title, including an English-language translation, and any other alternative titles known to

the owner by which the restored work may be identified, the name of the owner, and an address and telephone number at which the owner can be located. Although the Office can ask for additional information, failure to provide such information will not invalidate the notice of intent.

Grace Period.

Reliance parties have a 12 month grace period after they have been notified either by publication in the **Federal Register** or by actual notice to sell off previously manufactured stock, to publicly perform or publicly display the work, or to authorize others to conduct these activities. Except for reliance parties who created derivative works, reliance parties must cease using the work after the 12-month grace period unless they reach a licensing agreement with the copyright owner for continued use of the restored work. Subsection (d)(3) of amended section 104A contains special rules with respect to derivative works based on underlying foreign works in which copyright has been restored such as a translation of a foreign language work or a motion picture based on a book or a play.

Procedure for Notification.

The Copyright Office will publish final regulations establishing the procedures for filing notices of intent to enforce by October 1, 1995. Owners of restored copyrights in eligible countries may begin filing notices of intent to enforce restored copyrights on January 1, 1996.

Registration of Restored Works.

The URAA also directs the Copyright Office to establish procedures permitting the owners of restored copyright to file applications to register a claim to copyright simultaneously with the notice of intent. The Office will also publish these procedures by October 1, 1995.

V. Public Comment on Procedures for Notices of Intent to Enforce and Registration

The restoration provisions are complex, and we have a number of questions about their implementation. To assist us in identifying all of the issues and to move the process forward, we are soliciting public comment, including comment from both potential owners of restored works and potential reliance parties. We will hold a public meeting in Room 414 of the James Madison Memorial Building of the Library of Congress, 101 Independence Ave. S.E. at 10:00 a.m. on March 20. Parties wishing to attend the meeting should notify the

² Congress specifically approved the Statement of Administrative Action (SAA). URAA sec. 101 (a)(2).

³ Agreement on TRIPs, VI: Arrangements, Article 65.

⁴ Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, Committee on Governmental Affairs of the United States Senate to accompany the Uruguay Round Agreements Act, S. 2467, S. Rep. No. 412, 103d Cong., 2d Sess. 225 (1994).

⁵ See Memorandum from Chris Schroeder, Counsellor to the Assistant Attorney General, Office of Legal Counsel, United States Dept. of Justice, to Ira S. Shapiro, General Counsel, USTR, on Whether Certain Copyright Provisions in the Draft Legislation to Implement the Uruguay Round of Multilateral Trade Negotiations Would Constitute a Taking Under the Fifth Amendment (July 29, 1994).

⁶ Amended sec. 104A(e)(1)(D)(i).

⁷ Ownership of a restored work vests initially in the author or initial rightholder (if the work is a sound recording) of the work as determined by the law of the source country of the work. Amended sec. 104A(b).

Acting General Counsel by March 10, 1995, by writing to Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, calling (202) 707-8380, or via telefax: (202) 707-8366. Their notification should give the party's name, an indication of association, an address and telefax number and, if possible, identify the issues he or she wish to address. Since the Office will be publishing a Notice of Proposed Rulemaking after the March 20 meeting, it will accept comments on the implementation procedures through April 18, 1995. Any party who wishes to receive the Notice of Proposed Rulemaking should let the Office know.

With respect to the issues, we are focusing on the notices of intent to enforce and the registration procedures. For example, one question is what additional information should be included in the notices of intent to enforce? What should be the extent of the indexing record? Should the notices be integrated into the online files of the Copyright Office and made available on the Internet? Can, and should, the Office publish in the Federal Register at shorter intervals than the four months specified in the statute? Finally, what should the filing fee be?

With respect to registration, should there be a new registration form for restored copyrights? With respect to the author, for purposes of registration, should the author be the author as defined in section 201 of the United States copyright law or the author as determined by the law of the source country? Should the application form require a designation of the source country? Who should be listed as the claimant—the author as determined by the law of the source country (or, if the work is a sound recording, the rightholder) or the individual or entity that owns all of the restored rights in the United States on the date the application is submitted? If the answer is other than the party that the rights vested in, should a transfer statement be required? How detailed should a transfer statement be, that is, should it, for example, include the date of the transfer? What should the fee for registration be? With respect to the deposit of copies and phonorecords, should the current practices apply or should new provisions be crafted?

Dated: February 3, 1995

Marybeth Peters
Register of Copyrights

Approved by:

James H. Billington
The Librarian of Congress

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