



# ANNOUNCEMENT

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

## NOTICE OF PROPOSED RULEMAKING.

### COPYRIGHT RESTORATION OF WORKS IN ACCORDANCE WITH THE URUGUAY ROUND AGREEMENTS ACT; CORRECTIONS PROCEDURE

The following excerpt is taken from Volume 62, Number 146 of the *Federal Register* for Wednesday, July 30, 1997 (p. 40780-40783)

#### LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 97-5]

#### Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Corrections Procedure

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** This document is issued to advise the public that the Copyright Office is proposing a new regulation to govern the filing of Correction Notices of Intent to Enforce a Restored Copyright [Correction NIEs] under section 104A of the copyright law, as amended pursuant to the Uruguay Round Agreements Act. The effect of the proposed regulation is to establish procedures for the correction of errors in previously filed Notices of Intent to Enforce a Restored Copyright and to provide a suggested format for submitting such information.

**DATES:** Comments must be received by August 29, 1997.

**ADDRESSES:** If delivered by hand, an original and ten (10) copies of comments should be delivered to: Library of Congress, Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, S.E., Washington, DC 20540. If sent by mail, an original and ten (10) copies of comments should be addressed to:

Nanette Petruzzelli, Acting General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024.

#### FOR ADDITIONAL INFORMATION:

Nanette Petruzzelli, Acting General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707 8366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Copyright Office has promulgated final regulations that provide for filing Notices of Intent to Enforce a Restored Copyright (NIEs) with the Office. 60 FR 50414 (Sept. 29, 1995). These regulations include brief procedures for correcting errors made in recorded NIEs; however, more detailed instructions for correcting NIEs have been requested. The Office is now proposing more detailed procedures.

Corrections are provided for by law and by Copyright Office regulation. The Uruguay Round Agreements Act (URAA) states that:

Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i) \*\*\* [and] shall be published in the *Federal Register* \*\*\*.

17 U.S.C. 104A(e)(1)(A)(iii). In its Sept. 29, 1995, regulation, the Copyright Office referenced this provision in the law that allows correction of minor errors:

The URAA allows a party who has filed an NIE with the Copyright Office to correct minor errors or omissions by further notice at any time after the NIE is filed. The procedures and fees are the same for filing an NIE which corrects a previously filed NIE, except that the party making the correction should refer to the previous NIE's volume and page number in the Copyright Office Documents Records, if known, on the corrected NIE.

60 FR 50414 (1995).

##### II. Procedures for Correcting Notices of Intent to Enforce

###### A. Who May File a Correction Notice of Intent To Enforce [Correction NIE]

Correction NIEs may be filed by or on behalf of the same copyright owner or rightholder who filed the original NIE. The "same copyright owner" includes successors in interest.

A certification by a third party is not sufficient to authorize a correction of an earlier NIE recorded in the name of another party/copyright owner, unless that third party is also the authorized agent of the copyright owner in whose name the original NIE was recorded. An authorized agent may file a Correction NIE whether or not that agent filed the original NIE.

###### B. Definition of Major and Minor Error

The Copyright Office has received a number of questions about the appropriate procedure to correct NIE errors -- some of which errors may be deemed as major. In responding to these inquiries, the Office had to consider the proper timeframe for making corrections

to NIEs and concludes that major errors, not defined or referenced within the statutory provisions, may be corrected only within the two-year period of eligibility for initially filing NIEs. Minor errors may be corrected at any time under the URAA provisions. [17 U.S.C. 104A(e), as amended.]

The Office has determined that major errors are errors concerning the following NIE statutory requirements: The name of the copyright owner or rightholder; the title of the work (as opposed to its translation, if any); and a written agency relationship, if applicable. The Office considers these items of information to be basic identifiers crucial to the effectiveness of adequately informing the public of the existence of a particular work which is subject to a Notice of Intent to Enforce. The title of a work and the identity of the rights owner in the work, including information regarding an agent of the rights owner, must be present in the Copyright Office NIE records in order for the NIE filer to meet the requirements of the statute and to allow the public through a reasonable search to locate the essential information within Office NIE records about a given work restored to copyright under the URAA. Where the original NIE did not adequately identify the owner of the restored work or the title of the restored work or an agency relationship, the Office will refuse to record a Correction NIE that is submitted after the two-year period following a work's restoration to copyright protection.

Adequate identification of a restored work means that accurate and sufficient information concerning the three statutorily required items of owner identity, title, and agency relationship, if any, is present in the original NIE. The necessary accuracy and sufficiency of information for the original NIE includes, but is not limited to, completeness of the information, accurate spelling of names and titles, and correct sequencing of wording within names and titles so that a reasonable search of the NIE records will reveal the work in question. The following are examples where original NIEs contain information which would not result in a reasonable search revealing the actual, correct title or owner identity for the restored work:

Title in original NIE: Robert Meets the Green Rabbit Again  
Title in Correction NIE: Here We Go Again- The Green Rabbit and Robert  
Title in original NIE: Now Are the Times That Try Men's Souls  
Title in Correction NIE: Trying Times for Mankind  
Owner in original NIE: Kathy and Lori Film Production, Inc.

Owner in Correction NIE: Kathy Lorenzo and Lori Lorenzo

Where the two-year period has expired and where there is doubt as to whether an error is major or minor, i.e., whether the error is such that it would fail to inform the public doing a reasonable search of the Copyright Office records of the existence of a work that is subject to a Notice of Intent to Enforce, the Office will correspond with the filer concerning the doubt and, if appropriate, may resolve the doubt in favor of the filer and record the Correction NIE.

Because the regulations of the Copyright Office allow the recordation of any document pertaining to a copyright, in instances where the Office refuses the recordation of a Correction NIE because the two year period of eligibility for initial filing of an NIE has passed, a party may record any document including one concerning rights restored under the URAA for a given work but may not designate the document on its face to be a Notice of Intent to Enforce or a Correction Notice of Intent to Enforce. See 37 CFR 201.4 for Copyright Office regulations on recordation of transfers and other documents. All documents, including NIEs and Correction NIEs, submitted for recordation with the Office are found within the same bibliographic database and a reasonable search by title or owner should reveal all recordations filed with the Offices concerning the same title or owner identity.

#### *C. Multiple NIEs for the Same Work and Correction Cross-References*

When rights in a restored work are owned by several different parties, multiple NIEs for the same work may have been submitted. For example, one person may own the exclusive right of reproduction and public distribution and another the exclusive right of public performance. When a work has multiple rights owners, each owner must file a separate NIE subject to the requirements for initial filing within two years of eligibility. In the instance of multiple owners of rights in a single work, if a party is acting on behalf of an earlier owner of record in an NIE and purporting to correct that earlier NIE, the Office points out that only the NIE record in the name of that particular earlier owner will be cross-referenced. Nevertheless, all NIE records for a given title will be easily retrievable as a group; if the works as recorded bear the same title, the NIE records would appear together in any title search of online records.

#### *D. Cancellations and Withdrawals*

The Office will not cancel a

recordation of an NIE unless the recordation fee is uncollectible. While the recordation of NIEs may not, with the exception of an uncollectible fee, be canceled [i.e., expunged from the record], a request to record an NIE may be withdrawn if the request to withdraw is received before the record of the NIE has been made available to the public through the Internet. In order to withdraw an NIE, the filer must contact the Documents Unit of the Copyright Office before the online record (Copyright Office Publication and Interactive Cataloging System (COPICS)) has been made publicly available.

#### *E. Fees*

The fee for a correction is the same as that for an initial NIE: for one work, the fee is thirty U.S. Dollars; for multiple works that meet the conditions for being filed on the same NIE, the fee is thirty U.S. Dollars for the first work, plus one dollar for each additional work. For NIE filings, including corrections, see 37 CFR 201.33(e) for fee information.

The filing fee partially reimburses the Office for its processing costs and the Office does not refund fees for errors made by filers in NIEs.

#### *F. Designation for a Correction Notice of Intent to Enforce*

A Correction NIE must be clearly indicated as such, i.e., the document filed should bear the title "Correction Notice of Intent To Enforce," or "Correction NIE." It must also specify the volume and document number for the recordation of the original NIE. This will enable the Office to record the correction with the appropriate cross-reference to the volume and document number of the original NIE.

#### *G. Format Information for Correction NIEs*

The suggested format for filing Correction NIEs generally follows the outline of the suggested format for the original filing. This is included as Appendix A below.

The format will be made available over the Internet from where it can be downloaded for use. Where a party wishes to correct in the same filing NIEs for many titles, he or she can adapt the suggested format to allow more space for titles. Use of the format enables the filer to furnish information prescribed by the original NIE regulation in orderly form.

When information [either required or optional] has been correctly given on the original NIE, the Correction NIE need not repeat that information. Filers should include information in the Correction NIE, however, that was omitted from the previous NIE and

which will help identify the restored work(s) involved.

Correction NIEs must be in English, except for the original title, and either typed or printed by hand legibly in dark, preferably black, ink. They should be on 8-1/2" by 11" white paper of good quality, with at least a 1" (or 3 cm) margin.

#### List of Subjects in 37 CFR Part 201

Copyright, Restoration of copyright.

#### Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR part 201 in the manner set forth below:

#### PART 201 -- GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

2. A new section 201.34 is added to read as follows:

#### § 201.34 Procedures for filing Correction Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of corrections of Notices of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act of December 8, 1994, as required by 17 U.S.C. 104A(e), as amended by Public Law No. 103-465, 108 Stat. 4809, 4976 (1994).

(b) *Definitions.* For purposes of this section, the following definitions apply.

(1) *Major error.* A major error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is an error in the name of the copyright owner or rightholder, in the title of the work (as opposed to its translation, if any) or concerning the written agency relationship where such error fails to adequately identify the restored work through a reasonable search of the Copyright Office NIE records.

(2) *Minor error.* A minor error in filing a Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act is any error that is not a major error.

(3) *Restored work.* For the definition of works restored under the URAA, see 37 CFR 201.33.

(c) *Forms.* The Copyright Office does not provide forms for Correction Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such Correction NIEs follow the

format set out in Appendix A of this section and give all information listed in paragraph (d) of this section. Correction NIEs must be in English, and should be typed or legibly printed by hand in dark, preferably black ink, on 8" by 11" white paper of good quality with at least a 1" (or three cm) margin.

(d) *Requirements for Correction Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act.*

(1) A correction for a Notice of Intent to Enforce should be clearly designated as a "Correction Notice of Intent to Enforce" or "Correction NIE."

(2) Correction Notices of Intent to Enforce should be sent to the following address: URAA/GATT, NIEs and Registrations, PO Box 70400, Southwest Station, Washington, DC 20024, USA.

(3) A Correction NIE shall contain the following information:

(i) The volume and document number of the previous Notice of Intent to Enforce [NIE] which is to be corrected;

(ii) The title of the work as it appears on the previous NIE, including alternative titles, if they appear;

(iii) The English translation of the title, if any, as it appears on the previous NIE;

(iv) A statement of the erroneous information as it appears on the previous NIE;

(v) A statement of the correct information as it should have appeared and an optional explanation of its correction; or

(vi) A statement of the information to be added. This includes optional information such as:

(A) Type of work;

(B) Rights owned by the party on whose behalf the Correction Notice is filed;

(C) Name of author;

(D) Source country;

(E) Year of publication;

(F) Alternative titles;

(G) An optional explanation of the added information.

(vii) The name and address:

(A) To which correspondence concerning the document should be sent; and

(B) To which the acknowledgment of the recordation of the Correction NIE should be mailed; and

(viii) A certification. The certification shall consist of:

(A) A statement that, for each of the works named above, the person signing the Correction NIE is the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, and that the information is correct to the best of that person's knowledge;

(B) The typed or printed name of the person whose signature appears;

(C) The signature and date of signature; and

(D) The telephone and telefax number at which owner, rightholder, or agent thereof can be reached.

(4) A Correction NIE may cover multiple works in multiple NIE documents for one fee provided that: each work is identified by title; all the works are by the same author; all the works are owned by the same copyright owner or owner of an exclusive right. In the case of Correction NIEs, the notice must separately designate each title to be corrected, noting the incorrect information as it appeared on the previously filed NIE, as well as the corrected information. A single notice covering multiple titles need bear only a single certification.

(5) Copies, phonorecords or supporting documents cannot be made part of the record of a Correction NIE and should not be submitted with the document.

(6) Time for Submitting Correction NIEs.

(i) Major errors. The Copyright Office will accept a Correction NIE for a major error concerning a restored work during the 24-month period beginning on the date of restoration of the work, as provided for original NIEs in Section 104A(d)(2)(A) of title 17.

(ii) Minor errors. The Office will accept a Correction NIE for a minor error or omission concerning a restored work at any time after the original NIE has been filed, as provided in Section 104A(e)(1)(A)(iii) of title 17.

(e) *Fee.--(1) Amount.* The filing fee for recording Correction NIEs is 30 U.S. dollars for each Correction Notice covering one work. For single Correction NIEs covering multiple works, that is, for works by the same author and owned by the same copyright owner or owner of an exclusive right, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work.

(2) *Method of Payment.* See 37 CFR 201.33(e)(1)(2).

(f) *Public online access.* Information contained in the Correction Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system, available through the Internet.

This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are (i) the World Wide Web (WWW), using the

Copyright Office Home Page at: <http://www.loc.gov/copyright/>; (ii) directly to LOCIS through the telnet address at [locis.loc.gov](telnet://locis.loc.gov); or (iii) the Library of Congress through gopher LC MARVEL and WWW which are available 24 hours a day. LOCIS is available 24 hours a day, Monday through Friday.

For the purpose of researching the full Office record of Correction NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law."

Images of the complete Correction NIEs as filed will be stored on optical disk and will be available from the Copyright Office.

**Appendix A to §201.34—Correction Notice of Intent to Enforce**

**CORRECTION OF NOTICE OF INTENT TO ENFORCE**

1. Name of Copyright Owner (or owner of exclusive right) [If this correction notice is to cover multiple works, the author and the rights owner must be the same for all works covered by the notice]

2. Title(s) (or brief description)

(a) Work No. 1-- \_\_\_\_\_

Volume and Document Number: \_\_\_\_\_

English Translation: \_\_\_\_\_

(b) Work No. 2 (if applicable)-- \_\_\_\_\_

Volume and Document Number: \_\_\_\_\_

English Translation: \_\_\_\_\_

(c) Work No. 3 (if applicable)-- \_\_\_\_\_

Volume and Document Number: \_\_\_\_\_

English Translation: \_\_\_\_\_

(d) Work No. 4 (if applicable)-- \_\_\_\_\_

Volume and Document Number: \_\_\_\_\_

English Translation: \_\_\_\_\_

3. Statement of incorrect information on earlier NIE: \_\_\_\_\_

4. Statement of correct (or previously omitted) information

Give the following only if incorrect or

omitted on earlier NIE:

(a) Type of work \_\_\_\_\_

(b) Rights owned \_\_\_\_\_

(c) Name of author (of entire work) \_\_\_\_\_

(d) Source Country \_\_\_\_\_

(e) Year of Publication (Approximate if precise year is unknown) \_\_\_\_\_

(f) Alternative titles \_\_\_\_\_

5. Explanation of error \_\_\_\_\_

6. Certification and Signature: I hereby certify that for each of the work(s) listed above, I am the copyright owner, or the owner of an exclusive right, or the owner's authorized agent, the agency relationship having been constituted in a writing signed by the owner before the filing of this notice, and that the information given herein is true and correct to the best of my knowledge.

Name and Address (typed or printed): \_\_\_\_\_

Telephone/Fax: \_\_\_\_\_

As agent for: \_\_\_\_\_

Date and Signature: \_\_\_\_\_

Dated: July 22, 1997.

**Marybeth Peters,**  
*Register of Copyrights.*

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