

CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (53 FR 8071). This regulatory action was the result of the Department's participation in the common rule developed by Federal agencies for administering grants and cooperative agreements awarded to State, local, and Indian tribal governments. Part 80 established Circular A-87 as the cost principles used by the Secretary of Education for determining allowable costs of State, local, and Indian tribal governments under grants and cooperative agreements with the Department. (34 CFR 80.22.)

When Part 80 was published, it was the practice of the Department to adopt circulars in the regulations by citing a specific circular publication date (See 34 CFR 80.22(b)). Now, the Department makes OMB circulars applicable through notices such as this one. Thus, the Department will make conforming amendments to 34 CFR 80.22 to eliminate the obsolete publication date for Circular A-87.

On May 17, 1995, OMB published a revision of Circular A-87 (60 FR 26484). This notice announces the applicability for 34 CFR Part 80 of the revision made by OMB, binding recipients of Department of Education grants and cooperative agreements to the requirements of Circular A-87 as revised on May 17, 1995. These cost principles apply to State, local, and Indian tribal governments, except to the extent that the principles are inconsistent with specific statutes or Departmental program or administrative regulations. The revised Circular is effective for grants and cooperative agreements made by ED on or after October 1, 1995 and for subgrants made under those awards on or after that date. The cost principles in Circular A-87 are also cross-referenced in the Department's administrative regulations applicable to institutions of higher education, hospitals, and nonprofit organizations, at 34 CFR 74.27(b).

The Secretary is aware that the revised circular contains areas of flexibility which were not contained in the prior cost principles and that could be beneficial to State, local and Indian tribal governments. The Department has made substantial grant awards, primarily to States, since July 1, 1995, and the recipients of these awards may desire to benefit from the more flexible rules in the revised A-87. Considering this, the Department has determined that it will permit recipients for which the Department has cognizance to charge direct costs which are consistent

with the revised Circular for the period July 1, 1995 through the end of the 1996 fiscal year. However, States and other governmental authorities that have State-wide cost allocation plans and indirect cost rates in effect for parts of fiscal year 1996 based on costs allowable under the prior A-87 may not amend those agreements prior to their expiration.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since OMB previously provided the public an opportunity for comment on the revision of Circular A-87 on October 12, 1988 (53 FR 40352) and August 19, 1993 (58 FR 44212), the Secretary finds that soliciting further public comment with respect to adopting the revised circular is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reason, the Secretary finds good cause under 5 U.S.C. 553(d) to waive the thirty-day delayed effective date.

Nonetheless, in light of recently enacted legislation—the Improving America's School Act, the Goals 2000: Educate America Act, and the School-to-Work Opportunities Act—the Secretary is interested in receiving suggestions or ideas from the States and local and Indian tribal governments and other interested parties about improving the application of the Circular based on the flexibility provided in these new laws.

The Secretary has already received and is reviewing letters from several States since the Circular's publication, concerning such areas as time distribution and the determination of reasonable and necessary expenditures of program funds.

The Secretary encourages States, local and Indian tribal governments, and other interested parties, as partners in Federal program management, to maintain an open dialogue with Department officials about matters covered in Circular A-87, including accounting practices that promote efficient administrative practices, support effective delivery of program services, and conserve resources.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: September 26, 1995.

Donald R. Wurtz,
Chief Financial Officer.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 95-1B]

Restoration of Certain Berne and WTO Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations

SUMMARY: The Copyright Office is issuing final regulations establishing procedures that govern the filing of Notices of Intent to Enforce copyright (NIEs) and the registering of copyright claims to restored works as required by the Uruguay Round Agreements Act. The Act automatically restores copyright for certain foreign works effective January 1, 1996. Although restoration is automatic, the copyright owner may file a Notice of Intent to Enforce the Restored Copyright with the Copyright Office in order to enforce rights against reliance parties.

EFFECTIVE DATE: These final regulations are effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

I. Background

On December 8, 1994, President Clinton signed the "Uruguay Round Agreements Act" (URAA), Pub. L. No. 103-465, 108 Stat. 4809. The URAA contains several significant copyright amendments. It amends the software rental provision found in 17 U.S.C. 109(b) by eliminating the expiration or sunset date, amends Titles 17 and 18 to create civil and criminal remedies for "bootlegging" sound recordings of live musical performances and music videos, and adds a new 17 U.S.C. 104A which restores copyright in certain foreign works. The URAA also gives the Copyright Office several responsibilities related to restoration of those works.

A. Restoration of Copyright in Eligible Works

Under the URAA, restoration of copyright in works from countries which are currently eligible occurs automatically on January 1, 1996. An eligible country is a nation, other than the United States, that is a member of the Berne Convention,¹ or a member of

¹ Convention concerning the creation of an International Union for the Protection of Literary

the World Trade Organization, or is the subject of a presidential proclamation declaring its eligibility.

Works from any source country eligible under the URAA may be subject to automatic copyright restoration. However, to be so restored, a work must meet certain other requirements:

1. It is not in the public domain in its source country through expiration of the term of protection;

2. It is in the public domain in the United States due to noncompliance with formalities imposed at any time by United States copyright law, lack of subject matter protection in the case of sound recordings fixed before February 15, 1972, or lack of national eligibility;

3. It has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country;

4. If published, it was first published in an eligible country and was not published in the United States during the 30-day period following publication in such eligible country.

Notwithstanding the fact that the work meets the above requirements, any work ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

B. Effective Date of Restoration

Eligible copyrights are restored automatically on the date the Agreement on Trade Related Aspects of Intellectual Property (TRIPs) enters into force with respect to the United States (URAA, section 514(a)). As discussed in the Notice of Policy Decision and Public Meeting, the Copyright Office has concluded that the effective date of copyright restoration is January 1, 1996. 60 FR 7793 (Feb. 9, 1995). President Clinton has confirmed that the date on which the obligations of the TRIPs Agreement will take effect for the United States is January 1, 1996. Proclamation No. 6780, 60 FR 15845 (Mar. 27, 1995).

II. The Copyright Office's Responsibilities

Although copyright restoration is automatic for eligible works, the URAA charged the Office with establishing regulations to govern the filing of Notices of Intent to Enforce (NIEs) restored copyrights and the registering of copyright claims in restored works by no later than October 1, 1995.

The Act also requires the Office to publish a list in the Federal Register

identifying restored works and their ownership where NIEs have been filed with the Office. The Office must also maintain a list containing all NIEs for inspection and copying by the public.

A. Notices of Intent To Enforce

1. Notification of Reliance Party

The URAA directs the owner of a restored work to notify reliance parties if the owner of the rights in a restored work plans to enforce those rights. A reliance party is typically a business or individual who, relying on the public domain status of a work, was already using the work prior to December 8, 1994, the date of enactment of the URAA.² The URAA authorizes the owner of a right in a restored work either to provide actual notice by serving a NIE directly on a reliance party or to provide constructive notice through the filing of a NIE with the Copyright Office.

2. Effective Filing Date

A work whose source country is a member of the Berne Convention or the World Trade Organization on January 1, 1996, is restored on that date. The owner of such a work may file a NIE concerning that work between January 1, 1996, and December 31, 1997. The Office will publish the first listing of NIEs no later than May 1, 1996, and will publish lists at regular four-month intervals for a period of two years thereafter.

In the case of works from any source country which became eligible for restoration under the URAA after January 1, 1996, owners of such works may file NIEs with the Copyright Office for a two year period starting from the date that country became eligible. The Office will also publish a list of NIEs as detailed above, for works from any of those countries, but the time frame for such lists will be measured from the date a particular country becomes eligible.

3. Effect of Notice on Reliance Party

A reliance party has a twelve-month period to sell off previously manufactured stock, to publicly perform or display the work, or to authorize others to conduct these activities. This period begins when the owner of a restored work notifies the reliance party that the owner is enforcing copyright in the identified work. The date runs from

²This is true for the great majority of works. However, for works from any country which was not eligible under the URAA as of December 8, 1994, reliance parties would be those using the work before the date on which that country becomes an eligible country by joining Berne, the WTO, or as a result of a Presidential proclamation.

either the date of publication in the Federal Register identifying the work or receipt of actual notice. If Notice of Intent to Enforce a Restored Copyright is provided both by publication in the Federal Register and service on the reliance party, the period runs from whichever date is the earlier, the date of Federal Register publication or service of actual notice. All reliance parties, except those who created certain derivative works, must cease using the work at the end of the twelve-month period unless they reach a licensing agreement with the copyright owner for continued use of the restored work.

B. Registration of Copyright Claims in Restored Works

The second filing that the owner of a restored work may choose to make with the Copyright Office is an application for registration of a copyright claim. Copyright registration is voluntary; the URAA directs the Office to have procedures for such registration, but it does not require owners of the restored works to register. Although the owner of a work not considered a Berne work as defined in 17 U.S.C. 101 must obtain or seek registration for a work before he or she can bring a copyright infringement action, the owner of rights in a Berne work does not have to register before initiating suit.³

It is true that the holder of a copyright certificate of registration may secure some procedural advantages in litigating a copyright suit based on the effective date of registration. If registration is made before or within 5 years of publication, it will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate; and if registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

III. The Comments

A. Comments Submitted

The Copyright Office sought public comment concerning the implementation of the URAA both prior to and after publication of its Notice of Proposed Rulemaking (NPRM). The Office first published a notice inviting interested parties to submit written comments and/or to attend a public meeting held at the Copyright Office on March 20, 1995, to discuss issues

³It would seem that this exception would apply only to works that meet the definition of a "Berne Convention work" in 17 U.S.C. 101.

and Artistic Works (Sept. 9, 1886, revised in 1908, 1928, 1948, 1967, 1971), hereinafter cited as the Berne Convention.

related to NIEs and registration of restored works. 60 FR 7793 (Feb. 9, 1995). The Office sent this notice to over ninety authors rights organizations and industry groups, as well as 182 foreign government agencies with copyright authority, to give them the opportunity to respond. Approximately forty individuals attended the meeting, including representatives from authors' rights organizations, museums, the publishing industry, the film industry, and the computer software industry.⁴ Fifteen written comments were submitted. The Office considered all of these views as it developed proposed procedures for the filing of NIEs and the registering of copyright claims in restored works. On July 10, the Office published proposed regulations in the Federal Register. 60 FR 35522 (July 10, 1995).

In the Notice of Proposed Rulemaking, the Office invited interested parties to submit written comments on the proposed regulations. The Office received comments from the following parties: The Association of American Publishers (AAP); Irwin Karp; Janine Lorente, for Société des Auteurs et Compositeurs Dramatiques (SACD); Nancy McAleer, for Thomson & Thomson; Bill Patry; David Pierce; Linda Shaughnessy, for AP Watt Ltd. Literary Agents; Ellen Theg, for International Television Trading Corp.; and Richard Wincor, of Coudert Brothers.

The Office notes that some of the comments received in response to the NPRM had already been addressed, and some called for minor clarifications that have been made to the final regulations. Other comments, whether raised for the first or second time, raise substantive issues that are discussed below.

B. Issues Related to Notices of Intent To Enforce

1. Formality

Ms. Shaughnessy stated that since copyright restoration is to occur automatically, the procedures for filing NIEs are exceptionally onerous. She asserted it should be sufficient to file one NIE for all of the titles of one author. Ms. Shaughnessy illustrated her point by noting that she will be filing for 73 authors, but there will be hundreds of titles involved. Comment 3. Ms. Lorente asserted that the NIE is a formality in violation of at least the spirit of Berne and that because reliance

parties are free to continue to exploit restored works in the United States unless a NIE is filed, an author cannot exercise his or her rights in the restored work automatically. Comment 5, at 1.

The Copyright Office again emphasizes that the restoration of copyright in certain foreign works considered in the public domain in the United States creates a conflict between reliance parties' and copyright owners' legitimate concerns. Reliance parties have invested capital and labor in the lawful exploitation of public domain property; the sudden restoration of copyright divests them of these investments. Without some provision addressing this potential loss, there could be challenges based on the "taking" clause of the Fifth Amendment of the U.S. Constitution. On the other hand, it is important that the United States restore copyright protection in certain foreign works. The United States arguably failed to conform its law fully to the Berne Convention in 1989 when it declined to interpret Article 18(1) on restoration⁵ as being mandatory. The U.S. Justice Department in its review of the URAA legislation concluded that under existing precedents interpreting the Fifth Amendment, the Notice of Intent to Enforce the Restored Copyright avoided an unconstitutional "taking."⁶ Thus, the Justice Department considered these provisions as critical.

We believe that such a filing is not inconsistent with the Berne Convention because Article 18(3)⁷ of the Berne Convention specifically permits member nations to determine "conditions" for applying the principles of restoration. Copyright restoration occurs automatically; the URAA merely creates a narrow set of conditions requiring notification to reliance parties. Moreover, the information sought on the NIEs is calculated to assist in the voluntary licensing of the restored work. The decision of Congress to enact these provisions is, therefore, supported by

⁵This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. Berne Convention art. 18(1)(Paris text).

⁶See 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).

⁷The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle. Berne Convention art. 18(3) (Paris text).

the legitimate interests of both reliance parties and copyright owners, by constitutional considerations, and by Article 18(3) of the Berne Convention.

The Office has tried, however, to make the procedures for filing NIEs practical, realizing that too detailed requirements would burden the owner and that too general ones would serve neither the owner nor the user of the restored work.

The Office also notes that the URAA makes such filings less onerous by permitting the owner to notify all reliance parties of a restored work by filing in one central place, the Copyright Office. Only if the owner does not file with the Copyright Office within the appropriate time period, as detailed above, must the owner provide actual notice to each user of a restored work in order to enforce rights.

The Office is permitting an owner of multiple works to file one NIE if each work is identified by title, has the same author, is owned by the same identified copyright owner or owner of an exclusive right, and the rights owned are the same.

2. Effective Date

Mr. Patry stated that January 1, 1995, is the initial date of copyright restoration. Comment 2, at 1. Mr. Karp asserted that the effective date of 104(A) is December 8, 1994, but that first restoration of copyrights will occur on January 1, 1996. Comment 8, at 2. The Office reaffirms its recognition of January 1, 1996, as the effective date of initial copyright restoration.

3. Minor Errors or Omissions

Ms. Lorente noted that it is often impossible for foreign authors to know the English language title under which a work is being exploited, especially as it is often not a literal translation. She, therefore, asked that a NIE not be invalidated if it gives the literal translation of the foreign title, and later it is determined that the English language title under which the work is exploited is different from the one given in the NIE. Comment 5, at 2.

All information on the NIE other than the original title of the foreign work must be completed in English. The law requires that an English translation of a foreign title be given on the NIE; it does not specify that it be the English title under which the work was exploited.

The Copyright Office will record the NIE under the titles that are provided; ultimately only a court can determine the validity of a NIE. However, the Office believes that a reasonable construction of the statute's

⁴A copy of all written comments and a summary of the meeting can be found in the Public Information Office of the Copyright Office, Room LM-401, James Madison Memorial Building, Washington, D.C.

requirements would permit good faith discrepancies in the English translation.

Furthermore, the URAA allows a party who has filed a 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 a NIE which corrects a previously filed NIE, except that the party making the correction should refer to previous NIE's volume and page number in the Copyright Office Documents Records, if known, on the corrected NIE.

4. Additional Information

The AAP asked the Office to require copyright owners to expand on the information contained in the NIEs, such as the format on which first the work was fixed (film, disk, etc.), contributors (editors, publishers, or director, animator, screenwriter, cinematographer, etc.) and for photographs, collections, etc. a description (material/subjects, organization, and/or classification). The AAP also asked the Office to request an e-mail address, names and addresses of any agents, representatives, or collecting societies that can serve as licensing authorities. The AAP suggested that the Office consider incentives such as fee discounts, for those providing more complete information. Comment 7, at 6-8. Ms. Theg asked that the year of creation be included in the NIE instead of the year of publication, since she believed it to be more consistently available. Comment 9, at 2.

The Office has incorporated some of the AAP's suggestions into the NIE format and hopes it has struck an appropriate balance in its NIE by requesting information helpful to reliance parties, while not burdening the filer of the NIE with lengthy and detailed suggested information.

5. Accessible and Useful Public Record

The URAA requires the Copyright Office to publish the titles and owners of restored works in the Federal Register. Since publication in the Federal Register is costly and the parties indicated that such information would not be as accessible as information made available via the Internet, the Office is limiting the information published in the Federal Register to what the law requires. Much of the information contained in the NIE will be available on COPICS, the Copyright Office's automated database of registrations and recorded copyright transfers and other documents. These records may be accessed by the public on terminals in the Copyright Office at

the Library of Congress and are also available via the Internet.

Since Internet access is not universal, Ms. Lorente asked that other means of getting information about NIEs, including written inquiries to the Copyright Office, should not be excluded. Comment 5, at 3. The AAP stated that it would be useful if the database could be searched in directories that listed all works restored in a particular country of origin. Comment 7, at 11. The AAP also asked that each work/title be given in a separate entry in the database. Comment 7, at 9.

Traditional search methods will continue to be available; NIEs may be searched in the COPICS database under the name of the owner, the titles it contains, as well as the names of the authors, if given. Although the Office will not index works by country of origin in the COPICS database or provide separate entries in the database for multiple works listed on one NIE, each work can be easily identified since the database is searchable by title, author, and the owner or owner of an exclusive right.

Finally, though online access will be the primary means for providing this information to the public, upon request the Copyright Office staff will search the records at the rate of \$20 for each hour or fraction thereof and furnish a written report. Search requests should be sent to the Reference and Bibliography Section, Copyright Office, Library of Congress, Washington, D.C. 20559-6000. In addition, individuals may come to the Office and do their own search free of charge.

6. Filing Fee

Ms. Lorente stated that restoration of copyright should be automatic, and without a fee, comment 5, at 3, and Ms. Shaughnessy asked that only one fee be charged for all the works of an author. Comment 3.

The Office notes that all of the works involved have been considered in the public domain in the United States. The URAA provides that restoration of eligible works is automatic, and a NIE may be filed directly on a reliance party. However, a notice which is effective against all reliance parties may be filed with the Copyright Office. The Office must examine and record that notice, issue an acknowledgement, create a catalog entry that includes among other things all the titles, publish the information in the Federal Register, and maintain the online catalog of the information. The URAA gives the Office authority to fix reasonable fees based on these costs.

The Office realizes that requiring a filing on each work of an author will be onerous and we will permit multiple works meeting the criteria described in our regulations to be filed on one notice for a lesser fee.

7. Acknowledgement

Ms. Lorente, Mr. Pierce and Ms. Theg all asserted that it is essential that the Copyright Office confirm the filing of a NIE. Ms. Lorente stated that it is very important that an author or agent have a document providing that he or she has complied with the URAA's provisions. See comment 5, at 2; comment 6, at 1; and comment 9, at 3. Ms. McAleer stressed that the acknowledgement of the recording of a NIE is an essential service because of the possibility that the NIE may be misplaced, causing its publication in the Federal Register to be delayed. Comment 4.

The Office will mail an acknowledgement of recordation to the filer of a NIE, including the date of receipt, the volume and page on which the NIE is recorded, and the anticipated date of publication in the Federal Register. The Office will not issue a certificate of recordation. Completed recordations will appear in the COPICS database and the Federal Register.

8. Transfers

Mr. Pierce asked that the Office require NIE filers, other than the author, to reference documents of transfer by date, parties and rights transferred, if any. He stated that this would decrease fraud and be less burdensome than filing the agreements with the Documents Unit of the Copyright Office. Comment 6, at 2.

While the Copyright Office agrees that such a requirement might be useful, it cannot adopt this requirement since it is not authorized by the URAA.

9. Federal Register Publication

The AAP agreed that, compared to the online database, the lists published in the Federal Register would be of secondary importance. AAP suggested, however, that the Federal Register entry also include the name of the author if possible. Comment 7, at 11.

In order to minimize costs, the Office has concluded that only the minimum information (title, name of the first owner or owner of an exclusive right identified on the NIE), will be included in the list of NIEs published in the Federal Register.

C. Issues Related to Registration of a Restored Work

1. Simultaneous Registration

Ms. Lorente asserted that registration is a second formality, and asked for simultaneous filing of NIEs and registration of copyright claims. She also argued both should be automatic and at no additional cost. Comment 5, at 2. Ms. They asked that the application for registration be modified to include the additional information requested in the NIE so that the NIE filing requirements could be satisfied at the time of making an application for registration. Comment 9, at 1.

As discussed earlier, procedures permitting the copyright registration of restored works are not formalities in violation of the Berne Convention. Registration is entirely voluntary for Berne works since copyright registration of restored works is not a prerequisite for the filing of a copyright infringement action. Registration of a claim in a work involves significant additional work and by law requires a fee. The Office has, however, attempted to keep the processing work and the fees to a minimum.

2. New URAA Related Registration Procedures

Mr. Pierce observed that registration, especially of motion pictures, is often very burdensome for foreign works, because of the difficulty in determining original publication dates and in submitting a copy of the work as first released. He concluded that applications will be filed for only a small percentage of the works unless the Office considers adopting more liberal deposit requirements such as accepting PAL, SECAM, VHS formats or written descriptions, allowing the registration of related works with multiple publication dates on one application, accepting approximate publication dates, and accepting a previously submitted deposit instead of requiring a new deposit. Comment 6, at 2. Ms. They asked that deposit requirements be waived entirely. Comment 9, at 2.

On the other side, the AAP questioned the necessity for changes in the existing registration and recordation systems. If such changes are made, the AAP asserted that they should not create precedent for other registration and deposit practices. The AAP also questioned the need for procedures allowing blanket exemptions in some instances for depositing materials, accepting descriptive materials instead of a copy of the work, and allowing certain collections such as photos or TV series to be given a single identifying

group name or title. The AAP is concerned that these procedures will make it difficult for reliance parties to identify restored works and comply with the law. The AAP asked that the Office instead deal with special situations on a case-by-case basis. Comment 7, at 12-16.

The procedures developed for the registration of copyright claims for restored works must both balance the needs of applicants for copyright registration, reliance parties, the public, and the Copyright Office and also establish a system that will be feasible administratively and elicit necessary information. As indicated in our final regulations, these new procedures apply only to works restored under the URAA and NAFTA; they thus have no precedential effect on other filings.

3. Claimant for Registration

Mr. Patry noted that the applicable statutory language relating to the filing of NIEs permits the "owners of restored copyright or the owner of an exclusive right therein" to file a NIE, while the URAA statutory language covering registration indicates that "owners of restored copyrights" may apply for copyright registration. He asserted the statute's failure to mention the owner of an exclusive right in connection with registration means that only an author may file a registration. Comment 2, at 1-2.

The Office agrees that the restored copyright vests initially in the author as determined by the law of the source country of the work. A work, however, is registered in the name of a claimant. 17 U.S.C. 409. "Claimant" is a term of art defined in existing Copyright Office regulations, as either the author of a work or a person or organization that has obtained ownership of all rights under the copyright initially belonging to the author. 37 CFR 202.3(a)(3). Thus, an owner of only an exclusive right would not be permitted to file an application in his or her own name as the copyright claimant, although he or she could submit an application. While the URAA authorizes the Office to adopt regulations permitting owners of restored copyrights to file for registration of the restored copyright, there is nothing in the URAA to suggest that parties who register a restored work are any different from those under existing copyright law and regulations. Moreover, it seems essential to retain the concept of claimant since authors may no longer be alive.

4. Foreign Law

The AAP stated that since URAA registrations may create legal

presumptions as to the validity of the copyright and the facts stated on the registration certificate, the Office should question an applicant's determination of foreign law issues. Comment 7, at 15. Mr. Karp asserted that since foreign law questions will arise with respect to many issues related to rights restored, including initial ownership, the Office should accept multiple NIEs or registrations for the same work. Comment 8, at 2.

The Copyright Office will accept such multiple, and possibly adverse, NIEs and registrations for the same work. One of the more difficult issues facing the Office is to what extent foreign law issues should be raised in the registration process. Section 104A(b) of the Act provides: "A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work." Determining the appropriate source country and the applicable foreign law is a question that must ultimately be resolved by a court. At most, the Office could simply question whether or not an author was in fact the author under the law of the source country. The applicant's answer would have to be accepted. The Office does not, therefore, plan to question an applicant's determination of foreign law issues.

IV. Procedures for Notices of Intent To Enforce

A Copyright Office task force has been meeting for several months to discuss issues related to establishing regulations for URAA filings. The Office also carefully considered the comments made at the public meeting and those submitted by interested parties in response to the Notice of Policy Decision and Public Meeting and the Notice of Proposed Rulemaking. Most of the commentators supported a detailed NIE rather than one limited to the minimal information required by the statute. Based on those comments, the Office is requesting more information from the filer of a NIE than required under the URAA. As provided in the statute, this additional information will not affect the validity of the notice. Additional information such as the identity of the author is essential, however, for efficient and timely identification of a specific work where enforcement of copyright is sought. The additional information will also facilitate the licensing of uses of restored works. Therefore, the Office urges those parties who are filing NIEs to provide as much of this additional information as possible.

A. Format for NIEs

1. Constructive Notice

The Copyright Office will not publish NIE forms; however, a suggested format for NIEs to be filed with the Office is included in the Appendix below. This format is available over the Internet and can be downloaded for use as a form. The suggested format requests information required by the statute and optional information which is extremely useful.

2. Actual Notice

Those parties choosing to serve actual Notice of Intent to Enforce a Restored Copyright on the reliance party should note that the URAA requires additional information. Therefore, if they use the Copyright Office's NIE format as a guide for the actual notice, it will be incomplete unless the additional information specified is added. The URAA specifies:

Notices of Intent to Enforce a Restored Copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.⁸

104A(e)(2)(B) of the URAA. Actual notices may be served on a reliance party at any time after the work is restored.

3. Who may file a Notice of Intent To Enforce?

A NIE may be filed by someone who has the authority to sign it. The statute says that the NIE must be signed by the owner or the owner's agent. It can also be signed by the owner of any exclusive right in the restored copyright. As noted in the URAA and emphasized in the certification requirement, an agent cannot sign a NIE unless the agency relationship was constituted in writing signed by the owner before the notice is filed. 104A(e)(1)(A)(i) of the URAA.

B. Filing Fee

The filing fee is 30 U. S. dollars⁹ for a NIE covering one work; for a NIE covering multiple works the fee is \$30

for the first work, plus one dollar for each additional work. This fee includes the cost of an acknowledgement of recordation which will be mailed to the filer after the Copyright Office records the NIE. The regulations provide special instructions for payment of the filing fee, including payment by credit card. These instructions must be followed in order to permit processing of the fee. In addition, the filer of a NIE must insure that sufficient funds are available for payment. Insufficient fees could delay the effective date of notice.

For all URAA filings, both recordation of a NIE and registration of a restored work, the Copyright Office will accept Visa, Master Card and American Express credit cards to facilitate payment in U.S. dollars. Payment by credit card is, however, available only for URAA filings.¹⁰

C. Certification

The Office requires the filer of a NIE to sign a certification statement at the end of the document filed indicating that the information given is correct to the best of his or her knowledge. The URAA explicitly states that any materially false statement knowingly made with respect to any restored copyright identified in any Notice of Intent shall make void all claims and assertions made with respect to such restored copyright. 104A(e)(3) of the URAA.

D. Mailing Address

Time is critical with processing NIEs, and it is, therefore, important that URAA mail not come in with regular Copyright Office mail. All NIEs should be mailed to: URAA/GATT, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, D.C. 20024, USA.

V. Procedures for Registering Copyright Claims in Restored Works

The URAA raises a number of unique considerations regarding the registration of copyright claims in restored works. First, a number of technical requirements, many of which are contained in the definition of "restored work," govern whether a foreign work is subject to automatic restoration under the URAA. In many cases applicants seeking registration will be foreign claimants who are unfamiliar with the registration procedures in the United States Copyright Office. In addition, communication over technical issues

may be difficult. Finally, virtually all of the restored copyrights will be older works; and in some cases, submitting a copy or phonorecord of the work will be a problem.

The Copyright Office weighed all of these considerations before developing a procedure for registering copyright claims in restored works. The Office has adopted a simplified procedure, which will still maintain the integrity of the public record and adhere to the provisions of the existing copyright law and the URAA.

The Office will register a claim to United States copyright in any work for which copyright protection is restored by the URAA, even if a registration was previously made before the work entered the public domain in this country. The Office will also register a claim for any work previously registered where the Office originally advised the copyright claimant that there was some doubt concerning compliance with the formal requirements of the law.

A. Registration Forms

Because the URAA creates unique eligibility requirements, the Copyright Office concluded that it should create two new registration forms and a continuation page specifically designed to obtain the information necessary for a GATT registration made under the URAA. They are Form GATT, Form GATT/GRP and Form GATT/CON. The Form GATT covers registration of individual restored works and restored works published under a single series title, Form GATT/GRP covers registration of groups of related restored works under the conditions set forth in the regulations, and the Form GATT/CON is a page providing additional space and may be used with either of the GATT application forms.

B. Deposit Required

In recognition of the difficulty some applicants may have in submitting a deposit of an older work "as first published," the Office has established special deposit regulations for URAA restored works. These regulations permit a deposit of other than the first published edition of the work, if absolutely necessary; applicants should keep in mind, however, that the deposit serves as a crucial part of the public record, and it is their interest to make a complete deposit.

C. Filing Fee

The filing fee for registration is \$20, since the Copyright Office believes the work in administering the registration procedure for restored works will be roughly comparable to general

⁸Emphasis added to show additional requirements for actual notice.

⁹All references to charges will be in terms of U.S. dollars.

¹⁰Acceptance of credit cards for URAA filings will serve as a test, however, by which the Office can determine at a later date the feasibility of accepting credit cards for other registrations and recordations.

registration procedures. In addition, the regulations contain special group registration options which will permit the registration of:

(1) A group of works published under a single series title. Form *GATT* should be used; the fee is \$20 for up to a calendar year's worth of episodes, installments, or issues published under the same single series title; and

(2) A group of at least two, but up to ten related individual works published within the same calendar year. Form *GATT/GRP* should be used, the fee is ten dollars per individual work, that is between \$20–\$100 per application.

The registration regulations contain special instructions for payment of the filing fee, including payment by credit card.

D. Mailing Address

All *GATT*/URAA applications for registration should be mailed to: URAA/*GATT*, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, DC 20024, USA.

VI. NAFTA

Exactly a year before the URAA was signed into law, Congress enacted the North American Free Trade Agreement Implementation Act (NAFTA) of December 8, 1993, adding a new section 104A to the Copyright Code that allowed copyright restoration in certain Mexican and Canadian works. See generally, Federal Register notices leading to the implementation of NAFTA, 59 FR 1408 (Jan. 10, 1994); 59 FR 12162 (Mar. 16, 1994); and 59 FR 58787 (Nov. 15, 1994). Although Congress modeled the URAA provisions on NAFTA, there are significant differences. For example, under the URAA, copyright restoration is automatic; under NAFTA it was not. Moreover, the URAA requires an English translation of the title as part of the NIE, but NAFTA did not require an English translation for NAFTA statements of intent.

In enacting these two laws, Congress intended the restoration provisions to operate separately from one another. Therefore, works restored under NAFTA are not additionally restored under the URAA. It is clear that Congress intended a new section 104A enacted in the URAA, to replace the NAFTA version of section 104A. Unfortunately, the statutory language in the URAA creates some ambiguities. The recent presidential proclamation clarifies some of these questions. 60 FR 15845 (Mar. 27, 1995).

The regulation governing filings under NAFTA will be amended to reflect a reference to the public law.

This change is made necessary by the deletion of the NAFTA version of section 104A. In addition, §§ 201.33 and 202.12 of the Copyright Office regulations contain provisions clarifying that works already restored under NAFTA do not additionally fall within the provisions of the URAA.

Despite the differences in NAFTA and URAA notice filings, the registration procedures, including deposit preferences, available for URAA restored works are also available for those works restored under NAFTA.

List of Subjects

37 CFR Part 201

Cable television, Copyright, Jukeboxes, Literary works, Satellites.

37 CFR Part 202

Claims, Copyright.

In consideration of the foregoing, the Copyright Office amends 37 CFR parts 201 and 202 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. Section 201.31 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required by the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law No. 103–182. * * *

* * * * *

3. Section 201.33 is added to read as follows:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of Notices of Intent to Enforce a Restored Copyright under the Uruguay Round Agreements Act, as required in 17 U.S.C. 104A(a). On or before May 1, 1996, and every four months thereafter, the Copyright Office will publish in the Federal Register a list of works for which Notices of Intent to Enforce have been filed. It will maintain a list of these

works. The Office will also make a more complete version of the information contained in the Notice of Intent to Enforce available on its automated database, which can be accessed over the Internet.

(b) *Definitions*—(1) *NAFTA work* means a work restored to copyright on January 1, 1995, as a result of compliance with procedures contained in the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law No. 103–182.

(2) *Reliance party* means any person who—

(i) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country under the URAA, which would have violated 17 U.S.C. 106 if the restored work had been subject to a copyright protection and who, after the source country becomes an eligible country, continues to engage in such acts;

(ii) Before the source country of a particular work becomes an eligible country, makes or acquires one or more copies of phonorecords of that work; or

(iii) As the result of the sale or other disposition of a derivative work, covered under the new 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in the new 17 U.S.C. 104A(d)(3) (A) or (B), is a successor, assignee or licensee of that person.

(3) *Restored work* means an original work of authorship that—

(i) Is protected under 17 U.S.C. 104A(a);

(ii) Is not in the public domain in its source country through expiration of term of protection;

(iii) Is in the public domain in the United States due to—

(A) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(B) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(C) Lack of national eligibility; and

(iv) Has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(4) *Source country* of a restored work is—

(i) A nation other than the United States; and

(ii) In the case of an unpublished work—

(A) The eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than one author or rightholder, the majority of foreign authors or rightholders are nationals or domiciliaries of eligible countries; or

(B) If the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(iii) In the case of a published work—

(A) The eligible country in which the work is first published; or

(B) If the restored work is published on the same day in two or more eligible countries, the eligible country which has the most significant contacts with the work.

(c) *Forms.* The Copyright Office does not provide forms for Notices of Intent to Enforce filed with the Copyright Office. It requests that filers of such notices follow the format set out in Appendix A of this section and give all of the information listed in paragraph (d) of this section. Notices of Intent to Enforce must be in English, and should be typed or printed by hand legibly in dark, preferably black, ink, on 8½ by 11 inch white paper of good quality, with at least a one inch (or three cm) margin.

(d) *Requirements for Notice of Intent to Enforce a Copyright Restored Under the Uruguay Round Agreements Act.* (1) Notices of Intent to Enforce should be sent to the following address: URAA/GATT, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, DC 20024, USA.

(2) The document should be clearly designated as "Notice of Intent to Enforce a Copyright Restored under the Uruguay Round Agreements Act".

(3) Notices of Intent to Enforce must include:

(i) Required information:

(A) The title of the work, or if untitled, a brief description of the work;

(B) An English translation of the title if title is in a foreign language;

(C) Alternative titles if any;

(D) Name of the copyright owner of the restored work, or of an owner of an exclusive right therein;

(E) The address and telephone number where the owner of copyright or the exclusive right therein can be reached; and

(F) The following certification signed and dated by the owner of copyright, or the owner of an exclusive right therein, or the owner's authorized agent:

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.

Signature _____

Name (printed or typed) _____

As agent for (if applicable) _____

Date: _____

(ii) Optional but essential information:

(A) Type of work (painting, sculpture, music, motion picture, sound recording, book, etc.);

(B) Name of author(s);

(C) Source country;

(D) Approximate year of publication;

(E) Additional identifying information (e.g. for movies: director, leading actors, screenwriter, animator; for photographs or books: subject matter; for books: editor, publisher, contributors);

(F) Rights owned by the party on whose behalf the Notice of Intent to Enforce is filed (e.g., the right to reproduce/distribute/publicly display/publicly perform the work, or to prepare a derivative work based on the work, etc.); and

(G) Telefax number at which owner, exclusive rights holder, or agent thereof can be reached.

(4) Notices of Intent to Enforce may cover multiple works provided that each work is identified by title, all the works are by the same author, all the works are owned by the identified copyright owner or owner of an exclusive right, and the rights owned by the party on whose behalf the Notice of Intent is filed are the same. In the case of Notices of Intent to Enforce covering multiple works, the notice must separately designate for each work covered the title of the work, or if untitled, a brief description of the work; an English translation of the title if the title is in a foreign language; alternative titles, if any; the type of work; the source country; the approximate year of publication; and additional identifying information.

(5) Notices of Intent to Enforce works restored on January 1, 1996, may be submitted to the Copyright Office on or after January 1, 1996, through December 31, 1997.

(e) *Fee.*

(1) *Amount.* The filing fee for recording Notices of Intent to Enforce is 30 U.S. dollars for notices covering one work. For notices covering multiple works as described in paragraph (d)(4) of this section, the fee is 30 U.S. dollars, plus one dollar for each additional work covered beyond the first designated work. For example, the fee for a Notice

of Intent to Enforce covering three works would be \$32. This fee includes the cost of an acknowledgement of recordation.

(2) *Method of Payment.* (i) *Checks, money orders, or bank drafts.* The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. International money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(ii) *Copyright Office Deposit Account.* The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Copyright Office, Library of Congress, Washington, DC 20559-6000, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(iii) *Credit cards.* For URAA filings the Copyright Office will accept VISA, MasterCard and American Express. Debit cards cannot be accepted for payment. With the NIE, a filer using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total amount, and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the filer must not write the credit card number on the Notice of Intent to Enforce.

(f) *Public online access.*

(1) Almost all of the information contained in the Notice of Intent to Enforce is available online in the Copyright Office History Documents (COHD) file through the Library of Congress electronic information system LC MARVEL through the Internet. Except on Federal holidays, this information may be obtained on terminals in the Copyright Office at the Library of Congress Monday through Friday 8:30 a.m. - 5:00 p.m. U.S. Eastern Time or over the Internet Monday - Friday 6:30 a.m. - 9:30 p.m. U.S. Eastern

Time, Saturday 8:00 a.m. - 5 p.m., and Sunday 1:00 p.m. - 5:00 p.m.

(2) Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: <http://lcweb.loc.gov/copyright>, (ii) telnet to locis.loc.gov or the numeric address 140.147.254.3, or (iii) telnet to marvel.loc.gov, or the numeric address 140.147.248.7 and log in as marvel, or (iv) use a Gopher Client to connect to marvel.loc.gov.

(3) Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of an exclusive right; the author; the type of work; the date of receipt of the NIE in the Copyright Office; the date of publication in the Federal Register; the rights covered by the notice; and the address, telephone and telefax number (if given) of the copyright owner.

(4) Online records of Notices of Intent to Enforce are searchable by the title, the copyright owner or owner of an exclusive right, and the author.

(g) *NAFTA work*. The copyright owner of a work restored under NAFTA by the filing of a NAFTA Statement of Intent to Restore with the Copyright Office prior to January 1, 1995, is not required to file a Notice of Intent to Enforce under this regulation.

Appendix A to § 201.33—Notice of Intent To Enforce a Copyright Restored Under the Uruguay Round Agreements Act (URAA)

1. Title: _____
(If this work does not have a title, state "No title.") OR
Brief description of work (for untitled works only): _____
2. English translation of title (if applicable): _____
3. Alternative title(s) (if any): _____
4. Type of work: _____
(e.g. painting, sculpture, music, motion picture, sound recording, book)
5. Name of author(s): _____
6. Source country: _____
7. Approximate year of publication: _____
8. Additional identifying information: _____
(e.g. for movies; director, leading actors, screenwriter, animator, for photographs: subject matter; for books; editor, publisher, contributors, subject matter).
9. Name of copyright owner: _____
(Statements may be filed in the name of the owner of the restored copyright or the owner of an exclusive right therein.)
10. If you are not the owner of all rights, specify the rights you own: _____

(e.g. the right to reproduce/distribute publicly display/publicly perform the work, or to prepare a derivative work based on the work)
11. Address at which copyright owner may be contacted: _____

(Give the complete address, including the country and an "attention" line, or "in care of" name, if necessary.)

12. Telephone number of owner: _____

13. Telefax number of owner: _____

14. 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.

Signature: _____

Name (printed or typed): _____

As agent for (if applicable): _____

Date: _____

Note: Notices of Intent to Enforce 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 8½" by 11" white paper of good quality, with at least a 1-inch (or 3 cm) margin.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 702.

5. A new § 202.12 is added to read as follows:

§ 202.12 Restored copyrights.

(a) *General*. This section prescribes rules pertaining to the registration of foreign copyright claims which have been restored to copyright protection under section 104A of 17 U.S.C., as amended by the Uruguay Round Agreements Act, Public Law 103-465.

(b) *Definitions*. (1) For the purposes of this section, restored work and source country, have the definition given in the URAA and § 201.33(b) of this chapter.

(2) *Descriptive statement for a work embodied solely in machine-readable format* is a separate written statement giving the title of the work, nature of the work (for example: computer program, database, videogame, etc.), plus a brief description of the contents or subject matter of the work.

(c) *Registration*. (1) *General*. Application, deposit, and filing fee for registering a copyright claim in a restored work under section 104A, as amended, may be submitted to the Copyright Office on or after January 1, 1996. The application, filing fee, and deposit should be sent in a single package to the following address: URAA/GATT, NIEs and Registration, P.O. Box 72400, Southwest Station, Washington, DC 20024, USA.

(2) *GATT Forms*. Application for registration for single works restored to copyright protection under URAA

should be made on Form GATT.

Application for registration for a group of works published under a single series title and published within the same calendar year should also be made on Form GATT. Application for a group of at least two and up to ten individual and related works as described in paragraph (c)(5)(ii) of this section should be made on Form GATT/GRP. GATT/URAA forms may be obtained by writing or calling the Copyright Office Hotline at (202) 707-9100. In addition, legible photocopies of these forms are acceptable if reproduced on good quality, 8½ by 11 inch white paper, and printed head to head so that page two is printed on the back of page one.

(3) Fee.

(i) *Amount*. The filing fee for registering a copyright claim in a restored work is 20 U.S. dollars. The filing fee for registering a group of multiple episodes under a series title under paragraph (c)(5)(i) of this section is also \$20. The filing fee for registering a group of related works under paragraph (c)(5)(ii) of this section is 10 U.S. dollars per individual work.

(ii) Method of payment.

(A) *Checks, money orders, or bank drafts*. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. In addition, international money orders, and postal money orders that are negotiable only at a post office are not acceptable. CURRENCY WILL NOT BE ACCEPTED.

(B) *Copyright Office Deposit Account*. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts please write: Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559, and request a copy of Circular 5, "How to Open and Maintain a Deposit Account in the Copyright Office."

(C) *Credit cards*. For URAA registrations the Copyright Office will accept VISA, MasterCard, and American Express. Debit cards cannot be accepted for payment. With the registration

application, an applicant using a credit card must submit a separate cover letter stating the name of the credit card, the credit card number, the expiration date of the credit card, the total amount authorized and a signature authorizing the Office to charge the fees to the account. To protect the security of the credit card number, the applicant must not write the credit card number on the registration application.

(4) *Deposit.*

(i) *General.* The deposit for a work registered as a restored work under the amended section 104A, except for those works listed in paragraphs (c)(4)(ii) through (iv) of this section, should consist of one copy or phonorecord which best represents the copyrightable content of the restored work. In descending order of preference, the deposit should be:

- (A) The work as first published;
- (B) A reprint or re-release of the work as first published;
- (C) A photocopy or identical reproduction of the work as first published; or
- (D) A revised version which includes a substantial amount of the copyrightable content of the restored work with an indication in writing of the percentage of the restored work appearing in the revision.

(ii) *Previously registered works.* No deposit is needed for works previously registered in the Copyright Office.

(iii) *Works embodied solely in machine-readable format.* For works embodied only in machine-readable formats, the deposit requirements are as follows:

- (A) One machine-readable copy and a descriptive statement of the work; or
- (B) Representative excerpts of the work, such as printouts; or, if the claim extends to audiovisual elements in the work, a videotape of what appears on the screen.

(iv) *Pictorial, graphic and sculptural works.* With the exception of 3-dimensional works of art, the general deposit preferences specified under paragraph (c)(4)(i) of this section shall govern. For 3-dimensional works of art, the preferred deposit is one or more photographs of the work, preferably in color.

(v) *Special relief.* An applicant who is unable to submit any of the preferred deposits may seek an alternative deposit under special relief (37 CFR 202.20(d)). In such a case, the applicant should indicate in writing why the deposit preferences cannot be met, and submit alternative identifying materials clearly showing some portion of the copyrightable contents of the restored

work which is the subject of registration.

(vi) *Motion pictures.* If the deposit is a film print (16 or 35 mm), the applicant should contact the Performing Arts Section of the Examining Division for delivery instructions. The telephone number is: (202) 707-6040; the telefax number is: (202) 707-1236.

(5) *Group registration.* Copyright claims in more than one restored work may be registered as a group in the following circumstances:

(i) *Single series title.* Works published under a single series title in multiple episodes, installments, or issues during the same calendar year may be registered as a group, provided the owner of U.S. rights is the same for all episodes, installments, or issues. The Form GATT should be used and the number of episodes or installments should be indicated in the title line. The filing fee for registering a group of such works is \$20. In general, the deposit requirements applicable to restored works will be applied to the episodes or installments in a similar fashion. In the case of a weekly or daily television series, applicants should first contact the Performing Arts Section of the Examining Division. The telephone number is (202) 707-6040; the telefax number is (202) 707-1236.

(ii) *Group of related works.* A group of related works may be registered on the Form GATT/GRP, provided the following conditions are met: the author(s) is the same for all works in the group; the owner of all United States rights is the same for all works in the group; all works must have been published in the same calendar year; all works fit within the same subject matter category, i.e., literary works, musical works, motion pictures, etc.; and there are at least two and not more than ten individual works in the group submitted. Applicants registering a group of related works must file for registration on the Form GATT/GRP. The filing fee for registering a group of related works is ten dollars per individual work.

(d) *Works excluded.* Works which are not copyrightable subject matter under title 17 of the U.S. Code, other than sound recordings fixed before February 15, 1972, shall not be registered as restored copyrights.

Dated: September 25, 1995.
Marybeth Peters,
Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.
[FR Doc. 95-24244 Filed 9-28-95; 8:45 am]
BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OR-A-95-01a; FRL-5302-1]

Approval and Promulgation of Definition of Areas for Air Quality Planning Purposes; Oregon-Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct-Final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the separation of the Portland, Oregon-Vancouver, Washington interstate carbon monoxide (CO) nonattainment area into two distinct nonattainment areas. The Oregon Department of Environmental Quality (ODEQ) has submitted sufficient technical documentation to adequately assure EPA that Vancouver and Portland are two separate CO airsheds. EPA believes any future problems will be hotspot in nature and therefore, EPA believes the CO national ambient air quality standards (NAAQS) will be protected in each state. This boundary correction will change the boundary description published in the November 6, 1991 Federal Register document.

DATES: This action will be effective on November 28, 1995 unless adverse or critical comments are received by October 30, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT-082), EPA, Docket OR-A-95-01, 1200 Sixth Avenue, Seattle, Washington 98101. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204-1390.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT-082), EPA, Seattle, Washington 98101, (206) 553-1814.