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I. Background

On December 8, 1994, President Clinton signed the "Uruguay Round Agreements Act" (URAA), Public Law 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 of 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 the World Trade Organization, or is the subject of a presidential proclamation.

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.

¹ Convention concerning the creation of an International Union for the Protection of Literary and Artistic Works (Sept. 9, 1886, revised in 1908, 1928, 1948, 1967, 1971), hereinafter cited as the Berne Convention.

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, is not a restored work.

B. Effective Date of Restoration

On February 9, 1995, the Copyright Office published a notice in the **Federal Register** summing up the provisions in the URAA with regard to the restoration of copyright protection for certain foreign works and announcing a public meeting on March 20, 1995, to discuss those provisions related to the responsibilities Congress gave the Copyright Office. 60 FR 7793 (Feb. 9, 1995). The effective date of copyright restoration is crucial to fulfilling those responsibilities in a timely manner. 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 February notice, the Copyright Office concluded that the effective date of copyright restoration is January 1, 1996. 60 FR 7793 (1995). Since then President Clinton has issued a proclamation confirming 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 new section 104A, which will go into effect on January 1, 1996, charges the Office with establishing regulations for two filings which may be made with the Copyright Office and may assist the owner of the restored work in securing certain remedies. The URAA requires the Copyright Office to publish regulations governing the filing of Notices of Intent to Enforce (NIEs) a restored copyright and the registering of copyright claims in restored works no later than ninety days before the date the TRIPs Agreement takes effect with respect to the United States. This date has been determined to be January 1, 1996; therefore, the Copyright Office will need to publish final regulations establishing the procedures for filing NIEs and applications for registration 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 publish its first list by no later than May 1, 1996,

and must publish lists at regular four-month intervals for a period of two years thereafter. The Office must also maintain for inspection and copying a list containing all NIEs.

A. Notices of Intent To Enforce

In order to enforce certain rights against reliance parties, the URAA directs copyright owners to notify these parties that they are enforcing the rights in a restored work. A reliance party is a business or individual who, relying on the public domain status of a work, was already using the work prior to the enactment of the URAA. The URAA authorizes the owner of a right in a restored work either to serve an actual NIE directly on a reliance party or provide constructive notice through the filing of such notices with the Copyright Office. Notices may be served on a reliance party at any time after the date of restoration of the restored copyright, i.e., January 1, 1996. As noted above, the Copyright Office is to publish a list in the **Federal Register** identifying NIEs filed with it. Reliance parties have a twelve-month grace period after they have been notified either by publication in the **Federal Register** or by actual notice to sell off previously manufactured stock, to publicly perform or publicly display the work, or to authorize others to conduct these activities. All reliance parties, except those who created derivative works, must cease using the work after the twelve-month grace period unless they reach a licensing agreement with the copyright owner for continued use of the restored work. The effective date of notification is thus very important both to owners of the restored works and reliance parties.

B. Registration of Copyright Claims in Restored Works

The second filing that the owner of a restored work may want to make with the Copyright Office is an application for registration of a copyright claim. The URAA directs the Office to provide procedures for such registration, but it does not require owners of the restored works to register. An author of a work which is not considered a Berne work must obtain or seek registration for a work before he or she can bring a copyright infringement action in federal court.² While the owner of rights in a

² The question of whether a work from a country that is a member of WTO but not Berne must be registered was not specifically addressed in the legislation; therefore, it would seem that works that do not come under the definition of a "Berne Convention work" found in 17 U.S.C. 101 would have to be registered before the owner can initiate a suit.