

a narrow set of conditions that requires notice to reliance parties. These conditions do not violate the Berne Convention. Without such notice the effect of restoration on a reliance party could be unconstitutional. 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 the legitimate interests of both reliance parties and copyright owners, by constitutional considerations, and by Article 18(3) of the Berne Convention.

C. Issues Related to Notices of Intent to Enforce

The URAA specifies the minimum content of the NIEs. It requires that the notice be signed by the owner or the owner's agent.⁷ In addition to the signature, the URAA states that the NIE must contain the title, including an English-language translation, any other alternative titles known to the owner by which the restored work may be identified, the name of the owner, and an address and telephone number at which the owner can be located. The URAA specifies that the Copyright Office can ask for additional information, but the failure to provide such information will not invalidate the NIE. At the March 20 meeting, the Office sought information from representatives of authors and user groups on what optional data would be helpful in creating a useful public record for both groups.

1. Useful Public Record

Many of the commentators expressed concern that unless filers of NIEs provide information beyond the minimum required by the statute, the NIE will not provide adequate notice to reliance parties. A number of commentators, including Ms. Perlmutter, Ms. Wasoff, and Thomson & Thomson asked that a public record be created for NIEs that provides information sufficient to identify a work and differentiate it from those with the same title. The commentators noted that the type of work and the name(s) of the author(s) would provide particularly valuable and essential information. Ms. Wasoff, Ms. Risher, Mr. Mier, Mr. Ortega, Mr. Chaubeau, and Thomson & Thomson also indicated that other information would help in differentiating between works, such as date and nation of first publication,

names of producers, directors, and leading actors (in the case of motion pictures), and birth and death dates for authors. Though date and location of publication could be helpful as identifying information, Dr. Feder and Ms. Koyanis pointed out that the date of publication is not particularly useful in establishing the expiration of the copyright term since most countries use the date of the author's death to establish the term. Ms. Koyanis and Thomson & Thomson stated that the NIE should specify whether the "owner" named is the owner of the restored copyright or the owner of an exclusive right. Several parties, including Dr. Feder, Ms. Messinger, and Thomson & Thomson suggested that the person who signs the certification statement should indicate whether he or she is acting as an agent. Ms. Koyanis suggested that no more proof of agency be required beyond that currently required for routine registrations.

2. Group Filing

Dr. Feder, Mrs. Gwilliams, and Mr. Bautista asked the Copyright Office to permit the filing of a single NIE for the body of an author's work. Mr. Patry pointed out that the law requires a NIE to be filed only for the "restored works" for which the copyright is going to be enforced against reliance parties, not all works, and that the titles must all be listed in the **Federal Register**. Mr. Patry stated that this was done as part of an effort to balance the interests of owners of restored works and reliance parties, so that the reliance parties could have a date certain when they would not have liability through constructive notice.

3. Acknowledgement

Another issue addressed at the public meeting was whether the publication in the **Federal Register** would be sufficient notice to the filer of a NIE that the NIE had been received and/or recorded by the Office. A number of parties, including Mr. Ossola, Ms. Munro, Dr. Feder, Mr. Ortega, and Thomson & Thomson asserted that acknowledgement of receipt and recordation of a NIE is an essential service that the Copyright Office should provide since foreign remitters will be anxious to know the status of the NIE(s) and would otherwise flood the Office with calls.

4. Fees

The Act allows the Office to charge a reasonable fee for recording a NIE, and the Office raised the question of what this fee should be. Mr. Komen stated that fees for NIEs should be consistent

with current recordation fees. Thomson & Thomson suggested that since most works will have two titles, the basic fee (\$20) could cover the first two titles, with an additional \$10 for each group of ten or fewer titles. Mr. Turkewitz urged the Copyright Office to keep fees for the NIE to a minimum.

D. Issues Related to Registration of a Restored Work

Another subject addressed at the public meeting was what the registration procedures should be for restored works. Particularly, the Office asked whether there should be a new registration form, what simultaneous filing under the URAA meant, whether group registration should be available, who the appropriate author is for registration purposes, and what the appropriate fee and deposit should be.

1. A New Registration Form

Mr. Yeates and Thomson & Thomson supported the creation of a new form. Mr. Komen recommended against adoption of a separate URAA copyright registration form.

2. Simultaneous Filing

Thomson & Thomson stated that simultaneous filing of a NIE and a registration should be allowed, as is currently the case with an assignment or a renewal application and a registration. Mr. Turkewitz urged that simultaneous registration of claims of copyright be both automatic and at no additional cost.

3. Group Registration

Many of the commentators urged the Copyright Office to allow group registration of restored works. Mr. Gutton and Dr. Feder asked the Copyright Office to accept one registration for the entire body of an artist's work. Ms. Koyanis noted that it is unlikely that the entire body of an artist's restored work will have been developed and distributed in such a way that the same facts would apply, but she asserted that a single registration could suffice if the facts do agree for all works, and if each work is given a title or description to aid identification. Thomson & Thomson indicated that every work in a group registration should have the same author(s) and owner(s).

4. Author

Dr. Feder, Mr. Yeates, Mr. Zapata, Mr. Gutton and Thomson and Thomson all stated that the author should be determined by the law of the source country.

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