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. <sup>2</sup> 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

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

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

<sup>&</sup>lt;sup>2</sup> This 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.

<sup>&</sup>lt;sup>3</sup> It 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.