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 restoration ⁵ 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. 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

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).

⁷ The 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.

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).