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. Theg 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. Theg 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.