II. Restoration of Copyright of Eligible Works

Section 514 of the URAA restores copyright protection in certain foreign works still under protection in a source country but in the public domain in the United States. It also grants protection to sound recordings fixed prior to February 15, 1972.1 Copyrights in eligible foreign works are restored automatically from the "date of restoration." Since restoration is automatic, the owner of the restored copyright does not have to register this work. To qualify for restoration, a work must be an original work of authorship that is protected under subsection (a), is not in the public domain in the source country through expiration of the term of protection, and is in the public domain in the United States because of noncompliance with formalities, lack of subject matter protection in the case of a sound recording fixed before February 15, 1972, or lack of national eligibility. A further requirement to qualify is that, at the time the work was created, at least one author or rightholder (in the case of a sound recording) must have been a national or domiciliary of an eligible country; and if the work is published, it must not have been published in the United States within 30 days of first publication in the eligible country. Amended sec. 104A(h)(6).

An eligible country is one, other than the United States, that is a member of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or a member of the World Trade Organization (WTO) or is subject to a presidential proclamation that extends copyright restoration to works of that country on the basis of reciprocal treatment to the works of United States nationals or domiciliaries.

III. Effective Date of Restoration

Section 514(a) of the URAA provides that the initial date of restoration of a restored copyright is "the date on which the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the [URAA] enters into force with respect to the United States." Although questions have been raised about the actual date of copyright restoration established under section 514(a), in light of the entire URAA, the Statement of Administrative Action (SAA), the TRIPs Agreement, and other legislative history-related materials, the effective date of copyright restoration is January 1.1996.

The SAA accompanying the legislation provides, in relevant part, that copyright will be restored on the date "when the TRIPs Agreement's obligations take effect for the United States."² The TRIPs Agreement states that no Member, including the United States, "shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Agreement Establishing WTO." 3 Since the WTO came into effect on January 1, 1995, the TRIPs Agreement's obligations take effect for the United States on January 1, 1996. Consequently, January 1, 1996, is the date on which copyright will be restored under the URAA.

This conclusion is amply supported by the legislative history of the URAA and the practical necessities surrounding implementation of the restoration provision. The Joint Report on the Senate version of the URAA bill specifically states that the "bill would automatically restore copyright protection for qualifying works * one year after the WTO comes into being."⁴ Furthermore, the Justice Department predicated its memorandum to the General Counsel to the United States Trade Representative as to the constitutionality of the restoration provisions on the date of restoration being January 1, 1996.⁵ Finally, the URAA requires the Copyright Office to publish rules governing the filing of notices of intent to enforce a restored copyright 90 days before the day that copyright restoration takes place.⁶ Because this publishing requirement would have been impossible to accomplish if the effective date were January 1, 1995, the only reasonable interpretation of the URAA is that the effective date of restoration is January 1, 1996.

⁵See 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). ⁶Amended sec. 104A(e)(1)(D)(i).

IV. Notification to Reliance Parties

Concern for Reliance Parties

Congress was concerned about the effect of restoring copyrights to works already in the public domain; some of which are being actively and legally exploited in the United States. The URAA refers to the businesses and individuals using such works as reliance parties and immunizes them for their acts prior to the date of automatic copyright restoration. Reliance parties must stop reproducing any work in which a copyright is restored and must not prepare new derivative works that reproduce significant elements of a work on the date these parties have effective notice that an owner intends to enforce the restored work. This effective notice date is either the date the Copyright Office publishes in the **Federal Register** the list identifying the works on which notices of intent to enforce have been filed or the date the reliance party received actual notice of the owner's intent to enforce the restored copyright.

Filing Notices of Intent to Enforce Copyright

The URAA gives copyright owners of restored copyrights two ways to serve notice of their intent to enforce the copyright on reliance parties. They may file an intent to enforce the restored copyright in the work with the Copyright Office or they may serve actual notice of the intent to enforce the restored copyright against a particular reliance party. If they choose the second way, they will have to notify each reliance party who may have used a work and identify the use. Consequently, it seems possible that many owners of copyright in restored works will choose to file notices of intent to enforce copyright with the Copyright Office. Based on the notices received, the Office will publish lists of notices of intent to enforce restored works beginning in May 1996 and continuing at regular intervals not to exceed four months thereafter.

The URAA specifies the minimum content of the notices of intent to enforce. It requires that the notice be signed by the owner or the owner's agent.⁷ In addition to the signature, it must contain the title, including an English-language translation, and any other alternative titles known to the owner by which the restored work may be identified, the name of the owner,

¹URAA, title V, "Intellectual Property," sec. 514, "Restored Works." Further references to this section will be to the amended 104A.

²Congress specifically approved the Statement of Administrative Action (SAA). URAA sec. 101 (a)(2). ³Agreement on TRIPs, VI: Arrangements, Article 65.

⁴Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, Committee on Governmental Affairs of the United States Senate to accompany the Uruguay Round Agreements Act, S. 2467, S. Rep. No. 412, 103d Cong., 2d Sess. 225 (1994).

⁷Ownership 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).