



# ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559-6000

## INTERIM REGULATION WITH REQUEST FOR COMMENTS

### PROCEDURES FOR COPYRIGHT RESTORATION OF CERTAIN MOTION PICTURES AND THEIR CONTENTS IN ACCORDANCE WITH THE NORTH AMERICAN FREE TRADE AGREEMENT

The following excerpt is taken from Volume 59, Number 51 of the Federal Register for Wednesday, March 16, 1994 (pp. 12162-12165)

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Copyright Office

37 CFR Part 201

[Docket No. RM 93-13A]

**Procedures for Copyright Restoration of Certain Motion Pictures and Their Contents in Accordance with the North American Free Trade Agreement**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Interim regulation with request for comments.

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**SUMMARY:** The Copyright Office is issuing interim regulations to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement (NAFTA) and the statute implementing it. The NAFTA Implementation Act authorizes the Copyright Office to establish procedures whereby potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, will have copyright protection restored effective January 1, 1995.

**DATES:** These interim regulations are effective March 16, 1994. Comments should be in writing and received on or before May 16, 1994.

**ADDRESSES:** If sent by mail, fifteen copies of written comments should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If hand delivered, fifteen copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue, SE, Washington, DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

**FOR FURTHER INFORMATION CONTACT:** Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, D.C. 20540. Telephone: (202) 707-8350. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On January 10, 1994, the Copyright Office notified the public of the provisions in NAFTA with regard to the restoration of copyright protection for certain works. 59 FR 1408 (1994) To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed in Mexico or Canada and entered the public domain in the United States because of first publication anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

These interim regulations set out the procedures that potential copyright owners must follow if they wish to have copyright protection for their works restored in the United States. To restore copyright, potential copyright owners must file Statements of Intent with the Copyright Office on or before December 31, 1994, and these Statements must contain the information set out in these regulations. The regulations also detail the procedures the Copyright Office will use to process Statements of Intent and create a record for the public.

#### I. Background

The North American Free Trade Agreement entered into force on January 1, 1994. The NAFTA Agreement and the NAFTA Implementation Act (Pub. L. 103-182) provide for the restoration of copyright for certain works that are currently in the public domain in the

United States. New section 104 sets out the conditions for restoring protection:

*Classes of works eligible.* Two types of works are eligible for copyright restoration: (1) motion pictures; and (2) works included in motion pictures (such as an underlying work—a novel or play on which a motion picture was based—or the original screenplay or original musical score of a motion picture).

*Dates of publication and public domain status.* To be eligible for restoration, the motion picture, or the work included in a motion picture, must meet two criteria: (1) the work must have been first published on or after January 1, 1978, and before March 1, 1989; and (2) the work must have fallen into the public domain in the United States because, at the time of its first publication, it failed to meet the requirements of the U.S. copyright law for publication with notice of copyright (17 U.S.C. 401, 402, 403, 405) as they existed at that time.

*Place of first fixation or publication.* Assuming they meet the other criteria, the following two kinds of works are eligible for copyright restoration: (1) published works that were first fixed in Canada or Mexico, regardless of where they were first published; and (2) works first published in Mexico or Canada, regardless of where they were first fixed. A motion picture, or a work included in a motion picture, meeting these requirements is entitled to receive copyright protection under title 17 for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with the required notice. 17 U.S.C. 104A(a)(1993).

Potential copyright owners of qualifying works must file a Statement of Intent with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force), and December 31, 1994, to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office will publish in the **Federal Register** a list of the works which are determined to be properly qualified for protection and for which complete Statements of Intent

have been filed. The restoration of copyright protection for eligible works will be effective on January 1, 1995.

The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the **Federal Register** of the list of works for which Statements of Intent have been received.

The copyright restoration provisions apply to a "motion picture" or any work included in a motion picture. Section 101 of title 17 defines motion pictures to include audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Thus, for example, the restoration provisions apply to feature films, short films, documentaries, silent films, television films, television series, and television programs, as well as works contained in these "motion pictures."

To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed<sup>1</sup> in Mexico or Canada and entered the public domain in the United States because of first publication<sup>2</sup> anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

<sup>1</sup> See 17 U.S.C. 101. For example, a "fixed" motion picture would be completed and embodied in a copy, such as on film stock or videotape. Also see the definitions provided in these interim regulations.

<sup>2</sup> See 17 U.S.C. 101. The place of first publication would be the place where copies were first sold, leased, loaned or offered for sale, by for example, the distribution of videotape copies or film prints. Also, see the definitions provided in these interim regulations.

Also, see Article 3(4) of the Berne Convention for the Protection of Literary and Artistic Works which permits simultaneous publication, that is, within 30 days of its first publication if published in two or more countries. For example, if a motion picture was first published (between January 1, 1978 and March 1, 1989) within 30 days in two countries, and one of these countries is Mexico or Canada, it would be eligible for the NAFTA copyright restoration.

2. Or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

Further, for copyright to be restored in an eligible work, a complete and timely Statement of Intent must be filed with the Copyright Office by the potential copyright owner or an authorized agent.

Although the Copyright Office has authority to charge a fee for the processing of NAFTA Statements of Intent under 17 U.S.C. 708, it has decided not to do so at this time. However, it reserves the right to charge a fee in the future if the Office's duties are broadened under the NAFTA or a similar agreement.

The filing of an effective Statement of Intent will not give any of the legal benefits or presumptions that a voluntary copyright registration now provides under U.S. copyright law. The Statement of Intent is submitted only for the purposes of the NAFTA copyright restoration provisions. Any work for which copyright is restored may be registered on and after January 1, 1995, in accordance with title 17, upon the submission of the proper copyright application, filing fee, and an appropriate deposit of the work. The Copyright Office will not accept applications for copyright registration for these works before January 1, 1995; only Statements of Intent may be filed before then.

After January 1, 1995, the Copyright Office encourages potential copyright owners to make a voluntary copyright registration to obtain the legal and commercial advantages made available by registration. These include certain evidentiary benefits; availability of statutory damages; and the creation of a complete registration record in the Copyright Office's online database.

## II. Explanation of Interim Regulations

### *Procedures for Filing an Effective Statement of Intent*

Potential copyright owners or their agents must file Statements of Intent with the Copyright Office on or before December 31, 1994, in order for a Statement to be effective. No fee is required. The Statement of Intent must be in English and

should be typed or clearly printed by hand on 8 1/2-inch by 11-inch white paper. To be complete, a Statement of Intent must contain all of the information required in items 1 through 6 below, including the entire "certification statement" and the signature of the potential copyright owner or authorized agent.

A complete Statement should clearly indicate at the top of the first page that the potential copyright owner is submitting: A Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement (NAFTA). All statements must be mailed to the Copyright Office at: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

All of the information required in items 1 through 6 below must be contained in a Statement of Intent. Otherwise the Copyright Office will correspond with the party submitting the Statement to correct omissions. Should that party continue to fail to include any of the required items (1 through 6), copyright restoration cannot be effected for that particular work. In addition to the required information, the Office encourages the potential copyright owner to provide other "optional" information that should be useful in providing information to the public about any work for which copyright is restored.

The required and optional information for a Statement of Intent is:

(1) *Title.* (Required information)

The title of the work or works for which copyright restoration is sought. If multiple works are listed in a single Statement of Intent, each individual work must be clearly and separately identified in items 1 through 6 of the Statement. For series and episodes, these titles must be clearly identified by a title or number.

*Explanation of item #1:* Only motion pictures and their contents (as defined in 17 U.S.C. 104A and 101) are eligible for copyright restoration. Potential copyright owners can submit the titles of any number of works for which they are seeking restoration on a single Statement of Intent. Assuming that the exploitation of the contents in a motion picture was

legally authorized at the time the motion picture was made, submission of the title of the motion picture will suffice for the restoration of copyright protection for the works included in it.

*Optional information for item #1* includes alternative titles (for example, the American release title of a motion picture if different from the foreign title); the original producer and/or director of the motion picture; and the format or physical description of the work as first published (for example, running time, number of reels, and whether the work is on film, videotape, videodisc, or another medium). This descriptive material will help identify similarly titled films or rereleases.

(2) *Nation of first fixation.* (Required information)

*Explanation of item #2:* To be eligible for copyright restoration a work must have been first fixed in Mexico or Canada, or, if first fixed in any other nation, it must have been first published in Mexico or Canada. For example, a work may be eligible for restoration if it was first fixed before 1978 in the United States but later published in Mexico or Canada between January 1, 1978, and March 1, 1989.

*Optional information for item #2* would include the year date of first fixation.

(3) *Nation of first publication.* (Required information)

*Explanation of item #3:* To be eligible for copyright restoration the work must have been first published in Mexico or Canada if it was first fixed in a nation other than Mexico or Canada. If a work remains unpublished in 1994, the NAFTA copyright restoration provisions are not applicable because the work is already protected under the copyright law of the United States regardless of the nationality or domicile of its author. The duration of unpublished works is governed by 17 U.S.C. 302 and 303.

(4) *Date of first publication.* (Required information)

*Explanation of item #4:* To be eligible for copyright restoration a work must have been first published on or after January 1,

1978, and before March 1, 1989, and must have entered the public domain in the United States for failure to comply with the copyright notice requirements of the U.S. Copyright Code. For example, the date of first publication would be the date of a film's release, or the date of its first offering for rental or sale.

(5) *Name and Address.* (Required information)

The name and mailing address of the potential copyright owner of work, and a telephone and telefax number, if available.

*Explanation of item #5:* The name and mailing address (the telephone and telefax numbers, if available) of the potential copyright owner will be used to create a readily available public record at the Library of Congress. This information will serve to identify the copyright owner of works for which copyright has been restored, to provide notice to the public that these works will have copyright protection for the remainder of their term, and to facilitate licensing and other uses of these works by the general public.

*Optional information for item #5* would include the name of the original copyright owner of the work, if it is different from the potential copyright owner; and for works contained in motion pictures, the potential owner or owners of those works, if different from the potential copyright owner submitting a Statement of Intent. Separate Statements of Intent may be submitted by the potential copyright owner(s) of the underlying works, if different from the owner of the motion picture.

(6) *Certification Statement and Signature.* (Required information)

The following dated certification statement must be included in its entirety along with the signature of the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

*Explanation of item #6:* The entire certification statement must be reproduced on each Statement of Intent to attest that the person signing the statement understands the copyright restoration provisions and the consequences of false statements of material facts. A complete Statement of Intent must be signed and dated by the potential copyright owner or an authorized agent.

### III. Sample Statement of Intent

As an Appendix, the Copyright Office provides a sample Statement of Intent which may be used by potential copyright owners or their authorized agents. This Appendix will not appear in the Code of Federal Regulations. The sample Statement includes both the required information that must be provided for the Statement of Intent to be effective and the additional optional information which is not required. If provided, the optional information, clearly identified in this sample, will greatly enhance the Copyright Office records. The Office encourages potential copyright owners to use this suggested format for their submissions to ensure that all necessary information is provided and to avoid correspondence.

### IV. Copyright Office Procedures for Handling Statements of Intent

A timely Statement of Intent will be reviewed by the Copyright Office for the required information listed in items 1 through 6. If the Statement does not give the required information, the Copyright Office will ask the potential copyright owner or authorized agent to submit the missing information. Complete and timely Statements of Intent will be entered into the Copyright Office's records and will be readily accessible to the public. The Copyright Office will publish a list of all the titles of eligible works for which effective Statements of Intent have been made in the **Federal Register** as soon as possible after January 1, 1995, and will make it available to the public after that date. Statements of Intent submitted after December 31, 1994, will not be accepted for inclusion in the Copyright Office's database or for the **Federal Register** notice in 1995. Copyright restoration is

automatic and requires no further action by the Copyright Office.

#### Appendix

Statement of Intent to Restore Copyright Protection in the United States in Accordance with the North American Free Trade Agreement (NAFTA)

1. Title of work(s): \_\_\_\_\_  
(For multiple works complete items 1 through 6 for each separate work.)

1a. Include series and episode title(s)/ number(s), if any \_\_\_\_\_

1b. If this Statement does not cover the entire motion picture, specify the underlying work covered, e.g., screenplay, music, etc.

1c. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title) \_\_\_\_\_

1d. (Optional) Original producer and/or director \_\_\_\_\_

1e. (Optional) Format or physical description of work as first published (running time, reels, etc.) \_\_\_\_\_

Film \_\_\_\_\_ Videotape \_\_\_\_\_  
Videodisc \_\_\_\_\_ Other (describe) \_\_\_\_\_

2. Nation of first fixation - Mexico ( ) Canada ( ) Other nation (specify): \_\_\_\_\_

2a. (Optional) Year of first fixation: \_\_\_\_\_

3. Nation of first publication - Mexico ( ) Canada ( ) Other nation (specify): \_\_\_\_\_

4. Date of first publication: \_\_\_\_\_  
(month/day/year)

5. Name and mailing address of potential copyright owner of work:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

(Street or Post Office Box, City/State, Country)

Telephone \_\_\_\_\_ Telefax \_\_\_\_\_

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Potential copyright owner or authorized agent)

#### List of Subjects in 37 CFR Part 201

Copyright, Restoration of Copyright for Certain Works in Accordance with the North American Free Trade Agreement.

#### Interim Regulations

For the reasons set out in the Preamble, section 37 CFR chapter II is amended in the manner set forth below.

#### PART 201-[AMENDED]

1. The authority citation for part 201 is revised to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; §201.31 is also issued under Public Law 103-182, 107 Stat. 2115.

2. A new section 201.31 is added to read as follows:

#### §201.31 Procedures for Copyright Restoration of Certain Motion Pictures and Their Contents in Accordance with the North American Free Trade Agreement

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required in 17 U.S.C. 104A(a). On or after January 3, 1995, the Copyright Office will publish in the **Federal Register** a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' for purposes of this title if a fixation of the work is being made simultaneously with its transmission.  
17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) *Forms*. The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) *Requirements for Effective Statements of Intent*. (1) The document should be clearly designated as a "Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement".

(2) Statements of Intent must include: (i) the title(s) of the work(s) for which copyright restoration is sought; (ii) nation of first fixation; (iii) nation of first publication; (iv) date of first publication; (v) name and mailing address (and telephone and telefax, if available) of the potential copyright owner of the work; (vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

I hereby certify that each of the above titled works was first fixed or first published in Mexico or Canada and entered the public domain in the United States of America because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by the copyright law of the United States of America then in effect. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

(3) Statements of Intent must be received in the Copyright Office on or

before December 31, 1994.

(4) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) *Fee*. The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) *Effective date of restoration of copyright protection*. (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

(2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the Federal Register of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) *Registration of works whose copyright has been restored*. After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

Dated: March 8, 1994.

**Barbara Ringer,**  
*Acting Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

**Billing Code: 1410-07-P**