



# ANNOUNCEMENT

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

## FINAL REGULATIONS

### 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 219 of the Federal Register for Tuesday, November 15, 1994 (pp. 58787-58789)

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**LIBRARY OF CONGRESS**

Copyright Office

37 CFR Part 201

[Docket No. RM 93-13B]

**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:** Final regulations.

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**SUMMARY:** The Copyright Office is issuing final regulations establishing procedures that govern 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. These final regulations make several modifications or clarifications to the interim regulations and are effective immediately.

**DATES:** These final regulations are effective November 15, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. 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 motion pictures and their contents. 59 FR 1408 (1994). On March 16, 1994, the Copyright Office published interim regulations with a request for comments to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for these works. 59 FR 12162 (1994). A total of four public comments were received. These final regulations adopt most of the recommendations made in the comments to improve the system of filing. Statements of Intent. Some Statements of Intent have already been filed with the Office. The amendments to the interim regulations, including the certification statement, do not affect these statements; they are governed by the regulations effective at the time they were filed. However, the Office will contact the filers of these Statements to ask if they wish to modify their Statements to comply fully with our final regulations.

**Works Eligible for Restoration**

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.

The interim regulations set out the procedures potential copyright owners should follow to have copyright protection for their works restored in the United States. In order for copyright to be restored in an eligible work, the potential copyright owner or an authorized agent must file a complete and timely Statement of Intent with the Copyright Office by December 31, 1994. These Statements must contain the information set out in the final regulations.<sup>1</sup> This information will be used by the Office to create a public record of the works restored to copyright protection.

**Summary of Comments**

We received a total of four written comments from: Jon Baumgarten, an attorney representing the Motion Picture Association of America (MPAA); Carmen Quintanilla Madero, Director General of the Mexican Copyright Office; Phil Hochberg, an attorney representing the National Hockey League; and James Bouras, an attorney. Most recommended modifying the interim regulations to identify clearly each work that will enjoy

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<sup>1</sup> Additional information that may be useful in filing a Statement of Intent appeared in the Federal Register, 59 FR 12162 (March 16, 1994), and in Copyright Office Announcement ML-476 which is available by contacting the Public Information Office at (202) 707-3000.

copyright restoration. For example, Mr. Baumgarten suggested a requirement

That Statements of Intent include identification of the title and potential copyright owner of works included in qualifying motion pictures; to avoid uncertainty and misreliance (by any party, "owner" or "user"), the regulations should provide that if any work is not so identified, or is inadequately identified, it is not protected.

Comment letter of Baumgarten at pp. 2-3.

Mr. Hochberg pointed out that since most sports programs do not have a title, they should be identified by the sporting event, team names, and date. Comment letter of Hochberg at p 2. The Office is amending the final regulations to incorporate both of these recommendations.

Mr. Bouras suggested that all Statements of Intent for titles in a foreign language require a literal translation of that title into English. Comment letter of Bouras at p 1. The Office will not require literal English translations of titles for foreign language works. However, the Office strongly recommends the inclusion of any alternate title, especially a title under which a work may have been subsequently released in the United States.

Mr. Bouras also stated that the inclusion of names of the stars of the film, authors of the book or play, and composers of the underlying music would help identify the work and asked that the final regulation either require or encourage the use of this information. The Office has decided not to require this information because it would create a burden on potential owners.

Prior to filing a comment, Carmen Quintanilla Madero from the Mexican Copyright Office wrote to Marybeth Peters asking for the status of motion pictures published before January 1, 1978. Both Ms. Peters and the Acting Register Barbara Ringer responded that the NAFTA Implementation Act only covered works published without notice between January 1, 1989 and March 1, 1989.<sup>2</sup>

Ms. Quintanilla's letter expressed concern that the NAFTA Implementation legislation addresses only works that lost their U.S. copyright protection by publication without a copyright notice on or after January 1, 1978. She believes that the intent of the Mexican negotiator was not satisfied and claims that

The clear goal of Mexico in negotiating Annex 1705.7 was to restore U.S. Copyright

protection for Mexico's "Golden Age" movies, which were released mostly prior to 1978  
Comment letter of Quintanilla at p 1.

Regardless of the fact that most of the Mexican films may not come within this window, the Office finds no authority to extend the window provided by Congress. The Intellectual Property Annex to the North American Free Trade Agreement refers specifically to section 405 (Notice of Copyright: Omission of Notice) of the U.S. copyright law. This section of the copyright law was enacted in 1976 in the general revision of the copyright law and became effective January 1, 1978. The specific reference to section 405 is included in the NAFTA Implementation Act (Pub. L. No. 103-182) and the language of the Act is very clear, providing that only works published between January 1, 1978, and March 1, 1989, are eligible for the restoration of copyright protection. Therefore, it is not possible to amend our draft regulations to cover works published before 1978.

Victor Blanco, Vice President of Copyright Affairs, Televisa South America, visited the Office on September 13, 1994. After having reviewed the interim regulations, he suggested a change in the language of the certification to clarify that the certifying party can certify only that he or she understands the work entered the public domain in the United States. The Office is revising the certification statement in response to Mr. Blanco's suggestion because a filer may not be an expert in U.S. copyright law and thus he or she can only certify what he or she understands to be the status of the work.

### Final Regulations

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

The overall objective in issuing these final regulations is to keep the Statement of Intent process simple and to identify clearly the works eligible for restoration. Based on the comments received in response to the Notice of Inquiry, the Office is making several changes intended to help identify works for which copyright has been restored.

### Identification of Titles of Underlying Works

If the potential copyright owner of both the motion picture and the underlying work(s), such as a screenplay or musical composition, is the same, all such works can be included on a single Statement of Intent. However, if the title of any underlying work is different from the

title of the motion picture, all titles must be given.

As already specified in the interim regulations, if the potential copyright owner of the motion picture is different from the potential copyright owner(s) of the underlying work(s), separate Statements of Intent must be filed.

### Identification of untitled programs

Sports programs that do not have a title can be identified by giving the sporting event, team names, and a date, for example, National Hockey League, New York Rangers at Toronto Maple Leafs, April 25, 1978.

### English translations of titles

The English translation of titles for foreign language works is not required, but the Office strongly encourages the filer of a Statement of Intent to include any alternate title, especially a title under which a work may have been subsequently released in the United States.

### Certification Statement

The language required in the certification by the potential owner or authorized agent is revised to clarify that the certifying party can certify only that he or she understands the work entered the public domain in the United States. See Item 6 of the Appendix. A party making this certification must use the required language but specify in the certification the country, Mexico or Canada, in which the work was first fixed or first published

In addition, the Office is requiring that the party submitting the statement print or type his or her name under the signature.

All statements should be mailed to the Copyright Office at: NAFTA, Copyright GC/1&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

Or they may be delivered to the Copyright Office's Public Information Office in Room 401, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., Monday - Friday, 8:30 am. - 5:00 pm. To be received timely they must reach the Office on or before December 31, 1994.

### Appendix— As Revised by Final Regulations 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: \_\_\_\_\_

If the Statement of Intent covers the entire motion picture, give the title of the motion picture.

<sup>2</sup> Both letters indicated that the United States Congress might address the status of works published without notice before January 1, 1978, when it considered the GATT legislation. Letter of Marybeth Peters to Carmen Quintanilla Madero, April 25, 1994; letter of Barbara Ringer to Carmen Quintanilla Madero, June 23, 1994.

If the Statement of Intent includes the motion picture and an underlying work(s), and any underlying work has a title different from the title of the motion picture, give both the title of the motion picture and the title(s) of underlying work(s). Also specify the kind of underlying work covered, for example, "screenplay" or "music." This situation applies only when the potential copyright owner is the same for the works.

If the Statement of Intent covers only an underlying work, give the title of the motion picture and specify the kind of underlying work covered, for example, "screenplay" or "music." In addition, if the underlying work has a title that is different from the title of the motion picture, give both titles, for example, state "(title of underlying work) contained in (title of motion picture)."

If the Statement of Intent covers more than one motion picture, complete items 1-4 for each motion picture. This situation applies only where the potential copyright owner is the same for all motion pictures listed on the Statement.

Sports programs that do not have a "title" can be identified by giving the sporting event, team names and a date (month, day and year).

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

1b. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title; English translation for foreign language titles, etc.)

1c. (Optional) Original producer and/or director

1d. (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 \_\_\_\_\_

Teletax \_\_\_\_\_

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

and (insert Mexico or Canada) understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice

required by U.S. Copyright Law. 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 \_\_\_\_\_

Name (Printed or Typed): \_\_\_\_\_

Date: \_\_\_\_\_

### List of Subjects in 37 CFR Part 201

Copyright, North American Free Trade Agreement Restoration of copyright for certain works.

### Final Regulations

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

### PART 201-- [AMENDED]

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

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; Pub. L. No. 103-182, 107 Stat. 2115.

2. Section 201.31 is amended by revising paragraph (d)(2), redesignating paragraphs (d)(3) and (4) as (d)(6) and (7), and adding new paragraphs (d)(3), (4) and (5) as follows.

(d) Requirements for Effective Statements of Intent: \* \* \*

(2) Statements of Intent must include:

(i) the title(s) of the work(s) for which copyright restoration is sought, including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;

(ii) the nation of first fixation;

(iii) the nation of first publication;

(iv) the date of first publication;

(v) the name and mailing address (and telephone and telefax, if applicable) 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:

Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

and (insert Mexico or Canada) understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. copyright law. 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 \_\_\_\_\_

Name (Printed or Typed): \_\_\_\_\_

Date: \_\_\_\_\_

(3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying work covered and give the title if different from the title of the motion picture.

(4) More than one motion picture may be included in a single Statement of Intent provided the potential copyright owner is the same for all the motion pictures. The information required in Section 201.31 (d)(2)(i) through (d)(2)(iv) must be given for each work.

(5) Sports programs that do not have a title can be identified in a Statement of Intent by giving the sporting event, the team names and the date (month, day and year).

\* \* \* \* \*

Dated: November 8, 1994

Marybeth Peters,  
Register of Copyrights

James H. Billington,  
The Librarian of Congress

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