



ANNOUNCEMENT

from the Copyright Office, Library of Congress,
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

STATEMENT OF POLICY

REGISTRATION OF CLAIMS TO COPYRIGHT

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000-6]

Registration of Claims to Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Statement of policy.

SUMMARY: The Copyright Office of the Library of Congress issues this statement of policy to clarify the practices relating to examination of copyright claims in music, and the relevance of the "nature-of-work" designation at space 1 of the PA Form.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION

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SUPPLEMENTARY INFORMATION: The Copyright Office is issuing this statement of policy to clarify its examination practices with respect to the "nature-of-work" space on Form PA, for registration of works of the performing arts. This policy statement is in response to a recent judicial decision by the United States Court of Appeals for the Third Circuit in *Raquel v. Education Management Corp.*, 196 F.3d 171 (3d Cir. 1999) [hereinafter referred to as *Raquel*], in which the court appears to have misunderstood the Copyright Office's longstanding published practices relating to the "nature-of-work" space.

In *Raquel*, the court held that a certificate of registration of a copyright was invalid because the claimants, authors of the copyright in a musical composition, had described the "nature of this work" in space 1 of their Form PA application as "Audiovisual work." The deposit submitted with the

application was a videotape of a television commercial in which the claimants' musical composition was performed. The court concluded, and the claimants do not appear to have contested, that the claimants did not own any copyright interest in the television commercial itself. In space 2, the application had correctly designated the nature of authorship as "All music and lyrics and arrangement."

A key element of the court's reasoning in invalidating the registration was the court's conclusion that "[h]ad the Register of Copyrights known that *Raquel* did not author the audiovisual work identified in its registration, it is likely that this rather fundamental misstatement would have occasioned the rejection of *Raquel's* application." 196 F.3d at 177. Based upon this prediction of what the Copyright Office would have done if it had known the claimants had not authored the television commercial, the court concluded that the claimants had made a material misrepresentation in the application for registration. The court also concluded that this misrepresentation could not have been inadvertent. As a result, the court applied the principle that a plaintiff's knowing failure to advise the Copyright Office, in an application for copyright registration, of material facts which might have led to the rejection of a registration application constitutes grounds for holding the registration invalid and incapable of supporting an infringement action. 196 F.3d at 176 (citing *Masquerade Novelty, Inc. v. Unique Indus., Inc.*, 912 F.2d 663, 667 (3d Cir. 1990).

The *Raquel* case raises questions concerning the "nature of this work" space on the Form PA application for copyright registration. If applied strictly, the decision could jeopardize the validity of copyright registrations of musical works in a number of instances. Because of the possibility that other courts will rely on *Raquel* as valid precedent for invalidating copyright registrations under similar circumstances, the Copyright Office is issuing this policy

statement to clarify that it was not misled in registering the copyright claim in the *Raquel* case, and that the Copyright Office knew that the copyright claim was in a musical work, and not an audiovisual work. The Office is also issuing this statement to clarify that in the "nature of this work" space on Form PA, it has been and continues to be acceptable to describe the physical nature of the deposit submitted with the application.

While section 409 of the copyright law largely dictates the content of the application form, this statutory section does not require a nature-of-work space. This space was added to the PA and VA forms because these forms cover a number of different categories of works, and it was believed the additional information would clarify the general character or the type or category of the work being registered. In practice, however, the information provided in this space by applicants often does not relate to the nature of the claim; and the Office's practice has always been to look to the "nature of authorship" statement in space 2 as the primary source of such information. See *Compendium of Copyright Office Practices, Compendium II ("Compendium II")*, Sec. 619 (1988) ("In general, the nature of authorship defines the scope of the registration; therefore, it represents an important copyright fact"). If, on the basis of the deposit and the nature of authorship statement, the nature of the copyright claim is clear, the Copyright Office will proceed with registration.

Ideally, the nature-of-work space should describe the work being registered. In practice, it has served a variety of functions, e.g., as a substitute for the statement of authorship (when such a statement was lacking) or as a supplementary description augmenting the statement of authorship. It has also served as a description of the physical nature of the deposit, and the Office has treated such a statement as acceptable where the nature of authorship statement and deposit make clear the scope of the copyright claim being registered. The *Compendium*

establishes this policy in the following language: "Forms PA and VA contain a nature-of-work space. This space should give a description of the general nature and character of the work being registered. A description of the physical form of the work is generally acceptable. Ordinarily, the Copyright Office will not consider the omission or incorrect completion of information in the nature-of-work space as a reason, in itself, for communicating with the applicant * * *" *Compendium II*, Sec. 614.

In *Raquel*, the nature of authorship line described the copyright claim as "All music and lyrics and arrangement." The deposit consisted of a videotape which contained the musical composition being registered. In the nature of work space, the applicant stated "audiovisual work." Consistent with general Copyright Office practice, the Office regarded the copyright claim to be in a musical composition, and no communication with the applicant was made regarding the reference to "audiovisual work" in the nature-of-work space since it was regarded as a physical description of the work being registered.*

The Office will continue to accept applications in which the "nature of

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this work" space describes the physical nature of the deposit rather than the scope of the copyright claim. However, the decision of the Third Circuit in *Raquel* demonstrates that there is some risk in engaging in this practice. It is hoped that this statement of policy, clarifying what the Office's practice has been and will continue to be, will offer guidance to the courts and to litigants about the Office's examination practices with respect to the nature-of-work space, and will prevent other courts addressing situations similar to that in *Raquel* from reaching the same result as in *Raquel*.

Dated: June 27, 2000.

Marybeth Peters,
Register of Copyrights.

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*Strictly speaking, an "audiovisual work" is one of the categories of works enumerated in section 102 of the Copyright Act, 17 U.S.C. 102. See also 17 U.S.C. 101 (definition of "audiovisual works"). Thus, it is understandable how the court of appeals could have interpreted the entry of "audiovisual work" in the "nature of this work" space as a description of the scope of *Raquel*'s claim. However, given the Office's practice of accepting descriptions of the physical form of the deposit, and given the Office's practice of looking to the "nature of authorship" statement for a description of the scope of the claim, the Office understood the term "audiovisual work" in this context to be a physical description of the deposit.