COMPARISON OF H.R. 4564, "THE UNIFORM FEDERAL RESEARCH AND DEVELOPMENT UTILIZATION ACT OF 1981" AND S. 1657," THE UNIFORM SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT UTILIZATION ACT"

POLICY

Basically, both bills identify the same findings and state the same purpose. H.R. 4564, has additional provisions not found in S. 1657.

The Senate bill includes definitions under this section (sec. 103); definitions are in Title V. sec. 511 in the House version.

RESPONSIBILITY

In the Senate bill, responsibility for the development, implementation, and administration of a uniform patent policy is given to the Secretary of Commerce (Sec. 201).

Title II, sec. 201 of H.R. 4564 gives this responsibility to the Office of Science and Technology Policy and the Federal Coordinating Council for Science, Engineering, and Technology.

It should be noted that sec. 402 of H.R. 4564 gives the Secretary of Commerce responsibility for assisting the Federal agencies in carrying out their responsibilities in the domestic and foreign protection and licensing of Federally owned inventions as mandated in sec. 401. This is similar to the responsibility conveyed to the Secretary of Commerce in S. 1657, sec. 201(c).

The House version also authorizes the Administrator of General Services to promulgate regulations concerning the licensing of federally owned inventions.

ALLOCATION OF RIGHTS

Government

Both bills grant essentially the same rights to the Federal government with the following exceptions:

--H.R. 4564 explicitly states that the government retains title if the contractor elects not to file a patent application (sec. 301(b)).

--S. 1657 states that the rights of the Government shall not be exercised unless it is determined that one of the expressed conditions exists (sec. 301(b)).

Contractor

Both bills have essentially the same provisions.

Waiver

Both bills contain identical provisions.

March-In Rights

Both bills contain similar provisions, although S. 1657 requires that, prior to exercising march-in rights, a determination be made by the Secretary of Commerce after a formal hearing (sec. 304(b)).

GENERAL PROVISIONS

H.R. 4564 requires the Administrator of General Services and the Secretary of Defense to determine uniform allocation of property rights including the provisions mandated in sections 301, 302, and 303 (sec. 305(a)). This is not included in the Senate version.

The requirements for each contract entered into by Federal agencies are essentially the same, although S. 1657 adds the clause "within a reasonable time after disclosure" to the requirement that the contract include a provision for the contractor to elect whether or not to file a patent application (sec. 305(a)(2)).

JUDICIAL REVIEW

Section 306 of H.R. 4564 allows for judicial review of agency determinations made under sec. 304(a) and 305(b), if requested by a person adversely affected. The Senate version of the bill has no such provision.

CONTRACTOR'S PAYMENTS TO GOVERNMENT (ROYALTIES)

H.R. 4564 mandates, with some exceptions, royalty payments (under regulations determined by the Administrator of the General Services Administration and the Secretary of Defense) to be used for Federal funding of research and development. S. 1657 has no such requirement.

BACKGROUND RIGHTS

The provisions concerning rights to background patents are the same in both bills.

LICENSING OF FEDERALLY OWNED PATENTS

Both H.R. 4564 and S. 1657 permit a Federal agency to license inventions to which the Government has acquired title, although the language in the two bills is somewhat different. The House bill also contains additional requirements not included in the Senate version; these are contained in a separate title (Title IV) specifically addressing the licensing issue.

Both the House and Senate versions permit Federal agencies to grant exclusive or partially exclusive license if several enumerated conditions are met (S. 1657, sec. 307; H.R. 4564, sec. 404).

In addition, H.R. 4564 has the following provisions which are not included in the Senate bill:

--Section 401 allows, among other things, Federal agencies to apply for, obtain, and maintain patents in the United States and foreign countries; promote licensing; grant nonexclusive, as well as exclusive or partially exclusive licenses; make studies regarding licensing and commercialization potential; transfer custody and administration of title to the Department of Commerce or other Federal agency; and designate the Department of Commerce as the recipient of fees and royalty receipts, etc.

--Certain responsibilities are given to the Secretary of Commerce (similar to S. 1657, sec. 201(c)) regarding activities which are necessary for Federal agencies to carry out sec. 401.

--The Administrator of the General Services Administration is given responsibility for the development of regulations for licensing.

--In addition to specifying *when* Federal agencies may grant exclusive or partially exclusive license, H.R. 4564 provides specific requirements for the grant of exclusive or partially exclusive license including keeping records of such determinations, granting of foreign patent applications, and the terms and conditions of revocation of the license, etc.

DEFINITIONS

The definitions are contained in different sections of the two bills. S. 1657 defines terms in Title I sec. 103; H.R. 4564 defines terms in Title IV, sec. 511.

The definition of 'Federal agency' differs: A Senate bill uses sec. 105 of title *4* USC; House bill uses sec. 105 of title *5* USC.

The House definition of "Contract" may be more restricted than the Senate version. In H.R. 4564, "contract" is described as". . .any contract, grant, or agreement entered into. . ." S. 1657 states that "contract" is defined as . . .any contract, grant, cooperative agreement, commitment, understanding or other arrangement entered into. . ."

H.R. 4565 defines "contractor" in terms of sec. 1 of title 1 USC; S. 1657 does not.

The definition of "invention" in S. 1657 includes reference to title 35 USC; the House version does not.

The House bill includes a definition of "Subject invention"; the Senate bill does not.

Both bills have similar definitions of "practical application" and "person".

S. 1657 defines "made under the contract" or "made under a contract"; H.R. 4564 defines "made" -- although both are defined similarly.

H.R. 4564 defines "antitrust law"; S. 1657 does not.

Senate bill defines "disclosure", "Government", "inventor", "nonprofit organization", "Secretary", and "small business firm"; the House bill does not define these terms.

RELATIONSHIP TO OTHER LAWS

H.R. 4564 includes a provision that this Act does not convey immunity under antitrust laws; the Senate bill has no such provision.

AMENDMENTS TO EXISTING LAWS

With the following exception, the bills are essentially the same. S. 1657 repeals section 200-209 and sec. 211 of title 35 USC; H.R. 4564 repeals sec. 6 of the Patent and Trademark Amendment of 1980 (35 USC 38; 94 Stat. 3018).

EXPIRATION

S. 1657 mandates that the authority conferred upon the Secretary of Commerce shall expire 7 years following the effective date unless renewed by Congress; H.R. 4564 has no such provision.

- - End of Section E - -

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM77-17]

Registration of Claims to Renewal of Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed rule.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation with respect to renewal registration practices and procedures under section 304(a) of the Copyright Act of 1976, title 17 of the United States Code. That section pertains to claims to renewal copyright in works for which first term copyright subsisted on January 1, 1978. The effect of the proposed regulation is to prescribe conditions for the registration of such claims to renewal copyright.

DATE: Written comments should be received on or before November 6, 1981.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Office of the General Counsel, C.O., Library of Congress, Department D.S., Washington, D.C. 20540; or by hand to: Office of the General Counsel, Copyright Office, Room LM-407, Madison Building, Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 304(a) of the Copyright Act of 1976 [Act of October 19, 1976, 90 Stat. 2541], provides generally that "any copyright, the first term of which is subsisting on January 1, 1978," endures for 28 years from the date it was originally secured, and that a second term of copyright, lasting 47 years, can be secured by certain designated claimants if an application for renewal is made to the Copyright Office "within one year prior to the expiration of the original term of copyright." [1] With one exception, this provision is essentially a reenactment of the renewal provision in effect before 1978; the exception involves the lengthening of the second (renewal) term from 28 years to 47 years. It applies to works originally copyrighted between January 1, 1950, and December 31, 1977.

On January 5, 1978, the Copyright Office published in the Federal Register (43 FR 964) a regulation revising § 202.17 of the regulations of the Copyright Office. This regulation was issued on an interim basis in order to allow persons to apply for and secure renewal registration immediately upon and after the effective date of the new Copyright Act. In addition, the Copyright Office invited comments from the public on the interim regulation in general and specific comments on:

(i) The necessity for original registration as a basis for renewal registration in the case of foreign works protected under the Universal Copyright Convention; and

(ii) The correct renewal claimant and statement of claim in cases where the author has no surviving widow, widower, or children and left a will naming executors, but the executors have been discharged.

Three comments were received in response to the rulemaking. After a careful review of these comments, as well as the relevant case law and legislative history concerning the renewal provision, the Copyright Office has reached some tentative conclusions as to what our regulation should provide. Also, the comments have led us to propose several changes in the interim regulation. A discussion of the major substantive comments and proposed changes follows.

1. *Failure to apply timely for renewal registration.* Paragraph (a)(1) of the interim regulation concerns the consequences which may result from a failure to apply timely for renewal registration. The third sentence of this provision states:

> Unless the required application and fee are received in the Copyright Office during the prescribed period before the first term of copyright expires, *copyright protection is lost permanently and the work enters the public domain.* (Emphasis added.)

One comment received on behalf of a copyright owner objected to the necessity for, and correctness of, the emphasized portion of the regulation. The commentator believed that this sentence could mislead the public since an unrenewed "new version" no longer protected by copyright may contain pre-existing works still subject to statutory copyright.

It is a well established principle in copyright law that although the new material in a derivative work may enter the public domain through failure to renew that version, the old matter contained therein which is still covered by a separate statutory copyright is not dedicated to the public. *G. Ricordi & Co. v. Paramount Pictures, Inc.*, 187 F.2d 469 (2d Cir.), cert. denied, 342 U.S. 849 (1957); *Filmvideo Releasing Corp. v. Hastings*, 426 F. Supp. 690 (S.D.N.Y. 1976); *Grove Press, Inc. v. Greenleaf Publishing Co.*, 247 F. Supp. 518 (E.D.N.Y. 1965); *Russell v. Price*, 612 F.2d 1123 (9th Cir. 1979).

There was certainly no intention on the part of the Office when the interim regulation was written to depart in any way from the *Ricordi* principle. Nevertheless, it is possible that the interim regulation as written could cause confusion among users as to the manner in which works in the public domain may be utilized. The Office believes, however, that copyright owners should be alerted to the consequences of expiration which results from a failure to apply timely for renewal registration.

In the interest of clarification, the Office would delete the emphasized portion of the interim regulation and in its place would insert a paraphrased part of section 304(a) of the Act. The sentence as contained in the proposed regulation reads as follows:

> Unless the required application and fee are received in the Copyright Office during the prescribed period before the first term of copyright expires, *the copyright in the unrenewed work terminates at the expiration of twenty-eight years from the end of the calendar year in which copyright was originally secured.*

2. *Original registration.* Article III(1) of the Universal Copyright Convention (U.C.C.) exempts, under certain conditions, foreign authors who are nationals of a U.C.C. country, or who first publish their works in a U.C.C. country, from formalities which constitute a condition of copyright protection in the country where protection is sought. When the United States joined the Universal Copyright Convention, effective in September, 1955, we amended our Copyright Act to implement this provision. Section 9(c) of the former Act (title 17 U.S.C., in effect on December 31, 1977) exempted U.C.C. works from the obligatory deposit and registration requirements set forth in the first sentence of section 13 of the former law. The fifth paragraph of Article III of the U.C.C., however, permits the United States to continue its formalities with respect to the renewal term of copyright.[2]

[1] Under section 305 of the Act, "[a]ll terms of copyright provided by sections 302 through 304 run to the end of the calendar year in which they would otherwise expire." Section 305 thus makes a material change regarding the renewal period for works in which copyright subsists on January 1, 1978. Under the former law, title 17 U.S.C., in effect on December 31, 1977, the renewal period was the 28th year of the original term rather than the calendar year in which the term expires.

[2] The U.C.C. text is as follows:

"If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV [25 years ordinarily] such State shall not be required to comply with the provisions of paragraph 1 of this Article [which make the U.C.C. notice the sole formality] in respect of the second or any subsequent term of copyright."

It is the view of the Copyright Office that this text clearly permits the United States to require renewal

As part of this rulemaking, the Copyright Office sought specific comments on:

The necessity of original registration as a basis for renewal registration in the case of foreign works protected under the Universal Copyright Convention. (43 FR 965).

In response to this inquiry, the Office received one comment from the Authors League of America, Inc. which contended that an original registration should not be required as a condition of renewal copyright in these cases.

Although the Office believes that an original registration provides several advantages under the statute and can be legally required as a condition precedent to renewal,[3] the history of the U.C.C. and the spirit underlying its formation have led us to propose alternatives to original registration for U.C.C. claimants. Where original registration for a work has not been made, however, the Office has concluded that it is appropriate and necessary to obtain documentation relating to the work's eligibility under the U.C.C. and to the subsistence of a copyright under U.S. law.

For these reasons, paragraph (d)(2) of the regulation requires a U.C.C. renewal claimant in the case of an unregistered work to accompany his or her claim with a "Renewal Affidavit for a U.C.C. Work," specifying the date and place of first publication and the citizenship and domicile of the author on the date of first publication. In order to assure that the notice requirements of the Convention, as implemented in U.S. law, were met at the time of first publication, the regulation further requires a claimant to accompany his or her claim and "Renewal Affidavit" with a submission relating to the form and position of the copyright notice. Although the best evidence of compliance with the notice requirements would be the submission of one complete copy of the work as first published, the Office recognizes the practical difficulties that this may entail. Accordingly, paragraph (d)(2)(ii) establishes alternative submission requirements in descending order of preference.

In its comments, the Authors League also suggested that U.S. authors and foreign authors of works not protected by the U.C.C. be relieved from the obligation of making an original term registration as a condition for renewal registration. The Office has not adopted this suggestion.

At least since 1909, it has been the position of the Copyright Office that renewal registration will not be made unless registration has first or simultaneously been made for the original term. Section 304(a) provides that the renewal claim must be "duly registered" in order to extend the term of copyrights in the original term on January 1, 1978. Under section 410(a), the Office has a duty to examine a claim and determine that the "legal and formal requirements" of the Act have prima facie been met before a certificate is issued. It seems clear that these statutory obligations cannot be carried out in the case of claims to renewal copyright unless original term registration has been made, or the equivalent documentary evidence has been submitted to substantiate the legal sufficiency of the claim. Without such evidence, spurious renewal claims would be entered and the integrity and usefulness of the public record would suffer. A work that had been rejected for original term registration might be submitted and registered for the renewal term. False claimants might apply for renewal registration.

While it might be theoretically possible to specify alternative submissions equivalent to original term registration for both U.C.C. and non-U.C.C. works, the Office sees no public benefit in such a cumbersome procedure for non-U.C.C. works. In any event, the Office believes that original term registration remains mandatory for pre-1978 published works not protected under the U.C.C. Except for U.C.C. works, section 13 of the former law required deposit of copies following publication with notice, "accompanied in each case by a claim of copyright."

3. *Posthumous works.* Section 304(a) of the current Act provides, and section 24 of the former act provided that, "in the case of any posthumous work * * * the proprietor of such copyright shall be entitled to a renewal." The question of what is a "posthumous work" for renewal purposes has been the subject of controvery. The term commonly refers to a work first published after the death of the author. Its importance in terms of who is a proper renewal claimant, however, has led to further refinement. The issue was considered in *Bartok* v. *Boosey & Hawkes, Inc.*, 523 F. 2d 941 (2d Cir. 1975). In this case, the U.S. Court of Appeals for the Second Circuit decided that, despite the fact that a work may be first published after the death of the author, it will not be considered posthumous for purposes of the renewal provision if copyright in the work has been assigned during the author's lifetime.

In discussing the meaning of the term "posthumous work" in relation to section 304(a), the Report of the Judiciary Committee of the House of Representatives (H.R. REP. NO. 94-1476, 94th Cong., 2d. Sess. at 139) states:

Although the bill preserves the language of the present renewal provision without any change in substance, the Committee intends that the reference to a "posthumous work" in this section has the meaning given to it in *Bartok* v. *Boosey & Hawkes, Inc.*, * * * one as to which no copyright assignment or other contract for exploitation of the work has occurred during an author's lifetime, rather than one which is simply first published after the author's death.

This definiton has been adopted in paragraph (b) of the proposed regulation.

The discussion on posthumous works in the Report of the Judiciary Committee of the Senate, however, is narrower in its scope (S. REP. NO. 94-473, 94th Cong., 1st Sess. at 123):

The reference to a "posthumous work" in this section means one as to which no assignment has occurred during the author's lifetime, rather than one which is simply first published after the author's death.

It may be argued that these two references to a "posthumous work" are inconsistent in cases where a contract for exploitation of the work, but no copyright "assignment" of the work, has been executed during the author's lifetime.

It is the practice of the Copyright Office, under the "rule of doubt," to resolve doubtful claims in favor of registration where a reasonable argument can be made that a court would sustain the claim. Because of the possibly conflicting interpretations of "posthumous work," paragraph (f)(2) of the regulation permits the filing of a renewal claim by the proprietor of the work, in addition to the natural claimant, where a contract for exploitation of the work has been executed during the author's lifetime even if no "assignment" of the copyright was made. However, the regulation makes clear that registration by the Copyright Office of the proprietor's renewal claim "should not be interpreted as evidencing the validity of the claim."

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registration for U.C.C. works, if it so chooses. We satisfy the U.C.C. obligation by providing 28 years of protection during the first term. Neither section 304(a) of the Copyright Act nor any other relevant provision exempt U.C.C. claimants from the renewal registration formality.

[3] In the case of non-U.C.C. works, it has been the long-established position of the Copyright Office that registration for the original term of copyright is a condition precedent to renewal registration. Although the United States could not, consistent with its U.C.C. obligations, require original term registration as a condition of protection for the first 28 years of the copyright for U.C.C. works, nothing in the text of the U.C.C. prohibits the United States from requiring original term registration simultaneous with renewal registration *solely* as a condition of protection from the 29th year of the copyright onward. That the original term registration would be made before the start of the 29th year seems immaterial if it is clear that protection during the first term is not conditioned on such registration. For policy reasons, however, the Copyright Office has not proposed that registration for the original term be required for U.C.C. works as a condition precedent to renewal registration.

4. *Duplicate renewal registration.* On occasion, the Copyright Office receives more than one application for renewal on behalf of the same renewal claimant. This situation arises most often in cases where an author and his or her publisher both file renewal claims on the author's behalf. It has been the practice of the Copyright Office in these cases (Part 11.9.2. I of the Compendium of Copyright Office Practices) to reject the second "duplicate" renewal application once renewal registration has been made. We have decided to propose that this practice be specifically stated in paragraph (e)(3) of the regulation. The clarity of the public record may be confused and in any event is not improved by duplicate registrations.

5. *Renewal claimants.* The general structure of the renewal provision creates the renewal interest as a separate estate, distinct from the original term of copyright. Eligibility to claim renewal is determined with reference to the statute, and one must come within its specified categories to claim the second term of statutory copyright. These categories of renewal claimants are set forth in paragraph (f)(1) of the regulation. If the author is alive, *only* he or she may claim renewal copyright; if the author is deceased, and there is a surviving spouse or child(ren), *only* the widow(er) and the child(ren) may claim; if there is no surviving widow(er) or child, and the author left a will, then *only* the author's executor may claim; and finally, the next of kin may claim, *in the absence of a will,* under the strict statutory language.

As part of this rulemaking, the Copyright Office sought specific comments on:

> The correct renewal claimant and statement of claim in cases where the author has no surviving widow, widower or children and left a will naming executors, but the executors have been discharged. (43 FR 965).

We received one comment relating to this question. It was suggested that the regulation permit the author's legatees to apply for the renewal directly where the author leaves a will but no executor is able or willing to act.

What legislative history exists on the subject, suggests that, in designating the executor as the proper renewal claimant for testate authors, rather than have the legatees claim in their own right, the Congress was most concerned with the efficient administration of the author's estate. The executor, who is responsible for the administration of the author's testamentary estate, was given special power with respect to renewal copyrights (which are not part of the testamentary estate). It was believed that the special fiduciary obligations of the executor placed him or her in a position to carry out the will of the testator. The apparent and ultimate motivation of Congress was to allow authors who were not survived by a widow(er) or children to choose who shall own the copyright renewal.

However, in practice, it has not clearly been established how the wishes of the testator can be given effect in three specific instances: (1) Where the author has left a will which names no executor; (2) where the author has left a will which names an executor who cannot or will not serve in that capacity; or (3) where the author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered.

The dilemma posed by the first situation was resolved in *Gibran v. Alfred A. Knopf Inc.*, 153 F. Supp. 854 (S.D.N.Y., 1957), aff'd *Gibran v. National Committee of Gibran,* 255 F.2d 121 (2d Cir. 1958, cert. denied, 358 U.S. 828 (1958). This case held that where an author has left a will which names no executor, a court-appointed administrator cum testamento annexo (administrator c.t.a.) in existence at the time of renewal stands in the shoes of the executor and, as such, is entitled to renew the copyright. The Copyright Office has applied this decision (Part 11.7.4 of the Compendium of Copyright Office Practices) by accepting renewal claims in the name of an existing administrator c.t.a. [or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.)] in cases where the author has left a will which names no executor.

We have decided to propose that this practice be incorporated in paragraph (f)(3) of the regulation. Furthermore, we have followed the spirit of the *Gibran* decision by extending the practice of accepting renewal claims in the name of an adminisrator c.t.a. or an administrator d.b.n.c.t.a., as the case may be, to the two remaining instances noted above. However, because of the continuing doubt surrounding claims in these two instances, the Copyright Office also will accept conflicting claims to renewal in the name of the next of kin. In this regard, the regulation makes clear that registration by the Copyright Office of the conflicting renewal claims "should not be interpreted as evidencing the validity of either claim."

We have also decided that there is no basis for renewal in the names of the legatees since Congress in 1909 deliberately excluded the author's heirs from the list of statutory successors.

6. *Application by telephone.* Under the interim regulation, the Copyright Office will, under certain circumstances, accept information required to effect renewal registration by telephone. This practice started under the former law where first term copyrights expired throughout the year, based on the exact date the copyright was originally secured. Experience with this practice under the current Act has led us to propose that we will not accept applications by telephone. Under the current Act, *all* copyrights expire on December 31 of a given year. The result has been that the Copyright Office is inundated with telephone applications in December of each year, and many calls that are placed are not answered. We have a major administrative problem, and chance plays a large role in determining whether renewal is effected. We are proposing to dispense with the telephone method of applying for renewal. We will accept telegraphic or other written forms of communication.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

In consideration of the foregoing, we propose to amend Part 202 of 37 CFR, Chapter II by adding a new §202.17 to read as follows:

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Pub. L. 94–553.

(b) *Definition.* For purposes of this section, the term "posthumous work" means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal Time-Limits.* (1) For works originally copyrighted between January 1, 1950 and December 31, 1977, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year of the copyright, and runs through December 31 of the 28th year of the copyright. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. Unless the required application and fee are received in the Copyright Office during the prescribed period before the first term of copyright expires, the copyright in the unrenewed work terminates at the expiration of twenty-eight years from the end of the calendar year in which copyright was originally secured. The Copyright Office has no discretion to extend the renewal time limits.

(2) The provisions of paragraph (c)(1) of this section are subject to the following qualification: In any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal (Form RE), and, in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to the subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C., section 304(a), he or she may apply for renewal registration by telegraphic or similar unsigned written communication. An application made by this method only will be accepted if: (i) The message is received in the Copyright Office within the specified time limits; (ii) the applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim; (iii) the fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and (iv) a formal application for renewal (Form RE), and in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to subsistence of the first-term copyright are also received in the Copyright Office before February 1 of the following year.

(d) *Original Registration.* (1) Except as provided by paragraph (d)(2) of this section, copyright in a work will not be registered for a renewal term unless an original registration for the work has been made in the Copyright Office.

(2) An original registration in the Copyright Office is not a condition precedent for renewal registration in the case of a work in which United States copyright subsists by virtue of section 9(c) of title 17 of the United States Code, in effect on December 31, 1977 (which implemented the Universal Copyright Convention) provided, however, that the application for renewal registration is accompanied by:

(i) An affidavit identified as "Renewal Affidavit for a U.C.C. Work" and containing the following information:

(A) The date of first publication of the work;

(B) The place of first publication of the work;

(C) The citizenship of the author on the date of first publication of the work;

(D) The domicile of the author on the date of first publication of the work;

(E) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the symbol © accompanied by the name of the copyright proprietor and the year of first publication, and that United States copyright subsists in the work;

(F) The handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (*1*) be accompanied by the printed or typewritten name of the person signing the affidavit and by the date of the signature; and (*2*) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code:

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(ii) A submission relating to the notice of copyright and copyrightable content which shall be, in descending order of preference, comprised of:

(A) One complete copy of the work as first published; or

(B) (*1*) A photocopy of the title page on the work as first published, and

(*2*) A photocopy of the page of the work as first published bearing the copyright notice, and

(*3*) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different, and

(*4*) A brief description of the copyrightable content of the work, and

(*5*) An explanation of the inability to submit one complete copy of the work as first published; or

(C) A statement describing the position and contents of the copyright notice as it appeared on the work as first published, and a brief description of the copyrightable content. The statement shall be made and signed in accordance with paragraph (d)(2)(i)(F) of this section and shall also include an explanation of the inability to submit either one complete copy of the work as first published or photocopies of the title and notice pages of the work as first published.

(e) *Application for Renewal Registration.* (1) Each application for renewal registration submitted on or after January 1, 1978 shall be furnished on Form RE. Copies of Form RE are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559.

(2)(i) An application for renewal registration may be submitted by any eligible renewal claimant as specified in paragraph (f) of this section or by the duly authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of $6. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given); (B) the handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person; (C) a declaration that the statements made in the application are correct to the best of that person's knowledge; and (D) the date of certification.

(iii) In the case of an application for renewal registration for a foreign work protected under the U.C.C. which has not been the subject of an original copyright registration, the application shall be accompanied by a "Renewal Affidavit for a U.C.C. Work" and a submission relating to the notice of copyright and the copyrightable content in accordance with paragraph (d)(2) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(f) *Renewal Claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter.

(i) In the case of any posthumous work or of any peridical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be

registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in decending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where: (A) The author has left a will which names no executor; (B) the author has left a will which names an executor who cannot or will not serve in that capacity; or (C) the author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction;

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(17 U.S.C. 304, 305, 702, 708)

Dated: September 25, 1981.

David Ladd,
Register of Copyrights.

Daniel J. Boorstin,
The Librarian of Congress.

-- End of Section F --