

# **UNITED STATES COPYRIGHT OFFICE**

**Notice of proposed rulemaking. Registration of Copyright: Definition of Claimant**

**Docket No. 2012-3**

## **COMMENTS of MOTION PICTURE ASSOCIATION OF AMERICA**

Fritz E. Attaway  
Executive Vice President and Special Policy Advisor  
Motion Picture Association of America, Inc.  
1600 I Street, N.W.  
Washington, D.C. 20006  
Tel: 202 293-1966; Fax: 202 785-3026  
Email: [fattaway@mpaa.org](mailto:fattaway@mpaa.org)

July 16, 2012

**COMMENTS**  
**of**  
**MOTION PICTURE ASSOCIATION OF AMERICA**

Motion Picture Association of America, Inc. (MPAA)<sup>1</sup> submits these comments in response to the Notice of Proposed Rulemaking ("Notice") published in the Federal Register on May 17, 2012, at page 29257.

The Notice seeks comment on the Copyright Office's proposal to amend the definition of a "claimant" for purposes of copyright registration by eliminating the footnote in §202.3(a)(3)(ii) of its regulations.

A reading of the Notice leads to the conclusion that the proposed amendment is intended to improve the clarity of information contained in registration applications and, specifically, to guard against possible attempts to register works by "claimants" that cannot exercise any of the exclusive rights granted to copyright owners by the Copyright Act. It is not intended to affect the rights that owners of one or more exclusive rights otherwise have under the Copyright Act, and does not appear to affect any of the current registration practices of MPAA members that are routinely accepted by the Copyright Office. Based on this understanding, MPAA does not object to the proposed amendment deleting the subject footnote.

As stated in the Notice, the Copyright Office "believes that the footnote creates considerable legal uncertainty while offering no

---

<sup>1</sup> MPAA members include Paramount Pictures Corporation, Sony Pictures Entertainment, Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment, Inc.

clear benefits to the registration system.”<sup>2</sup> Noting that “neither the Interim Regulations nor the **Federal Register** notice announcing it provided an explanation for the footnote and one can therefore only speculate as to the reason it was crafted,”<sup>3</sup> the Notice offers two conceivable concerns the footnote was intended to address. The first relates “to cases where the original author no longer owns all (or any) of the rights in the work”<sup>4</sup> and the second relates to the, “more complicated situation faced by the authors of collective works.”<sup>5</sup> However, the Copyright Office concludes that the footnote is not necessary in either case, stating that in the former “an author may always be named as a proper claimant in a work, even when an author no longer owns all of the exclusive rights in a copyright,”<sup>6</sup> and in the latter an author of a collective work “may avail himself or herself to the group registration option for contributions to periodicals established pursuant to section 408(d) of the Copyright Act.”<sup>7</sup>

The Notice does not refer to any current registration practices that would be barred by elimination of the footnote. However, the Notice suggests that the potential problem elimination of the footnote is intended to avoid is that the footnote “would seem to allow a person or entity to claim title for purposes of copyright registration even if such a person or entity was not in fact the owner of *any* exclusive rights.”<sup>8</sup> The Notice goes on to state:

there is no clear foundation in the statutory language for allowing a person or organization with less than a copyright ownership interest in an exclusive right to be considered a owner of copyright or a valid claimant of a claim to copyright. The bald right to register a work is not one of the section 106 exclusive rights. Only the owner of an exclusive right (or subdivision thereof) is entitled, to the extent of that right, to all

---

<sup>2</sup> Notice, p. 29257.

<sup>3</sup> Id.

<sup>4</sup> Notice, p. 29258.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Notice, p. 29259.

<sup>8</sup> Notice, p. 29258.

of the protection and remedies accorded to the copyright owner by title 17.<sup>9</sup>

The Notice goes on to cite recent court decisions rejecting copyright claims when the “claimant’ does not in fact own any section 106 rights or may technically own those rights, but does not have the ability to exercise any of the exclusive rights.”<sup>10</sup>

In light of the foregoing, it is apparent that the removal of the footnote is intended to improve the clarity of information contained in registration applications and, specifically, to guard against possible attempts to register works by “claimants” that cannot exercise any of the exclusive rights granted to copyright owners by the Copyright Act. It is not intended to, and does not, affect the rights that owners of one or more exclusive rights otherwise have under the Copyright Act, and is not intended to affect any of the current registration practices of MPAA members that are routinely accepted by the Copyright Office. MPAA therefore does not object to the proposed amendment deleting the subject footnote, but would request confirmation by the Copyright Office that our reading of the Notice and the result of the proposed deletion is correct.

---

<sup>9</sup> Notice, p. 29258, 29259.

<sup>10</sup> Notice, p. 29259.