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June 10, 1997

Dear Ms. Hutton:

This concerns copyright renewal in a motion picture entitled PENDULUM. This motion picture was published on January 1, 1969, and was registered by the Copyright Office under registration Lp36398. The registration designates Pendulum Productions as the copyright claimant and author of the motion picture. Pendulum Productions was also designated in the copyright notice as the copyright claimant.

On February 7, 1996, the Copyright Office received a copyright renewal application from Columbia Pictures covering the motion picture PENDULUM. This renewal claim was also registered by this Office and issued as registration RE 720-933 in the name of Columbia Pictures Industries, Inc., as renewal claimant.

On May 23, 1996, the Copyright Office received four applications from James Niss, son of producer Stanley Niss, relating to the motion picture PENDULUM. The applications were applications covering the motion picture, the screen play or shooting script, and an unpublished story summary. A fourth application was a Form CA correcting the original registration to designate Stanley Niss as the author and copyright claimant of the motion picture PENDULUM.

In a letter dated August 21, 1996, the Copyright Office wrote Mr. Niss refusing registration of claims in the published screen play and the unpublished story. Mr. Niss also submitted claims to change the name of the author of the motion picture and to renew the motion picture in his own name. Mr. Niss filed an appeal dated November 10, 1996, addressed to the Board of Appeals. The Examining Division responded to the communication of November 10th by letter dated January 8, 1997, and concluded that "in the absence of documentation" registrations would not be appropriate. The Examining Division did offer to register the unpublished story summary as an unpublished work.

The Board of Appeals of the Copyright Office subsequently met on the appeal of Mr. Niss, and carefully considered his legal memorandum and supporting documentation. In particular, the Board considered the contract between Stanley Niss and Columbia Pictures. The Board has reached the conclusion that an uncertainty exists over the renewal ownership of the motion picture PENDULUM. Under the circumstances, and in accord with our practices under section 108.06 of the Compendium of Copyright Office Practices (1984) by which we register adverse or conflicting claims to copyright

in the same material, it is appropriate to treat the submissions of Mr. Niss as adverse claims, and to enter them into the public record. The Copyright Office will not disturb the renewal registration already issued to Columbia Pictures. In order to resolve the ownership controversy, the parties are free to negotiate between themselves concerning the outstanding issues or to pursue their rights in a judicial forum.

The documentation Mr. Niss has supplied to the Copyright Office is part of the public record and copies may be inspected by contacting the Certifications and Documents Section of the Information and Reference Division.

Finally, we are enclosing a copy of the correspondence from the Appeals Board to Mr. Niss.

Sincerely,

Nanette Petruzzelli

Nanette Petruzzelli
Acting General Counsel
for the Appeals Board
U.S. Copyright Office

Enclosure:
Copy of letter to James Niss

Columbia Pictures Industries, Inc.
10202 W. Washington Blvd.
Culver City, CA 90232-3195

Attn: Marty Kay Hutton

r:\kd\hutton
June 10, 1997

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COPY

June 10, 1997

Dear Mr. Niss:

As Attorney-Advisor Kent Dunlap indicated to you over the telephone, the Board of Appeals has met on your appeal of the Examining Division's refusal to register four copyright claims relating to the motion picture PENDULUM: a correction of the author identity for the motion picture; a renewal of the motion picture; a registration for the shooting script; and a registration for the untitled story summary for screen. The Board has concluded that, given the documentation you have submitted, it is appropriate to treat your submissions as adverse claims to the renewal already issued to Columbia Pictures. Therefore, for two of the four claims registrations are being made and will be mailed under separate cover.

The two claims we are holding are those for the registration of the three-page interoffice story summary and for the registration of the shooting script. We first address the story summary. The Office does not consider this work, consisting of text describing the general story and plot of the movie PENDULUM, to have been published when the motion picture was published. Although the published motion picture reflects the ideas/concepts of the storyline, the text work does not consist of actual dialogue/script or other published motion picture elements. We will, therefore, register the work as unpublished textual authorship on a Form TX which we are enclosing and which we ask that you complete and return, for the sake of expediting the registration, to the special address for appeals: Board of Appeals, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

We are also enclosing a Form PA for the registration of those elements of the shooting script which were not included or embodied within the published motion picture. Although the specific text of the general storyline or summary [referred to above] was not published within the motion picture, the shooting script was an element embodied within the published motion picture. Because we already have on record an original registration for the motion picture as a whole, we cannot make a duplicate, or overlapping registration, for those elements of the shooting script which were included in the motion picture publication. We ask, therefore, that you complete a Form PA application with space 6 of the form filled in, giving a description of the still unpublished new matter being registered for the first time and which was not embodied within the previously published motion picture. Example: space 6a: previously published motion picture; space 6b: all elements of the shooting script not incorporated in published motion picture.

The Copyright Office is notifying Columbia Pictures as to its decision concerning the adverse claims which we are putting on the public record in this case. A copy of that letter is enclosed.

Finally, the Final Shooting Script: March 11, 1968, appears to be an original document. Since you have also enclosed a photocopy of this document, we are retaining the photocopy for our registration records, and returning the original.

Sincerely,

Nanette Petruzzelli

Nanette Petruzzelli
Acting General Counsel
for the Appeals Board
U.S. Copyright Office

Enclosures:
Copy of letter to Columbia Pictures
Final Shooting Script: March 11, 1968
Form PA
Form TX

Mr. James Niss
400 Riverside Drive, Apt. 3C
New York, New York 10025

r:\kd\niss
June 10, 1997