The Debate on Copyright Term Extension in the US

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Abstract
Since the beginning of US copyright law, a prevalent interest in increasing the term of protection has predominated in court decisions as the value of intellectual property has strengthened. However, the ever-changing legislature that continually extends copyright term has raised controversy among critics who believe the law has become too broad. The aim of this paper is to examine the progression of copyright extension in the United States as well as to compare the arguments for and against such extension. The paper will also briefly look at the progression of copyright extension in Indonesia.

Keywords: Copyright, Copyright Term Extension, Copyright Duration, Us Copyright Law, Indonesia Copyright Law.

A. Introduction

The Copyright Clause under the United States Constitution states that Congress shall have the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries".[1] This preamble provides the purpose of copyright law in the US. The "limited times" provision should be of particular note as it provides some constraint on the powers of Congress to change

[1] Article 1, Section (8), Clause 8, *United States Constitution.*

copyright law. As the law changes, Congress and US courts must always keep this constitutional basis in mind as the goal of a legislation must fall in line with the purpose of "promot[ing] the progress of science and useful arts".

The interpretation of the language is often debated in court and used by both sides of the argument in relation to copyright extension. Both sides differ in opinion as to what promotes "progress of science and useful arts" as well as what constitutes "limited times". Other points of debate such as the economic incentive given by copyright are extensively argued by both sides.

In Indonesia, copyright term has seen a similarly upward trend since copyright laws were first introduced in the country. The increased interest in broader copyright protection as reflected in its laws has been undoubtedly influenced by its participation in international law treaties and a move to harmonize with the upward trend in many jurisdictions around the world including the United States.

The debate surrounding the extent of copyright protection continues well after the 1998 Copyright Term Extension Act, which largely presides as the current law for copyright protection in the US. Several cases following the act have tried and failed to challenge the law in respect to copyright duration. The latest copyright act enforced in 2018, the Music Modernization Act, modified the duration of certain sound recordings

B. Discussion

B. 1. History of Copyright Extension Prior to the Copyright Term Extension Act

The first federal copyright act establishing copyright laws in the US provided a term of merely 14 years.[2] Since then, there has been a prevailing general and economic interest to strengthen copyright protection, not only in scope but also duration. Such interest has pervaded in the changing US legislation throughout the following years, with omnibus revisions continually increasing copyright duration in the Copyright Acts of 1831[3] , 1909[4] and 1976[5]. The Berne Convention of 1886 required participating countries to provide copyright protection for a minimum of the life of the author plus 50 years. [6] Although the United States did not ratify the Berne Convention until March 1, 1989[7], the same duration of copyright protection had been provided under the Copyright Act of 1976. Congress has historically exercised much greater caution in increasing copyright term. Prior to the 1976 act.

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[2] Section 1 of *Copyright Act of 1790* provided a 14-year term of protection with a possibility for the copyright holder to renew protection for an additional 14 years, provided that at least one author was alive at the expiration of the first term.

[3] The Copyright Act of 1831, the first major statutory revision of US Copyright Law, extended term of protection from 14 to 28 years and extended the right to claim the 14- year renewal to the author's heirs.

[4] The Copyright Act of 1909 extended the copyright renewal term of 14 years to 28 years, which with the 28-year protection from the date of publication, totals to a maximum of 56 years of protection. Protection "may be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author is not living".

[5] Section 302 in the U.S. Copyright Act of 1976 revised copyright duration, extending protection to "a term consisting of the life of the author and fifty years after the author's death.

[6] Article 7 Section (1) *Berne Convention for the Protection of Literary and Artistic Works.*

[7] The Berne Convention Implementation Act of 1988 ratified the Berne Convention in the United States. Historically, the US had refused to join the Berne Convention for 102 years because it would require significant changes to its copyright law, particularly regarding moral rights and copyright formalities.

Congress has only changed copyright term twice. Since then they have changed it numerous times.[8] The report on the Copyright Act of 1909 demonstrates Congress' understanding of adhering to the purpose stated in the Copyright Clause' preamble and that unless an act was designed to accomplish such purpose, "it would be beyond the power of Congress".[9] In the report, Congress also implied the necessity of cost-benefit analysis to balance the extent of copyright protection, considering two questions: "first, how much will the legislation stimulate the producer and so benefit the public; and, second, how much will the monopoly granted be detrimental to the public"[10].

Following that, however, Congress stated very different rationales in justifying the 1976 Act, which are "almost entirely for the benefit of the author".[11] One of these rationales argued that "The 56-year term under the 1909 Act was not long enough to assure an author and his dependents a fair economic return, given the substantial increase in life expectancy".[12] Another accounted for the growth in communication media, which "substantially lengthened the commercial life of a great many works". In line with a more economic interest, another rationale reasoned that "the public does not benefit from a shorter term…as the prices the public pays for often remain the same after the work enters into public domain". Additionally, the life-plus-fifty year term would align with most nations' law and thus

[8] Darren Fonda, "Copyright's Crusader," The Boston Globe Magazine, August 29, 1999, quoting Lawrence Lessig.
[9] Copyright Act of 1909, The House Report 1.
[10] Edward C. Walterscheid, "Defining the Patent and Copyright Term: Term Limits and the Intellectual Property Clause." *Journal of Intellectual Property Law*, no. 2 (March 2000): 315–94.
[11] Ibid 386, quoting Melville B. Nimmer & David Nimmer, Nimmer on Copyright Section I.03[B].
[12] Ibid.

"expedite international commerce" and "open the way for membership in the Berne Convention".[13] In the report on the Berne Convention Implementation Act of 1988, Congress once again expressed the need to balance the societal costs and benefits of copyright extension. "The primary objective of our copyright laws is not to reward the author, but rather to secure for the public the benefits from the creations of authors." Thus despite the continual extensions recurring in US legislation, Congress seemingly does have the public interest in mind.

B. 2. Copyright Term Extension Act (CTEA) of 1998

In 1998, the United States Congress passed the Copyright Term Extension Act (CTEA), also known as the Sonny Bono Copyright Term Extension Act. Currently, it is the latest act in the United States to extend copyright term, amending the provisions of Title 17 in the United States Code with respect to copyright duration.[14] The act extended the term to the life of the author plus 70 years, and for a work of corporate authorship, 120 years from creation or 95 years from publication, whichever expires earlier. This effectively delayed the date of works made in 1923 or afterwards to enter into public domain as they would not do so until January 1, 2019 or later. Unlike copyright extension legislation in the UK and EU, the CTEA did not revive expired copyrights. Importantly, works such as the Mickey Mouse character, which made its first appearance in 1928 would not enter into public domain until 2024. The involvement of copyright owners

[13] Ibid.
[14] Section.505, *Sonny Bono Copyright Term Extension Act*.

such as The Walt Disney Company in lobbying in support of the act gave it its nickname, the Mickey Mouse Protection Act.

The Senate Report detailed the official reasons for passing the term extension, stating that it "ensure[s] adequate copyright protection for American works in foreign nations and the continued economic benefits of a healthy surplus balance of trade in the exploitation of copyrighted works".[15] The 21-year extension will "provide significant trade benefits by substantially harmonizing U.S. copyright law to that of the European Union".[16] It also ensures fair compensation for American creators, which will in turn stimulate the creation of new works and enhance economic incentives to preserve existing works.[17] As such, the extension will "enhance the long-term volume, vitality and accessibility of the public domain".[18]

B. 2. 1. Support for CTEA

Prior to the CTEA, Disney had been a major force on the legislation, employing lobbyists in Washington from 1990.[19] Among others, the proponents in favor of the act include California congresswoman Mary Bono[20] as well as companies such as Time

[15] Congress.gov, "Copyright Term Extension Act Of 1996.". Accessed December 10, 2021, https://www.congress.gov/congressionalreport/104th-congress/senate-report/315.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Alan K. Ota, "Disney In Washington: The Mouse That Roars." CNN. Cable News Network, Accessed December 9, 2021, https://edition.cnn.com/ALLPOLITICS/1998/08/10/cq/disney.html.
[20] Mary Bono is Sonny Bono's widow and successor in Congress. She was one of the original sponsors of the CTEA. The late Salvatore "Sonny" Bono was a California congressman whom the act was alternatively named after. Before he died, he had been a sponsor of a similar bill.

Warner, Viacom, Universal and major professional sports leagues (NFL, NBA, NHL, MLB).[21]

One of the arguments supporting the act is restated from a rationale of the 1976 Copyright Act in respect to the increased life expectancy of humans and how copyright extension is necessary to ensure appropriate remuneration for copyright holders. Another reasoned that copyrighted works brought significant monetary gain to the US and forms of media including VHS, DVD, Cable and Satellite have further increased the value and commercial life of movies and television series. It is also argued that there was a need to match US copyright term to in accordance with European law, otherwise the difference would negatively impact the international commerce of the entertainment industry. In a global marketplace copyrighted works that entered into public domain earlier in the US could be freely exploited internationally.[22] Furthermore, the Copyright Clause as stated in Constitution merely provides that copyright must only last for "limited times"and does not expressly state a substantive limit on the powers of Congress. Therefore, further extension of duration so long as it is finite and enacted "to promote the progress of science and useful arts"[23] is arguably constitutional.

Proponents assert the rationalization that copyright encourages such progress in the arts, and that with copyright extension, authors are encouraged to create original works rather than reuse old works. This does not take into account works that

[21] Linda Greenhouse, "Justices To Review Copyright Extension", New York Times, February 20, 2002, https://www.nytimes.com/2002/02/20/business/justices-to-review-copyright-extension.html

[22] Scott M. Martin, "The Mythology of the Public Domain: Exploring the Myths Behind Attacks on the Duration of Copyright Protection." *Loyola of Los Angeles Law*, no. 1 (2002): 275.

[23] Article 1, Section (8), Clause 8, *United States Constitution.*

incorporate from others and artists such as Andy Warhol, who would not likely have been able to exhibit or monetize from his works had the act taken place in the 1960s.

Additionally, artistic inspiration does not only come from the public domain. Copyright merely covers the expression of an idea and not the idea itself, therefore authors are free to take inspiration from previous works so long as they do not infringe.[24] Borrowing ideas is commonplace in the entertainment industry and works such as parody are protected under the fair use doctrine.[25]

In opposition, the First Amendment[26] is often used as an argument. However, Harper & Row v. Nation Enterprises[27] has decisively set a high bar to this argument as courts have held that copyrights are "categorically immune from challenges under the First Amendment".[28] Following the CTEA, Eldred v. Ashcroft failed to overcome the decision set in Harper in regards to the use of the First Amendment as a valid argument.

B. 2. 2. Opposition against CTEA

Before the CTEA was passed, Professor Dennis S. Karjala testified before the Committees on the Judiciary, contending that "extending the term of copyright protection would impose substantial costs on the United States general public without supplying any

[24] Martin. op. cit., p. 268.
[25] Section 107, Title 17, United States Code: fair use is a limitation to copyright
[26] First Amendment, *US Constitution*: "Congress shall make no law…abridging freedom of speech"
[27] The decision was held in Harper & Row v. Nation Enterprises deemed a magazine's advanced publication of excerpts from former President Gerald Ford's memoirs to be an infringement of his copyrights. Thus essentially, copyright laws do not restrict freedom of speech.
[28] Victoria A. Grezlak, "Mickey Mouse & Sonny Bono Go to Court: The Copyright Term Extension Act and Its Effect on Current and Future Rights." *UIC Review of Intellectual Property Law*, no. 2 (2002): 105.

public benefit. The extension bills represent a fundamental departure from the United States philosophy that intellectual property legislation serves a public purpose". A criticism of the CTEA also argues that the US traditionally has held a much narrower interpretation of the Copyright Clause, and that unlike many European nations, it does not consider copyright a "natural right".[29] Thus, opponents view that copyright extension "weakens the public domain and make public access to works more difficult".[30]

Opponents had tried to challenge the act's constitutionality, claiming that it does not "promote the progress of science and useful arts" and is instead a display of corporate welfare. Along with the 1976 Act extending copyrights, the CTEA is an arguable step closer to a perpetual copyright term, which violates "limited times" under the copyright clause.

A rebuttal to the life expectancy argument is that life expectancy had approximately only doubled from 35 years in 1800 to 77.6 years is 2002, in contrast to copyright term, which has tripled. Furthermore, life expectancy has historically been skewed due to infant mortality rates.[31]

In an amicus brief opposing the CTEA, seventeen prominent economists including five Nobel Prize winners estimated that the extension provided an incrementally improved present value of less than 1% for authors, while the additional transaction costs of term extension of existing works is much larger, especially for works with

[29] Professor Peter Jaszi, "The Copyright Term Extension Act", (Hearings on S. 483 Before the Senate Judiciary Comm., 104th Cong., 1st Sess, (1995).
[30] Jenny L. Dixon, "The Copyright Term Extension Act: Is Life Plus Seventy Too Much?" *Hastings Communications and Entertainment Law Journal*, no. 4 (1996): 977.
[31] "Life Expectancy by Age, 1850?2011, Infoplease, Accessed December 10, 2021, https://www.infoplease.com/us/mortality/lifeexpectancy-age-1850-2011 .

copyrights that will soon expire or would have already expired without the CTEA. With so little commercial benefit, the economic incentive provided by copyright extension is questionable.

Additionally, it is argued that copyright extension would encourage offshore production. For instance, derivative works could be created outside of the US where the copyright of the works would have been expired and the law would deny US residents access to these works. Finally, many authors would not be able to afford licenses nor have the resources to even meet a copyright owner if copyright was perpetual. As such, rather than stifling the creation of new works, proponents argue that an extensive public domain is actually necessary to sustain artistic creation.

B. 3. Challenges to CTEA

B. 3. 1. Eldred v. Ashcroft (2003)

The first decisive case to challenge the CTEA was Eldred, in which the Supreme Court upheld the constitutionality of the act. The petitioners represented were groups who relied on the public domain for their work including Eric Eldred, an Internet publisher who led the petition. They were accompanied by a large number of amici including the Free Software Foundation, the American Association of Law Libraries, the Bureau of National Affair as well as numerous copyright law and constitutional law professors as well as other academics. On the other hand, the amici in support of the law included Motion Picture Association of America, the Recording Industry Association of America, ASCAP and Broadcast Music Incorporated. The plaintiffs brought the challenge using three main arguments. First, the CTEA violated freedom of expression under the

First Amendment. Second, the retroactive term disregarded the originality requirement of copyright, granting monopolies to "unoriginal" works. Third, it violates the Copyright Clause' preamble, "To promote the Progress of Science and useful Arts", as well as the "limited times provision".

Relying on Harper, the court dismissed the First Amendment challenge. The court also held that the originality requirement from Feist Publications, Inc., v. Rural Telephone Service Coz[32] only applies to the initial eligibility of the subject matter. As such, a work will remain sufficiently "original" for the purposes of renewal if it was so in the first place. Finally, the court rejected that the language of the Copyright Clause placed a limit on Congressional power. The Court of Appeals affirmed that the CTEA was a "rational exercise of legislative authority". Justice Ruth Ginsburg agreed with Eldred and CTEA, restating the rationale behind the CTEA: the need to harmonize laws with the EU and the preservation and reissue of previous works.[33] The decision made in Eldred served as a decisive precedent in a number of copyright cases in which the courts firmly upheld Eldred and the CTEA favor of the law.

B. 3. 2. Empirical Tests

A 2012 study conducted by Christopher Buccafusco and Paul J. Heald investigated three justifications of copyright extension: that public domain works will be underused and less available, that common ownership will lead to the overuse and degradation of

[32] Feist Publications v. Rural Telephone Service Co. held that telephone directory listings compiled in white pages directories are uncopyrightable facts.
[33] *ELDRED et al. v. ASHCROFT, ATTORNEY GENERAL certiorari to the united states court of appeals for the district of columbia circuit.*

works[34], and that the reputation of the original works will be tarnished by poor quality derivative works. The experiment compared the sales of audiobooks of novels in two decades on either side of the public domain divide.[35] The results revealed that works in the public domain were almost twice as likely to be available than copyrighted works[36], found no evidence of overexploitation in public domain works[37], and found that the quality of the audiobook recordings did not undermine the cultural and economic value of works.[38] Heald later conducted another experiment assessing a random sample of new books on Amazon.com and interestingly, the results showed that public domain books from 1880 were sold at double the rate of copyrighted books from 1980.[39] He concluded that "copyright term extensions have prevented the development of a market for re-printing a massive number of 'missing' works from the 20th century".[40]

Additionally, Buccafusco and Heald dismiss the incentive-to-create rationale of extending copyright (i.e. that the author would be incentivized to create more works if his copyright generated more money), as such incentive would not apply in the case of already existing works.[41] There would be no point to provide incentive to a dead author, for example.

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[34] Christopher Buccafusco and Paul J. Heald, "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension." *Berkeley Technology Law Journal*, no. 1 (2013): 15-16.
[35] Ibid
[36] Ibid, p. 22
[37] Ibid, p. 31
[38] Ibid, p. 26
[39] Paul J. Heald, "How Copyright Keeps Works Disappeared", *Journal of Empirical Legal Studies* , no. 4 (2014): 829–66. https://doi.org/10.1111/jels.12057.
[40] Ibid p. 49
[41]Christopher Buccafusco and Paul J. Heald, "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension." *Berkeley Technology Law Journal*, no. 1 (2013): 3

B. 4. Copyright Extension in Indonesia

Current legislation for copyright in Indonesia is set out in Law No. 28 of 2014. The notion of copyright is defined in Article 1 point 1 as "Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations". Essentially, it is a legal framework which allows entrepreneurs alike to operate with protection on their intangible, proprietary assets. The Indonesian government, specifically via the Patent Office or Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights of the Republic of Indonesia (MOLHR) is an agency responsible for enforcing copyright regulations with its name and structure having changed multiple times since independence.

The enactment of the 2014 Copyright Law follows prior amendments beginning in 1982 when the Indonesian government revoked the Dutch Copyright act and replaced it with Act No. 6 of 1982, again amended by Act No. 7 of 1987, Act No. 12 of 1997, Act No. 19 of 2002 and the latest one being the current legislation or Undang Undang Hak Cipta Baru. The new laws did not remove copyright infringement on music, movies and softwares but instead revamped the old fashioned ones through key adjustments.

Initially, in Act No. 6 of 1982 on Copyright, the regulations regarding duration of copyrights are stipulated under Article 26(I), which states that "Any copyright shall be valid for the lifetime of the author concerned and 25 years after his demise." Therefore, when the law was first introduced in Indonesia, the regulations regarding the copyright terms were limited to 25 years. This term has been extended

throughout the updated regulations and laws regarding Copyright, until the most recent act, which is 'Undang Undang Hak Cipta Baru' (Law no. 28 / 2014 on copyrights). Within the newest provision, under Article 58(2), it states that "In the event that the Works as referred to in Section (1) is owned by 2 (two) or more persons, Copyright protection will endure for a term consisting of the life of the last surviving Author and 70 (seventy) years after such last surviving author's death, commencing from 1st January of the year following the event.", and moreover in Article 58(3), it states that "Copyright protection to the Works as referred to in section (1) and section (2) owned or held by a legal entity endures for 50 (fifty) years since its first Publication."

The law stipulates the applicable regulations more specifically, and divides the duration into two separate situations, where the durations are 50 and 70 years respectively to the situations stated in each article. Therefore, we can see the development of the duration of copyrights, and how the term has now been extended from 25 years to 50 and 70 years each.

A change in the time frames for the legal protection of copyright and other intellectual properties had been decided in the 2014 law. For original creators, the protection period for their work applies for 70 years after their passing, beginning 1st of January in the following year. If it is owned by a legal organization, the protection applies for 50 years. Regarding economic profits, the creator has full rights which extends to official beneficiaries that inherit the works. The addition of this law also limits the transfer of economic rights through flat selling as this will ease the process in the case that the beneficiaries cannot be contacted immediately after the passing of a creator. In terms of dispute settlements, the new law offers a wider

range of plausible solutions such as arbitrage, mediation, criminal lawsuits and court settlements.

The improved legislation now extends intellectual property protection to marketplaces such as stores, shopping centres and other retailers. The owners and managers are in charge of making sure there are no copyright or trademark infringements in their establishment. Intangible movable objects count as copyrights and trademarks which can now be used as fiduciary warranties. Any copyrights and trademarks that the Indonesian government have deemed as violation against moral norms, public orders, national security and other formal and legal aspects will be abolished. Original creators, trademark/brand owners and official beneficiaries will have the royalties generated from commercial uses of the intellectual properties. The Collective Management Association will welcome original creators, brand and trademark owners, and official beneficiaries automatically for profits.[42] Lastly, the new law alters the use of copyrights and other intellectual properties. It regulates the use of IPs as parts of responses towards the development of communication and information technologies.[43]

Changes in legislation also coincide with Indonesia's participation in international treaties. In Law No. 7 of 1994, the government ratified the establishment of the World Trade Organization, which includes the Agreement on Trade-Related Aspects of Intellectual Property Rights. The TRIPS agreement

[42] Cekindo Business International, Ltd. "Copyright Indonesia: Its Important Role in Business." accessed December 10, 2021, https://www.cekindo.com/blog/copyright-lawindonesia.
[43] BpLawyers "Indonesia's New Copyright Law, Great Way Deal with Copyright Infringement.", accessed December, 2021, https://bplawyers.co.id/en/2018/01/30/indonesias-new-copyright-law-great-way-deal-copyright-infringement/

incorporated provisions of the Berne Convention on copyright including those on copyright duration. In 1997, the government ratified the Berne Convention through Presidential Decree No. 18 of 1997 and also ratified the World Intellectual Property Organization Copyright Treaty through Presidential Decree No. 19 of 1997.

B. 5. Recent Legislation

The latest change in US copyright law, The Music Modernization Act (MMA) was signed into law by President Donald Trump on October 11, 2018. The Act sought to modernize copyright-related issues in regards to music and audio recordings to adapt to technology such as digital streaming. The act received strong support from members of the music industry as well as digital streaming services and related industry groups. It consisted of three separate consolidated bills introduced during the 115th United States Congress. Of these bills, the CLASSICS Act is notable in relation to copyright terms.

The Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act, or the CLASSICS Act, was introduced by Congress on July 19, 2017. The Act sought to "provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes".[44] The copyrights of these recordings would now have an expiry date of 2067 or later, providing a total term of protection of 144 years. Previously, sound recordings made before February 15, 1972

[44] Congress.gov, "All Information (Except Text) for H.R.3301 - CLASSICS Act." Accessed December 10, 2021. https://www.congress.gov/bill/115thcongress/house-bill/3301/all-info?r=1

were not covered under federal copyright law, which left protection to be handled in individual states. This consequently complicated procedures of copyright enforcement and royalty payments. The act was eventually consolidated into MMA on April 10, 2018.

Upon introduction, the CLASSICS Act had been met with some criticism from a vocal group of law professors, more than forty of whom had signed a letter pleading Congress to reject the act.[45] They argued that the act did not serve the purposes of copyright law and was not introduced to incentivize the creation of new works but simply to "provide new rewards to existing copyright owners".[46] Professor Lawrence Lessig, who had been forthright in his position against the CTEA and notably a lead counsel for Eric Eldred voiced his dissenting opinion, anticipating other copyright owners to complain in the future about the "unfairness" of the protection given to creators of legacy recordings. With its drastic reforms on copyright law, the enactment of the MMA has substantial ramifications for the music.

C. Conclusion

Both sides of the debate surrounding copyright extension present extensive arguments. The support for copyright extension largely favors copyright owners. In addition to providing economic benefits, proponents cite the Copyright Clause to argue that fair

[45] Alexander MB and others to Chairman Grassley, Ranking Member Feinstein, and members of the Senate Judiciary Committee, "Public Knowledge", accessed March 24, 2019
https://www.publicknowledge.org/assets/uploads/documents/Classics_Act_IP_Professors_L etter_5.14.18.pdf
[46] Ibid, p. 1

compensation to the author will inevitably incentivize creation. Such arguments have prevailed in court, though it is unquestionable that lobbying from interest groups has had a significant influence on the presiding law. On the other hand, critics of copyright extension contend that with less works in the public domain creation will not be incentivized, but rather, stifled. They reason that a shorter duration is in public economic interest. Arguments against copyright extension have been supported by numerous law professors, distinguished economists and other academic groups. More importantly, empirical evidence that has surfaced debunks the grounds of many of the arguments underlined by proponents of extension. For example, there is reason to assume copyright extension has not substantially benefited copyright owners. Such evidence brings a more compelling argument to the opposing side of the debate.

Presently, however, Congress and US courts appear to side overwhelmingly in favor of extending protection to copyright owners. With the MMA and the CLASSICS Act further extending the rights of certain works, it can be expected that copyright terms would continue to be extended. The current state of the law does not look optimistic for opponents of copyright extension. Harper and subsequently Eldred deny the use of the First Amendment to legally challenge the constitutionality of copyright extension. Eldred also asserts that the Copyright Clause does not impose any limit to the powers of Congress, signifying that Congress is free to enact any further change to copyright duration.

Nonetheless, the debate surrounding copyright extension continues. While Congress and courts show no signs of changing their position, voices of opposition can still clearly be heard.

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International Conventions/Treaties

Berne Convention for the Protection of 'Literary and Artistic Works (1886)

Berne Convention Implementation Act (1988) US Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act US

Copyright Act 1911

Copyright Act of 1790 US

Copyright Act of 1831 US

Copyright Act of 1909 US

Copyright Act of 1976 US

Copyright, Designs and Patents Act 1988

Copyright Term Extension Act (1998) US Duration of Copyright and Rights in Performances Regulations 1995

Music Modernization Act (H.R. 1551, Pub.L. 115–264)

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