
Eldred v. Ashcroft: Supreme Court Affirms Extension of U.S. Copyright Protection

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The U.S. Supreme Court has approved a 20-year extension of federal copyright protection.

On January 15, 2003, the U.S. Supreme Court ruled 7-2 in *Eldred v. Ashcroft* to uphold the Sonny Bono Copyright Term Extension Act of 1998 (the Bono Act), which adds 20 years to the term of U.S. copyright protection. This is the first time that the U.S. Supreme Court has weighed in on the constitutionality of a law setting the term of copyright protection. The Bono Act allows authors of individual copyrighted works (and their estates) to hold a copyright for the life of the author plus 70 years (previously 50 years) after the author's death, and owners of works made for hire or done anonymously, typically corporations, to hold a copyright for 95 years (previously 75 years from publication or 100 years from creation, whichever expired first) from publication (see our [February 3, 2003 IP Law Alert](#) for a discussion of issues relating to works made for hire). As a result of the Court's decision, songs, films, books and other copyrighted works from the 1920s and 1930s that were set to expire early this century will not be released into the public domain for another 20 years, including songs by George Gershwin, poems by Robert Frost, the Disney depiction of Mickey Mouse in "Steamboat Willie," Margaret Mitchell's "Gone With the Wind" and other familiar works.

The U.S. Constitution gives Congress the power to "promote the progress of science and the useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." The plaintiffs, including an online archive operator, and other publishers and would-be users of non-copyrighted material (such as a church choir director, an orchestral sheet music company, a company that restores old films, and Dover Publications, a publisher of public domain books), argued that by lengthening the term of existing copyrighted works, the Bono Act effectively made copyrights perpetual, violating the "for limited times" restriction of the Constitution.

Justice Ruth Bader Ginsburg's majority opinion stated that Congress acted within its constitutional authority by setting an identified period of time for the copyright term extension and that the Court would not "second-guess Congressional determinations and policy judgments" in the area of intellectual property, however debatable or unwise those determinations or policy judgments may be. The Court found it particularly significant that a key policy consideration for Congress in passing

the Bono Act was the harmonization of U.S. copyright law with a 1993 European Union (EU) directive instructing EU member states to establish a copyright term of life plus 70 years and to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term (see our [April 30, 2002 Internet Alert](#)).

The Court also rejected the plaintiffs' argument that the Bono Act infringed plaintiffs' rights to free speech under the First Amendment, stating that copyright law was established to encourage the creation and publication of new expression and contains "built-in First Amendment accommodations."

Companies that had been hoping to use, copy or post old copyrighted works on a website in the expectation that the copyrights would soon expire may want to re-evaluate that strategy. In light of the many term extensions that Congress has authorized over the years and the Court's landmark endorsement of this practice, it appears that Congress will continue to have broad discretion to extend copyright terms.

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