

The History of U.S. Copyright Law and Disney's Involvement in Copyright Term Extension

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Abstract

Copyright term extension is often a contentious topic among copyright owners, corporate lobbyists, and opponents of copyright extension. The history of copyright law spans more than 225 years and has always been an ever-evolving process. The Copyright Act of 1790 was the first statute in the United States to identify definite provisions of copyright law and permitted authors the right to their intellectual property for a duration of 14 years. Today, depending on the type of work, copyright terms can reach up to 120 years. Historically, Disney has been exceedingly protective of their intellectual property and is a prominent supporter and lobbyist for copyright term extension (Bernaski, 2014). Disney's involvement in copyright term extension originates from their goal to prevent their copyrights from entering the public domain, specifically their Mickey Mouse character. This paper examines the history of copyright law in the United States, copyright case law, Disney's involvement in copyright term extension, various arguments for and against copyright term extension, and the future of copyright law.

The History of U.S. Copyright Law and Disney's Involvement in Copyright Term Extension

The history of U.S. copyright law began when the framers enacted the Copyright Clause of the Constitution in 1787 (“United States Copyright Law”, 2005). The Copyright Clause states that, “The Congress shall have 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” (“United States Copyright Law”, 2005). The framers originally intended the Copyright Clause to encourage the production of original works and provide authors protection from unknown copyright infringement (“United States Copyright Law”, 2005). These ideals persist today, and the provisions of the U.S. Copyright Act are extremely valuable to large companies such as the Disney Corporation. Businesses and other lobbyists maintain that copyright law needs to change accordingly, but many opponents of copyright term extension question when Congress will halt extension terms. Furthermore, advances in the technologies for creating and distributing copyrighted works have played a significant role in shaping U.S. copyright law (“Copyright Law and Economics in the Digital Era”, 2013). This paper analyzes the history of U.S. copyright law, copyright case law, how the Disney Corporation became involved in copyright term extension, both sides of the copyright term extension debate, and the future of copyright law in the United States.

The History of U.S. Copyright Law

Copyright law dates back to the Statute of Anne, which the Parliament of Great Britain passed in 1710 (Fisher, 2018). This statute was a breakthrough in the history of copyright law, because it was the first official copyright act. Parliament created the Statute of Anne to allow authors to become the primary recipients of their copyright for a duration of 14 years plus a renewal of 14 years (Fisher, 2018). It also specified that copyrights should have limited terms and after the

terms expired, the works would pass into the public domain (Fisher, 2018). The public domain commonly refers to creative materials that are not protected by copyright laws (Stim, 2017). In other words, the public owns these works rather than an individual author or artist (Stim, 2017). The Statute of Anne clearly influenced early U.S. copyright legislation in terms of concepts, legal procedures, and specific text (Fisher, 2018). The ideals and principles of copyright law were also particularly important to the framers because they believed that citizens should benefit from their original works (Fisher, 2018). Since the Statute of Anne, Congress has revised U.S. copyright law to define the scope of copyright, change the term of protection, and address new technologies (Fisher, 2018). The next section of this paper will discuss the revisions of the U.S. Copyright Act.

Copyright Act Revisions

Copyright Act of 1790. The First Congress implemented the U.S. copyright act in 1790 (“United States Copyright Law”, 2005). The Copyright Act of 1790 granted authors the right to print or publish their work for a period of 14 years and if the author was living at the end of the initial term, they could renew protection for another 14 years (“United States Copyright Law”, 2005). This copyright term is vastly different from the provisions of the Copyright Term Extension Act in place today. Like the Copyright Clause of the Constitution, the purpose of the 1790 act was to provide an incentive to authors, artists, and scientists to create original works (“United States Copyright Law”, 2005). However, at the same time, Congress limited copyright terms to stimulate creativity through public access to works in the public domain (“United States Copyright Law”, 2005). Moreover, Congress required authors to comply with several formal procedures, which included publication in the U.S. and certain recording processes in the federal district court where the author lived (“United States Copyright Law”, 2005). If authors did not follow these procedures, the work would go into the public domain.

Copyright Act of 1909. The Copyright Act of 1909 was the first major revision to U.S. copyright law since 1790 and went into effect on July 1, 1909 (“United States Copyright Law”, 2005). The act expanded copyright protections to include all works of authorship and extended the term of protection to 28 years with a possible renewal of 28 years (“United States Copyright Law”, 2005). The primary reason why Congress doubled the term was that most authors were outliving their copyrights (Carlisle, 2014). In 1905, President Theodore Roosevelt argued for a complete revision of copyright law as opposed to amendments saying:

"Our copyright laws urgently need revision. They are imperfect in definition, confused and inconsistent in expression; they omit provision for many articles which, under modern reproductive processes, are entitled to protection; they impose hardships upon the copyright proprietor which are not essential to the fair protection of the public; they are difficult for the courts to interpret and impossible for the Copyright Office to administer with satisfaction to the public" (“United States Copyright Law”, 2005).

Copyright Act of 1976. The next major modification of the U.S. Copyright Act occurred in 1976. Congress enacted this revision to address technological developments, the reproduction of copyrighted works, and the definition of copyright infringement (“United States Copyright Law”, 2005). This revision specified that copyright exists in original works fixed in any tangible medium of expression, and it included literary, musical, choreographic works, motion pictures, sound recordings and other forms of authorship (Fisher, 2018). Moreover, the act defined the subject matter of works covered, exclusive rights, copyright notice, copyright registration, copyright infringement, and remedies to infringement (“United States Copyright Law”, 2005). The 1976 act also extended the term of protection from 28 years with a renewal of 28 years, to life of the author plus 50 years (“United States Copyright Law”, 2005). Again, Congress extended

copyright terms due to increased life expectancy and many proponents of the extension reasoned that a copyright term of 56 years was not long enough for an author to receive the full economic benefits from their work (“United States Copyright Law”, 2005).

At that time, many countries had adopted the term of life plus 50 years, and it was becoming easier for copyrighted works to travel internationally (“United States Copyright Law”, 2005). In other words, a short copyright term could have economic consequences for the author of the work and the United States (“United States Copyright Law”, 2005). Copyright industries contribute significantly to the U.S. gross domestic product (GDP), employment, and trade (“Copyright Law and Economics in the Digital Era”, 2013). Additionally, copyrighted works influence economic and productivity growth (“Copyright Law and Economics in the Digital Era”, 2013). A short copyright term could also diminish the author’s benefits from copyright publication such as royalties, self-advertisement, and self-promotion (Landes & Posner, 1989). Therefore, a longer copyright term ensures that authors will obtain recognition from the work they publish (Landes & Posner, 1989). Ultimately, for the reasons stated above, Congress decided to adopt the life plus 50 years term for new works published after January 1, 1978 (“United States Copyright Law”, 2005).

Copyright Term Extension Act (CTEA) of 1998. On October 7, 1998, Congress passed the Copyright Term Extension Act (“United States Copyright Law”, 2005). With support from Democrats and Republicans, both the Senate and House passed the bill unanimously (Hartmann, 2017). The law extended copyright protection from the life of the author plus 50 years to the life of the author plus 70 years (“United States Copyright Law”, 2005). Like the 1976 Copyright Act, Congress enacted the CTEA to provide a longer term of protection, so authors would have a greater incentive to produce a higher quantity and quality of works (“United States Copyright Law”, 2005).

Many proponents of the CTEA believed that it would benefit authors and artists to correspond copyright terms with international trading partners, especially Europe. In 1993, the European Union (EU) issued a directive that provided protection to two generations after the author's death, which extended their copyright term to the author's life plus 70 years (Schwartz, 2004). Moreover, the EU denied the longer copyright term to American authors, because U.S. copyright laws did not secure the same term (Carlisle, 2014). Due to this EU mandate, Congress was motivated to guarantee that American authors would receive the same copyright protection in Europe as other EU citizens (Carlisle, 2014). In 1998, Congress stated that the purpose of the CTEA was:

“...to ensure 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... Such an extension will provide significant trade benefits by substantially harmonizing U.S. copyright law to that of the European Union while ensuring fair compensation for American creators . . . by stimulating the creation of new works and providing enhanced economic incentives to preserve existing works, such an extension will enhance the long-term volume, vitality, and accessibility of the public domain” (“United States Copyright Law”, 2005).

Contrastingly, numerous groups including small publishers of music, books, and videos of works based on the public domain were against the passage of the CTEA (“United States Copyright Law”, 2005). Almost immediately, many of the opponents challenged the constitutionality of the act (Lee, 2013). In fact, the legal battle against the CTEA drew more attention and support from the public than the legislative process (Lee, 2013). The opponent's argument was that the extended copyright term would diminish their resources and profits and that the act infringed upon their

First Amendment free speech rights (“United States Copyright Law”, 2005). Opponents of the act also asserted that there was no evidence to support the belief that an additional 20 years would make a difference in how authors produce work (“United States Copyright Law”, 2005).

Supreme Court and Appellate Court Copyright Case Law

The courts are continuously trying to catch up to technological changes, which copyright case law regularly reflects. As technology has advanced, companies such as Disney, Warner Brothers, and Universal often try to determine ways to ensure that users will pay for their content. Yet, there is a disagreement between users and providers, not only about copyright extension terms, but also about illegally downloading content. Today, with services like Netflix and Hulu, it is easier than ever to stream a movie and receive digital content within seconds. Twenty to thirty years ago, people had to buy movies on cassette tapes and a VCR was a valuable item to have in the common American household. However, as the Internet progressed and evolved, some consumers found it more cost effective to illegally download and copy television shows, music, and movies. Consequently, Disney and other corporations have continually devised ways and methods that require individuals to pay for digital content. Even though copyright law’s provisions provided a means for enforcing rights to copy and distribute protected works, various features of the Internet have made copyright enforcement difficult in many ways (“Copyright Law and Economics in the Digital Era”, 2013). As these issues gained prominence, the U.S. Supreme Court and various appellate courts began to examine copyright issues such as copyright term extension, third-party streaming websites, and fair use arguments. Relevant cases are described below.

Eldred v. Ashcroft (2003) effectively

In the Supreme Court case, *Eldred v. Ashcroft*, the Court addressed whether the 1998 Copyright Term Extension Act was constitutional (Schwartz, 2004). As previously stated, Congress extended the duration of copyrights by 20 years, making copyrights last until 70 years after the author's death (Schwartz, 2004). The plaintiffs in this case were individuals whose services and products were based on copyrighted works that entered the public domain. They argued that the CTEA violates both the Copyright Clause's limited times provision and the First Amendment's free speech guarantee (Schwartz, 2004). Furthermore, those opposed to the CTEA maintained that Congress did not have the right to extend the copyright term for published works with existing copyrights (Schwartz, 2004).

Eldred's argument. This case addressed several issues including the extent of Congress' authority to enact legislation that governs intellectual property and the limits that the First Amendment places on intellectual property protection (McJohn, 2003). The plaintiffs also presented several arguments regarding the interpretation of the Copyright Clause of the Constitution (McJohn, 2003). Essentially, the plaintiffs' argument was that the Copyright Clause was subject to limits and the extension of copyright protection violated the limited times provision in the Copyright Clause (Schwartz, 2004). The plaintiffs also argued that the CTEA was unconstitutional, because it unnecessarily obstructed material from entering the public domain (Schwartz, 2004). In all, Eldred claimed that Congress violated the Constitution when it passed laws that let copyright owners renew the ownership rights to their works for an additional 20 years (Schwartz, 2004).

Government's argument. The respondent in this case, John Ashcroft, the United States Attorney General, argued that it was necessary for Congress to correspond the length of copyright protection to guard U.S. intellectual property (Schwartz, 2004). The U.S. is the world's largest

exporter of copyrighted material because the intellectual property industries represent the nation's third largest export, bringing approximately \$40 billion into the U.S. each year (Schwartz, 2004). Ashcroft also reasoned that American authors would lose an immense amount of revenue if they received 20 less years of protection in Europe (Schwartz, 2004). In addition, if Congress did not enact the CTEA, the U.S. would have lost jobs and production studios because the incentive of another twenty years of protection would encourage entertainment studios to hire foreign directors (Schwartz, 2004).

Supreme Court's decision. In a 7-2 decision, Justice Ginsburg wrote the majority opinion and held that “[t]ext, history, and precedent” confirms that Congress used their authority appropriately to enact the CTEA (Schwartz, 2004). Justice Ginsburg also asserted that, “The CTEA reflects judgments of a kind Congress typically makes, judgments that we cannot dismiss as outside the Legislature’s domain... [I]t is generally for Congress, not the Courts, to decide how best to pursue the Copyright Clause’s objectives” (Schwartz, 2004). Furthermore, the majority opinion emphasized that copyright law “celebrates the profit motive” for authors (Schwartz, 2004). However, Justice Breyer wrote the dissenting opinion arguing,

“The statute before us, the 1998 Copyright Term Extension Act, extends the term of most existing copyrights to 95 years and that of many new copyrights to 70 years after the author’s death. The economic effect of this 20-year extension—the longest blanket extension since the Nation’s founding—is to make the copyright term not limited, but virtually perpetual” (*Eric Eldred, Et Al., Petitioners v. John D. Ashcroft, Attorney General*, 2003).

The Court ultimately held that Congress had the authority to pass the act, and the act did not surpass constitutional limitations when they protected existing and future copyrights for an

additional 20 years (Schwartz, 2004). Moreover, the Court found that the CTEA "continues the unbroken congressional practice of treating future and existing copyrights in parity for term extension purposes" (Schwartz, 2004). The Court also affirmed that Congress exercised their power and authority correctly under the Copyright Clause of the Constitution (Schwartz, 2004). Finally, the Court held that the CTEA's extension of existing and future copyrights does not violate the First Amendment (Schwartz, 2004).

Disney v. VidAngel (2017)

In August 2017, the Ninth Circuit Court of Appeals heard the case, *Disney v. VidAngel*. This case illustrates how copyright law is still a debated topic today. The issue presented in this case was whether a third-party site that digitizes physical copies of movies and removes offensive material from the copyrighted works constitutes fair use (*"Disney Enterprises, Inc. v. VidAngel, Inc."*, 2017). Disney and other large television and movie corporations alleged that VidAngel infringed upon their copyright protections because VidAngel operated an online streaming service that removed objectionable or offensive content from movies and television shows (*"Disney Enterprises, Inc. v. VidAngel, Inc."*, 2017). To stream and edit content for their customers, VidAngel purchased physical movie and television show discs, decrypted the discs to upload a copy to a computer, and then streamed a filtered version of the work to its customers (*"Disney Enterprises, Inc. v. VidAngel, Inc."*, 2017). Customers would purchase "discs" and sell them back, which allowed the consumer to rent their copy for \$1 per day (*"Disney Enterprises, Inc. v. VidAngel, Inc."*, 2017). Disney, Lucasfilm, Twentieth Century Fox Film Corp., and Warner Brothers Entertainment sued VidAngel for copyright infringement (*"Disney Enterprises, Inc. v. VidAngel, Inc."*, 2017).

The court sided with Disney and concluded that the copyright use was not fair, and VidAngel's copying infringed upon the plaintiffs' exclusive reproduction right ("*Disney Enterprises, Inc. v. VidAngel, Inc.*", 2017). It is important to reiterate that users can stream digital movies in seconds and corporations always try to find ways to maintain the authenticity of their copyrights. Copyright protection across the world has become more problematic in recent years due to technological improvements that make content sharing extremely easy and inexpensive (Shear, 2010). Legislators in the U.S. and across the world have tried to balance the need to protect an author's intellectual property from unauthorized use without hindering technological innovation (Shear, 2010). Above all, this case highlights how protective Disney and other corporations are of their copyrights. The next section of this paper will discuss Disney's involvement in copyright term extension.

Disney's Involvement in Copyright Term Extension

For decades, Disney has been extremely protective of their copyrights and is a supporter of copyright term extension (Schlackman, 2014). The Walt Disney Company is vested in protecting their intellectual property, because they operate 12 theme parks, 52 resorts, 9 studios, including Pixar and Marvel, and four cruise ships (Carlisle, 2014). Copyright protections are invaluable for Disney's assets because once copyright protection is lost, others are free to use, change, sell, or reproduce that intellectual property (Carlisle, 2014). In addition, Walt Disney World in Florida employs approximately 66,000 people and spends more than \$1.2 billion on payroll and \$474 million on benefits each year (Carlisle, 2014). It is apparent from this example, that the creation and protection of intellectual property is a primary motivation for Disney because they employ many people and provide entertainment for individuals across the world.

Disney became involved in the copyright term extension debate because the company was confronted with the possibility of losing protection for their character, Mickey Mouse (Schlackman, 2014). Mickey Mouse was created by Walt Disney in 1928 and first appeared on one of the first sound cartoons, *Steamboat Willie* (Schlackman, 2014). Mickey now serves as the ultimate symbol of Disney and has a 97 percent global recognition rate (Schlackman, 2014). By the time Congress debated copyright term extension in 1998, the copyright on Mickey Mouse was earning about \$8 billion per year (Schlackman, 2014). Due to the revenue that Mickey Mouse accumulates annually, Disney was heavily interested in the extension of copyright terms in 1998. Today, the value of Disney's brand name alone is estimated at \$43 billion, largely due to Mickey Mouse products (Hartmann, 2017). Furthermore, in May 2017, Disney's net worth was estimated at \$178 billion, according to Forbes (Hartmann, 2017).

When Disney created Mickey Mouse in 1928, the 1909 Copyright Act granted 56 years of protection under the law (Crockett, 2016). The majority of Disney's classic characters, including Mickey Mouse, were created under the 1909 Copyright Act with 56 years of protection (Hartmann, 2017). This meant that the copyright for Disney's 1928 creations, were scheduled to expire in 1984 (Hartmann, 2017). However, as this date drew near, Disney started to lobby Congress for new copyright legislation because losing Mickey to the public domain would be a huge loss for Disney financially. To emphasize, in 1976, just eight years prior to Mickey's expiration, Congress completely overhauled U.S. copyright law to conform to European standards (Crockett, 2016). Due to the 1976 Copyright Act, Mickey Mouse extended his copyright, which would have expired in 2003 (Crockett, 2016). Again, by the 1990s, Disney began to worry about Mickey going into the public domain. In 1998, Congress passed the CTEA, which granted authors an additional 20

years of copyright protection (Crockett, 2016). Currently, Mickey's copyright is scheduled to expire in 2023 (Crockett, 2016).

Moreover, Disney constantly lobbies to extend copyright terms because of what would happen after Mickey Mouse enters the public domain. If Mickey Mouse ever enters the public domain, other iconic characters would subsequently be released (Crockett, 2016). These characters include Pluto, Goofy, Donald Duck, Snow White and the Seven Dwarves, Pinocchio, Dumbo, Bambi, and Cinderella (Crockett, 2016). After those characters are released, there is a major film every year after that whose characters would be released, including Alice in Wonderland, Peter Pan, Lady and the Tramp, and Sleeping Beauty (Crockett, 2016).

Additionally, Disney fights to extend copyright terms because the creation of new works is very expensive (Hartmann, 2017). In 2015, Disney tried to introduce a new franchise related to the movie Tomorrowland (Hartmann, 2017). The film cost \$190 million to produce, \$112 million to advertise, but only earned \$204 million worldwide (Hartmann, 2017). Disney's classic characters created prior to 1980 continuously provide substantial revenue and have been an integral part of Disney's financial stability (Hartmann, 2017). Disney has created movie sensations including Frozen and Lion King; however, these films were made almost 20 years apart and Disney released over 20 other animated films in between (Hartmann, 2017). Many of the other features, including Tomorrowland, barely broke even (Hartmann, 2017).

Finally, many opponents of copyright extension assert that Disney is hypocritical about copyright law because the public domain is the foundation for many of the company's greatest successes (Schwartz, 2004). For example, the 2002 animated movie Treasure Planet was based on the public domain work, Treasure Island by Robert Louis Stevenson (Schwartz, 2004). Other classics such as Snow White and the Seven Dwarfs, Cinderella, Pinocchio, The Hunchback of

Notre Dame, Alice in Wonderland, Hercules, and The Jungle Book, all originate from the public domain (Schwartz, 2004). Moreover, opponents argue that even though Disney reused material from the public domain, none of the works created by Disney, have entered the public domain for others to build upon (Schwartz, 2004).

Arguments For and Against Copyright Term Extension

The 1976 and 1998 Copyright Act revisions enacted by Congress in an attempt adapt to technological and international copyright changes have made copyright law a controversial issue. Proponents primarily contend that a longer term of protection provides a greater incentive to produce a higher quantity and quality of works (Schwartz, 2004). Opponents disagree and assert that a work's financial return occurs in the first few years after publication with a decrease in profits over time, rather than throughout the entirety of the author's life (Schwartz, 2004). Proponents and opponents also disagree whether authors benefit from copyright term extension, especially when the terms correspond with international copyright regulations (Schwartz, 2004). Both sides of the argument are examined below.

Proponents of Copyright Term Extension

Proponents of copyright extension argue that expanding protections will further incentivize the creation of works and that the public domain could diminish the hard work of copyright owners (Schwartz, 2004). They also claim that as the life expectancy of people increase, Congress should extend copyright terms to reflect those changes (Schwartz, 2004). Furthermore, supporters of copyright term extension believe that protection should benefit the author and the author's descendants (Schwartz, 2004). Largely, expanding copyright terms further incentivizes creation

because authors will be reassured that their work will remain protected for a longer time (Schwartz, 2004).

Furthermore, supporters argue that copyright owners should have the opportunity to profit from their creations before the copyright goes into the public domain (Schwartz, 2004). If authors know that they are creating works for the benefit of the public domain rather than for the gain of their beneficiaries, there is the possibility that they would refuse to put in the time and effort to create other works (Schwartz, 2004). Correspondingly, by allowing works to fall into the public domain too early, the owner may not receive maximum profits, even if the work has been in existence for many years (Schwartz, 2004).

Additionally, the creation of copyrighted works is often expensive because the maintenance and production of works can be extremely costly (Schwartz, 2004). If terms are not long enough, creators are not guaranteed that they will be able to exclude others from copying their ideas and will hold back from creating original works (Schwartz, 2004). Even though Disney has already recouped their investments for their copyrights, they continuously finance derivative works featuring that copyright (Schwartz, 2004). For example, in recent years, Disney has remade many of their classics into live-action movies such as Cinderella, Beauty and the Beast, Alice in Wonderland, and The Jungle Book (Oswald & Acuna, 2018). Upcoming live-action movie remakes include Aladdin, Dumbo, The Lion King, Mulan, Pinocchio and many others (Oswald & Acuna, 2018). Therefore, proponents frequently contend that limiting a copyright suppresses creativity (Schwartz, 2004). Many proponents also assert that because a company has profited from a copyright is not grounds for releasing it to the public domain (Schwartz, 2004).

Equally important, advocates reason that copyrights are an important part of the U.S. economy, and the U.S. should have the same copyright terms as other countries because the United

States creates some of the most valuable copyrights in the world (Carlisle, 2014). In the article, “*Copyrights Last Too Long! They Don't; and Why It's Not Changing*” by Stephen Carlisle, he states that “... [I]n 2007, U.S. artists produced \$71 billion dollars’ worth of long-lived entertainment originals and \$96 billion dollars of short-lived artistic products such as television, radio and internet programming.” He also estimated that the value of these assets was approximately \$536 billion for entertainment originals. These figures have far-reaching economic effects, so if the U.S. did not align their terms with the rest of the world, it is possible that authors could lose valuable profits (Carlisle, 2014).

Overusing copyrights can also reduce the value of the original work and harm the wellbeing of the author. The purpose of copyright law is to incentivize original and derivative works and protect the copyright from overuse in the public domain (Schwartz, 2004). Many advocates claim that if consumers see an inappropriate use of a copyright, the users could be offended and lose interest in the original work, which in turn harms the original author (Schwartz, 2004). Altogether, supporters advocate that the danger of overuse of copyrights is a real concern and copyright owners would lose the benefits from the works they created (Schwartz, 2004).

Opponents of Copyright Term Extension

On the other side of the copyright term extension debate, opponents believe that terms do not need to be extended any further in the interest of encouraging new or derivative works (Schwartz, 2004). Opponents of term extension often include lawyers, scholars, and activists who are concerned that increasing copyright protection could have unfortunate consequences for society, especially if the terms restrict the ability of artists to create new works (Bernaski, 2014). On one hand, proponents argue technological advances make works sustainable for longer periods, but opponents claim that copyright protection is a “bargained agreement between the government

and the creators” (Schwartz, 2004). Opponents also maintain that term extensions are not necessary “to promote the progress of science and the useful arts” because most works receive most of the profits within the first few years of publication (Bernaski, 2014).

Opponents also reason that the increase in life expectancy argument of proponents is insufficient because current terms provide for many protected years after the death of the author (Schwartz, 2004). Similarly, they say that protecting the work during the author’s lifetime and the lifetime of two generations is not the intention of copyright law (Schwartz, 2004). Challengers of copyright term extension assert that the public would be better off if the descendants of authors did something productive for society rather than profiting off a limited number of copyrights their whole lives (Schwartz, 2004). Their overall argument is that there is no right for two generations to benefit from copyright protection (Schwartz, 2004).

Opponents also believe that copyright extensions harm the public more than they benefit authors, particularly when there are fewer additions to the public domain (Schwartz, 2004). Since the public benefits from works entering the public domain, halting copyrights for a certain number of years can constitute the wrongful taking of works that were going to enter the public domain and benefit the public (Schwartz, 2004). The public benefits from the public domain because public works promote education through the spread of information and ideas (“Is Copyright Term Extension Finally Done?”, 2018). The public domain also helps facilitate the creation of new works by allowing authors to use preexisting works (“Is Copyright Term Extension Finally Done?”, 2018). Opponents also reason that extension is unconstitutional under the First Amendment. They maintain that a limit on the public domain restricts free speech because those authors cannot use the works that would be entering the public domain (Schwartz, 2004).

In examining the arguments of both the proponents and the opponents of copyright term extension, it is evident that Congress must balance both sides if they decide to revise the U.S. Copyright Act in the future. Proponents and opponents of copyright term extension primarily disagree whether copyright protection encourages the creation of new works (Schwartz, 2004). Opponents assert that the American copyright system was designed to encourage innovation, but they argue that current protections diminish creativity (“Is Copyright Term Extension Finally Done?”, 2018). Conversely, proponents claim that additional copyright protection incentivizes authors to continue to create new and derivative works (Bernaski, 2014). The next section of this paper will discuss the future of U.S. copyright law.

The Future of U.S. Copyright Law

In the upcoming years, Congress must decide how they are going to approach revisions of the U.S. Copyright Act. The public domain has been suspended since the 1920s and 1930s and Congress must now determine how they are going to balance the beliefs and opinions of the proponents and opponents of copyright term extension (McKay, 2011). Opponents have already challenged the constitutionality of the 1998 CTEA in the Supreme Court case, *Eldred v. Ashcroft*, and it is reasonable to expect that they will be determined to fight for the use of the public domain in the future (Solum, 2005). Presently, fan-made derivative works based on public domain works have a growing cultural importance, but copyright laws must change to accommodate new artists (McKay, 2011).

Jonathan Schwartz, the author of “*Will Mickey Be Property of Disney Forever - Divergent Attitudes toward Patent and Copyright Extensions in Light of Eldred v. Ashcroft*”, predicts that Congress could decide not to further extend the copyright term of protection. Therefore, if Congress decided not to extend terms, creations produced before the 1950s would go into the

public domain (Schwartz, 2004). Schwartz also maintains that it is possible that Congress could again increase terms due to pressure from various lobbyists such as Disney. They would then enact legislation to give existing works additional time for copyright protection (Schwartz, 2004). Again, it is likely that opponents of copyright term extension would argue in front of the Supreme Court and ask them to revisit their decision in *Eldred v. Ashcroft* (Schwartz, 2004). It is likely that their arguments would have more support and would be more intense (Schwartz, 2004). Schwartz also states that the limited times provision in the copyright clause could be an issue in addition to the opponent's First Amendment argument. Moreover, it is possible that a set number of years could be sufficient to reason that legislation could provide a "perpetual copyright" similar to Justice Breyer's dissenting argument in *Eldred v. Ashcroft*.

The future of U.S. copyright remains uncertain amid recent legal and technological developments. Copyright law is uniquely affected by the Internet and technology because new developments can evade existing legal provisions designed to protect intellectual property (Solum, 2005). The U.S. court system and Congress have attempted to adjust and amend copyright law to conform to new technology, but they are frequently overwhelmed by the transformation of the Internet and software (Solum, 2005). Opponents of copyright law contend that copyright laws stifle creativity, particularly since large corporate copyright holders, like Disney, are increasingly protective of their own intellectual property. As a result, either the future of copyright law will favor large corporations or it will adapt to changing cultural norms and technology developments and allow artists and authors to use works from the public domain (Solum, 2005).

Conclusion

Copyright law ultimately tries to balance the rights of creators to profit from their works and the right of society to benefit from increased production using the public domain. The

expansion of the Internet and development of new technologies have established the need for large corporations, such as Disney, and the Legislature to improve and devise methods to protect against copyright infringement (Solum, 2005). Certainly, the 1998 Copyright Term Extension Act differentiated the copyright debate between proponents and opponents. In the future, proponents of extension could potentially argue that terms should be extended (Bernaski, 2014). It is also possible that they will contend that longer terms will further incentivize progress for individuals and large corporations like Disney (Bernaski, 2014). Opponents of term extension will continue their argument and reason that there is no right for a copyright to survive multiple generations, that extensions limit the public domain, and that extending terms does not incentivize authors (Bernaski, 2014). However, regardless of Congress' possible revisions of the U.S. Copyright Act, opponents of copyright term extension will advocate that citizens must oversee the federal government's actions, because the potential for infinite extensions remains a possibility (Solum, 2005). Ultimately, the progress of the arts should provide the public with the opportunity to enjoy works created by Disney and other entertainment corporations, but also allow authors and artists to create derivative works that contribute to society (Schwartz, 2004).

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