

Supreme Court Upholds Copyright Extension Act
by Lynn Perry

On January 15, 2003, the Supreme Court of the United States, by a 7 to 2 majority, upheld the 1998 Sonny Bono Copyright Term Extension Law, which grants an additional 20 years of copyright protection to copyrighted works. Motion picture and publishing industries applauded the decision in *Eldred v. Ashcroft* and breathed a great sigh of relief. Without this extension, works such as Disney's original copyright for the Mickey Mouse character, certain Ernest Hemingway books, and some early movies, including the 1928 film featuring the first Mickey Mouse character, "Steamboat Willie," as well as "Gone With the Wind" and "The Wizard of Oz," would soon expire.

Under the Copyright Extension Law, generally¹ the terms of copyright are as follows:²

- For works first *published* prior to 1922, the copyright has expired
- For works first *published* from 1923-1963, the copyright lasts for 95 years from publication *provided* the work was registered with the U.S. Copyright Office and renewed after 28 years³
- For works first *published* from 1964-1977, the copyright lasts for 95 years from publication with no registration required⁴
- For works first *created* in 1978 or later, the copyright lasts for the life of the author plus 70 years, or for works "made for hire" (a technical term defined by statute), the copyright lasts for 95 years from first publication or 120 years from creation, whichever first expires, with no registration required.

The first U.S. copyright law was enacted in 1790 and gave protection for just 14 years from the date of publication, though this term was renewable for an additional 14 years if the author was still living after the first term. The terms have been extended numerous times by Congress, most recently to more closely align with a 1993 European Union directive aimed at harmonizing the law of many countries. The Extension Law passed in Congress without a single dissenting vote.

Only about 2% of the copyrighted books, songs and films that were previously due to expire soon have any commercial value, according to a study quoted by dissenting Justice Stephen Breyer. Nevertheless, that 2% earn some \$400 million a year in royalties.

The plaintiff, Eric Eldred, a retired Navy computer engineer who runs a Web site offering free access to thousands of literary works, challenged the Extension Law as limiting free speech rights under Section 8 and the First Amendment of the Constitution, the former of which grants authors exclusive rights over their works "to promote the progress of science and useful arts ... for limited times." Nevertheless, movie studios said they needed longer copyright protection to help defray the expense of restoring classic films for videos and DVDs. Further, heirs of noted authors and composers such as the Ira and George Gershwin Foundation and the estate of Kurt Weill passionately supported the law.

¹ Determining copyright terms can be very complex and often depends on a variety of factors.

² These terms do not apply to unpublished works created prior to 1978, which have different terms.

³ Under certain circumstances, works whose copyright had expired before January 1, 1996 might have been restored.

⁴ Note that registration *is* required to file a lawsuit to enforce the owner's rights in the copyright.

The impact of the Extension Law is to maintain protection for a relatively few but lucrative works for an additional 20 years, and to necessitate often substantial efforts in clearing rights to utilize many mid-20th Century and older works.