H’wood pleading for long copyright
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By Brooks Boliek

WASHINGTON (The Hollywood Reporter) --- Hollywood’s studios and guilds as well as the record industry urged the U.S. Supreme Court (news sites) on Monday to declare constitutional a 1998 law that extended by 20 years the amount of time copyright holders retain exclusive rights to their works.

In February, the Supreme Court shocked the copyright industries when it agreed to hear a challenge to the Sonny Bono Copyright Term Extension Act which extended the amount of time copyright holders retain rights. The copyright industries fought hard to get the term extended, arguing that they were losing money to European nations that have similar laws.

A decision by the court could set limits on Congress’ ability to decide copyright terms and could even roll back the current term. The court is scheduled to hear the case Oct. 9.

In the "friend-of-the-court" brief filed Tuesday with the high court by the MPAA, the studios contended that the law is consistent with the Constitution 200 years of copyright law.

"The Constitution is plain and clear that Congress has the authority to set copyright terms," MPAA president and CEO Jack Valenti said of the organization’s filing. "The opponents of (CTEA) failed to make an impression on Congress during the original debate on this law. Having gotten nowhere with Congress, they have now dressed up their policy arguments as constitutional ones. The CTEA keeps creators and copyright owners in this nation on even footing with their counterparts in other parts of the world and provides incentives for the creation of new works and the continued preservation and restoration of older ones."

A consortium of entertainment guilds, including the Writers Guild of America East and West, the Screen Actors Guild (news - web sites), the Directors Guild of America, the American Federation of Television & Radio Artists (news - web sites) and the American Federation of Musicians, filed a joint "friend-of-the-court" brief Monday in support of the law.

"The extension of copyright term is critically important to the creators of copyrighted work, including professional performers," SAG executive Pam said. "Congress clearly had the authority to adopt the 1998 Copyright Term Extension Act."

The law was challenged by a group of Internet publishers and fair-use activists led by Eric Eldred, who runs the Eldritch Press, an Internet site that publishes for free works that have entered the public domain. Noted constitutional attorney Lawrence Lessig is representing the plaintiffs in the case as Eldred v. Ashcroft.

Eldred challenged the law, contending that Congress went too far when it extended the copyright term in 1998. Congress has extended the copyright term 11 times in the past 40 years, in effect creating an unlimited copyright term, the challengers argued. They also argued that the law is an violation of free speech rights and was illegally applied retroactively to works that already exist.

A clause in Article I of the Constitution grants authors and inventors a "limited time" to exclusively profit from their works. By giving inventors and authors an exclusive monopoly, the framers hoped to spur innovation and ideas. By limiting the term, they hoped to increase the world’s fund of knowledge.

"Congress has now found a way to evade this constitutional restraint," the challengers wrote in their earlier brief to the court. "Rather than granting a fixed (i.e. 'limited') term of copyright, Congress has repeatedly extended the terms of existing copyrights -- 11 times in the past 40 years. These extensions are for works that have already been created. They are not grants that require any new creation in return. These repeated, blanket extensions of existing copyright terms exceed Congress' power under the Copyright Clause, both because they violate the 'limited time' requirement and because they violate this Court's 'originality' requirement."

In a 2-1 vote, the lower court did not buy that argument and ruled that Congress has the power to extend the term as long as that extension was not open-ended. It also rejected the Eldritch’s free speech claims.

Under the law, movies and other works for hire created after 1978 are protected for 95 years from the year of publication or 120 years from the year of creation, whichever occurs first. A work made for hire created before 1978 is protected for a total of 95 years.

For a work created in 1978 or later, to which an individual author holds the copyright, the law extended the term to the life of the author plus 70 years.

The MPAA’s brief details several reasons why the petitioners’ claim should be rejected, including:

- In uniformly extending the copyright term, the CTEA follows a long and consistent practice, dating back to the first federal copyright statute of 1790.
- Nothing in the text or purpose of the Constitution’s Copyright Clause (Article I, section 8) supports the petitioners’ view. The court has always interpreted that clause broadly to give Congress the discretion it needs to build an effective copyright regime.
Effectively structuring copyright laws requires balancing various interests, making predictive judgments about the development of the national and international economies and responding to changing technologies. These are the sorts of judgments to which the court has, and properly should, give deference to legislators.

The Recording Industry Association of America (news, web sites) argued that the court’s action threatens to turn it into a legislative body.

"If adopted, the aggressive standards of review urged by petitioners would require this court to sit as a 'superlegislature,' second-guessing Congress' policy judgment concerning the length, scope, and other characteristics of copyright protection," the RIAA argued. "The judiciary would be embroiled in the balancing of competing policies and values that is properly the business of the political branches. The resulting weakening of copyright protection would pave the way for piracy of artistic works after copyright holders have invested the very substantial time and money necessary to create, promote, disseminate those works to the American public."

Peter Kiefer in Los Angeles contributed to this report.

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