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SUPREME COURT OF THE UNITED STATES

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ELDRED ET AL. v. ASHCROFT, ATTORNEY GENERAL**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

No. 01–618. Argued October 9, 2002—Decided January 15, 2003

The Copyright and Patent Clause, U. S. Const., Art. I, §8, cl. 8, provides as to copyrights: “Congress shall have Power . . . [t]o promote the Progress of Science . . . by securing [to Authors] for limited Times . . . the exclusive Right to their . . . Writings.” In the 1998 Copyright Term Extension Act (CTEA), Congress enlarged the duration of copyrights by 20 years: Under the 1976 Copyright Act (1976 Act), copyright protection generally lasted from a work’s creation until 50 years after the author’s death; under the CTEA, most copyrights now run from creation until 70 years after the author’s death, 17 U. S. C. §302(a). As in the case of prior copyright extensions, principally in 1831, 1909, and 1976, Congress provided for application of the enlarged terms to existing and future copyrights alike.

Petitioners, whose products or services build on copyrighted works that have gone into the public domain, brought this suit seeking a determination that the CTEA fails constitutional review under both the Copyright Clause’s “limited Times” prescription and the First Amendment’s free speech guarantee. Petitioners do not challenge the CTEA’s “life-plus-70-years” time span itself. They maintain that Congress went awry not with respect to newly created works, but in enlarging the term for published works with existing copyrights. The “limited Tim[e]” in effect when a copyright is secured, petitioners urge, becomes the constitutional boundary, a clear line beyond the power of Congress to extend. As to the First Amendment, petitioners contend that the CTEA is a content-neutral regulation of speech that fails inspection under the heightened judicial scrutiny appropriate for such regulations. The District Court entered judgment on the pleadings for the Attorney General (respondent here), holding that the CTEA does not violate the Copyright Clause’s “limited Times” re-

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striction because the CTEA's terms, though longer than the 1976 Act's terms, are still limited, not perpetual, and therefore fit within Congress' discretion. The court also held that there are no First Amendment rights to use the copyrighted works of others. The District of Columbia Circuit affirmed. In that court's unanimous view, *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U. S. 539, foreclosed petitioners' First Amendment challenge to the CTEA. The appeals court reasoned that copyright does not impermissibly restrict free speech, for it grants the author an exclusive right only to the specific form of expression; it does not shield any idea or fact contained in the copyrighted work, and it allows for "fair use" even of the expression itself. A majority of the court also rejected petitioners' Copyright Clause claim. The court ruled that Circuit precedent precluded petitioners' plea for interpretation of the "limited Times" prescription with a view to the Clause's preambular statement of purpose: "To promote the Progress of Science." The court found nothing in the constitutional text or history to suggest that a term of years for a copyright is not a "limited Time" if it may later be extended for another "limited Time." Recounting that the First Congress made the 1790 Copyright Act applicable to existing copyrights arising under state copyright laws, the court held that that construction by contemporaries of the Constitution's formation merited almost conclusive weight under *Burrow-Giles Lithographic Co. v. Sarony*, 111 U. S. 53, 57. As early as *McClurg v. Kingsland*, 1 How. 202, the Court of Appeals recognized, this Court made it plain that the Copyright Clause permits Congress to amplify an existing patent's terms. The court added that this Court has been similarly deferential to Congress' judgment regarding copyright. *E.g.*, *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U. S. 417. Concerning petitioners' assertion that Congress could evade the limitation on its authority by stringing together an unlimited number of "limited Times," the court stated that such legislative misbehavior clearly was not before it. Rather, the court emphasized, the CTEA matched the baseline term for United States copyrights with the European Union term in order to meet contemporary circumstances.

Held: In placing existing and future copyrights in parity in the CTEA, Congress acted within its authority and did not transgress constitutional limitations. Pp. 7–31.

1. The CTEA's extension of existing copyrights does not exceed Congress' power under the Copyright Clause. Pp. 7–28.

(a) Guided by text, history, and precedent, this Court cannot agree with petitioners that extending the duration of existing copyrights is categorically beyond Congress' Copyright Clause authority. Although conceding that the CTEA's baseline term of life plus 70

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years qualifies as a “limited Tim[e]” as applied to future copyrights, petitioners contend that existing copyrights extended to endure for that same term are not “limited.” In petitioners’ view, a time prescription, once set, becomes forever “fixed” or “inalterable.” The word “limited,” however, does not convey a meaning so constricted. At the time of the Framing, “limited” meant what it means today: confined within certain bounds, restrained, or circumscribed. Thus understood, a time span appropriately “limited” as applied to future copyrights does not automatically cease to be “limited” when applied to existing copyrights. To comprehend the scope of Congress’ Copyright Clause power, “a page of history is worth a volume of logic.” *New York Trust Co. v. Eisner*, 256 U. S. 345, 349. History reveals an unbroken congressional practice of granting to authors of works with existing copyrights the benefit of term extensions so that all under copyright protection will be governed evenhandedly under the same regime. Moreover, because the Clause empowering Congress to confer copyrights also authorizes patents, the Court’s inquiry is significantly informed by the fact that early Congresses extended the duration of numerous individual patents as well as copyrights. Lower courts saw no “limited Times” impediment to such extensions. Further, although this Court never before has had occasion to decide whether extending existing copyrights complies with the “limited Times” prescription, the Court has found no constitutional barrier to the legislative expansion of existing patents. See, e.g., *McClurg*, 1 How., at 206. Congress’ consistent historical practice reflects a judgment that an author who sold his work a week before should not be placed in a worse situation than the author who sold his work the day after enactment of a copyright extension. The CTEA follows this historical practice by keeping the 1976 Act’s duration provisions largely in place and simply adding 20 years to each of them.

The CTEA is a rational exercise of the legislative authority conferred by the Copyright Clause. On this point, the Court defers substantially to Congress. *Sony*, 464 U. S., at 429. The CTEA reflects judgments of a kind Congress typically makes, judgments the Court cannot dismiss as outside the Legislature’s domain. A key factor in the CTEA’s passage was a 1993 European Union (EU) directive instructing EU members to establish a baseline 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. By extending the baseline United States copyright term, Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts. The CTEA may also provide greater incentive for American and other authors to create and disseminate their work in the United States.

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Additionally, Congress passed the CTEA in light of demographic, economic, and technological changes, and rationally credited projections that longer terms would encourage copyright holders to invest in the restoration and public distribution of their works. Pp. 7–17.

(b) Petitioners’ Copyright Clause arguments, which rely on several novel readings of the Clause, are unpersuasive. Pp. 17–28.

(1) Nothing before this Court warrants construction of the CTEA’s 20-year term extension as a congressional attempt to evade or override the “limited Times” constraint. Critically, petitioners fail to show how the CTEA crosses a constitutionally significant threshold with respect to “limited Times” that the 1831, 1909, and 1976 Acts did not. Those earlier Acts did not create perpetual copyrights, and neither does the CTEA. Pp. 18–19.

(2) Petitioners’ dominant series of arguments, premised on the proposition that Congress may not extend an existing copyright absent new consideration from the author, are unavailing. The first such contention, that the CTEA’s extension of existing copyrights overlooks the requirement of “originality,” incorrectly relies on *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U. S. 340, 345, 359. That case did not touch on the duration of copyright protection. Rather, it addressed only the core question of copyrightability. Explaining the originality requirement, *Feist* trained on the Copyright Clause words “Authors” and “Writings,” *id.*, at 346–347, and did not construe the “limited Times” prescription, as to which the originality requirement has no bearing. Also unavailing is petitioners’ second argument, that the CTEA’s extension of existing copyrights fails to “promote the Progress of Science” because it does not stimulate the creation of new works, but merely adds value to works already created. The justifications that motivated Congress to enact the CTEA, set forth *supra*, provide a rational basis for concluding that the CTEA “promote[s] the Progress of Science.” Moreover, Congress’ unbroken practice since the founding generation of applying new definitions or adjustments of the copyright term to both future works and existing works overwhelms petitioners’ argument. Also rejected is petitioners’ third contention, that the CTEA’s extension of existing copyrights without demanding additional consideration ignores copyright’s *quid pro quo*, whereby Congress grants the author of an original work an “exclusive Right” for a “limited Tim[e]” in exchange for a dedication to the public thereafter. Given Congress’ consistent placement of existing copyright holders in parity with future holders, the author of a work created in the last 170 years would reasonably comprehend, as the protection offered her, a copyright not only for the time in place when protection is gained, but also for any renewal or extension legislated during that time. *Sears, Roebuck & Co. v. Stiffel Co.*, 376

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U. S. 25, 229, and *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U. S. 141, 146, both of which involved the federal patent regime, are not to the contrary, since neither concerned the extension of a patent's duration nor suggested that such an extension might be constitutionally infirm. Furthermore, given crucial distinctions between patents and copyrights, one cannot extract from language in the Court's patent decisions—language not trained on a grant's duration—genuine support for petitioners' *quid pro quo* argument. Patents and copyrights do not entail the same exchange, since immediate disclosure is not the objective of, but is *exacted from*, the patentee, whereas disclosure is the desired objective of the author seeking copyright protection. Moreover, while copyright gives the holder no monopoly on any knowledge, fact, or idea, the grant of a patent prevents full use by others of the inventor's knowledge. Pp. 20–27.

(3) The “congruence and proportionality” standard of review described in cases evaluating exercises of Congress' power under §5 of the Fourteenth Amendment has never been applied outside the §5 context. It does not hold sway for judicial review of legislation enacted, as copyright laws are, pursuant to Article I authorization. Section 5 authorizes Congress to “enforce” commands contained in and incorporated into the Fourteenth Amendment. The Copyright Clause, in contrast, empowers Congress to *define* the scope of the substantive right. See *Sony*, 464 U. S., at 429. Judicial deference to such congressional definition is “but a corollary to the grant to Congress of any Article I power.” *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 6. It would be no more appropriate for this Court to subject the CTEA to “congruence and proportionality” review than it would be to hold the Act unconstitutional *per se*. Pp. 27–28.

2. The CTEA's extension of existing and future copyrights does not violate the First Amendment. That Amendment and the Copyright Clause were adopted close in time. This proximity indicates the Framers' view that copyright's limited monopolies are compatible with free speech principles. In addition, copyright law contains built-in First Amendment accommodations. See *Harper & Row*, 471 U. S., at 560. First, 17 U. S. C. §102(b), which makes only expression, not ideas, eligible for copyright protection, strikes a definitional balance between the First Amendment and copyright law by permitting free communication of facts while still protecting an author's expression. *Harper & Row*, 471 U. S., at 556. Second, the “fair use” defense codified at §107 allows the public to use not only facts and ideas contained in a copyrighted work, but also expression itself for limited purposes. “Fair use” thereby affords considerable latitude for scholarship and comment, *id.*, at 560, and even for parody, see *Campbell v. Acuff-Rose Music, Inc.*, 510 U. S. 569. The CTEA itself supplements

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these traditional First Amendment safeguards in two prescriptions: The first allows libraries and similar institutions to reproduce and distribute copies of certain published works for scholarly purposes during the last 20 years of any copyright term, if the work is not already being exploited commercially and further copies are unavailable at a reasonable price, §108(h); the second exempts small businesses from having to pay performance royalties on music played from licensed radio, television, and similar facilities, §110(5)(B). Finally, petitioners' reliance on *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 641, is misplaced. *Turner Broadcasting* invalidated a statute requiring cable television operators to carry and transmit broadcast stations through their proprietary cable systems. The CTEA, in contrast, does not oblige anyone to reproduce another's speech against the carrier's will. Instead, it protects authors' original expression from unrestricted exploitation. The First Amendment securely protects the freedom to make—or decline to make—one's own speech; it bears less heavily when speakers assert the right to make other people's speeches. When, as in this case, Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary. See, *e.g.*, *Harper & Row*, 471 U. S., at 560. Pp. 28–31.

239 F. 3d 372, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., and BREYER, J., filed dissenting opinions.