



**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY
AND THE INTERNET**

**HEARING ON MORAL RIGHTS, TERMINATION RIGHTS, RESALE ROYALTY,
AND COPYRIGHT TERM**

STATEMENT OF THE LIBRARY COPYRIGHT ALLIANCE

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries—that collectively represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel. In this statement, LCA addresses the negative effects that the present lengthy copyright term has on the public domain and the public interest.

The current copyright term in the United States is already unacceptably long, resulting in significant harm to the public domain and limiting access to these works. There is no policy justification or economic evidence to support extension of the current copyright term and LCA opposes any such efforts.

The Constitutional rationale for the intellectual property system is “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.”¹ The Supreme Court has confirmed that this rationale is ultimately intended to serve the public:

Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts. The immediate effect of our copyright law is to secure a fair return for an “author’s” creative labor. But the ultimate aim is, by this incentive, to stimulate creativity for the general public good.²

The first copyright term in the United States was set by the Copyright Act of 1790, modeled after the Statute of Anne (1710), and granted a period of protection of fourteen years for American authors, with a renewable period of an additional fourteen years. This term was meant to provide an incentive to creators by providing a limited time monopoly, while also aiming to create a balance, allowing the public to rely on these works once this limited period ended.

¹ U.S. Const., Art. 1, Sec. 8, Cl. 8.

² Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975).

Since this first copyright act was enacted, several revisions to the term of protection were made, each lengthening the “limited time” granted to authors. In 1831, the term was revised to set the initial term at twenty-eight years, with a renewable term of fourteen years. The term was again revised in 1909, lengthening the renewable term to twenty-eight years. The Copyright Act of 1976 provided for a term of protection of the life of the author plus an additional fifty years, or seventy years for works for hire.

The term of protection in the United States was again extended through the Copyright Term Extension Act of 1998 to the current period of the life of the author plus seventy years or ninety-five years for works for hire. The term of copyright in the United States thus now significantly exceeds the international standard established under the Berne Convention of life plus fifty years.

Notably, as legal historian Edward Walterscheid has observed, while patents and copyrights were included in the same clause of the Constitution and originally had the same or similar durations, the patent term has increased by just 43 percent while the copyright term has increased by almost 580 percent.³

The continued extensions of copyright term hinder the stated Constitutional goal of the intellectual property system of serving the good by shrinking the public domain: works that are not under copyright protection. One study demonstrated that lengthy copyright term has resulted in the greater in-print availability of titles from the 1890s and early 1900s than from works published in the mid-twentieth century because the older works are known to be in the public domain and can be reprinted without determining whether a rights holder exists and negotiating a license for the printing.⁴

The public domain is a vital component of the cultural world. It not only allows the public to access books and texts, but also serves as a storehouse of raw materials from which derivative works and new ideas are built. Longer copyright terms lengthen the amount of time a work is protected thereby escalating the costs of access to knowledge by requiring licensing for a greater period of time, increasing the resources that must be devoted to searching for authors, and contributing to potential loss of materials.

It also should be noted that the lengthy copyright term extending far beyond the life of the author has exacerbated the orphan works problem: the rights to a particular work may pass on to the author’s heirs, his heirs’ heirs, or may be assigned to a third party and it can be extremely difficult to determine who holds the rights. Given the primary objective of the intellectual property system, the purpose of providing the limited term monopoly of copyright protection certainly was not intended to be a financial reward for the heirs of the creators.

³ Edward Walterscheid, *Defining the Patent and Copyright Term: Term Limits and the Intellectual Property Clause*, 7 J. INTELL. PROP. L. 315, 389 (2000). Walterscheid further observes, “Congress must justify why a 20-year term can provide sufficient incentive to inventors, but not to writers and artists.”)

⁴ See Timothy B. Lee, *Why Does Amazon have more books from the 1880s than the 1980s? Blame Copyright?* WASH. POST (Jul. 31, 2013), available at <http://www.washingtonpost.com/blogs/the-switch/wp/2013/07/31/why-does-amazon-have-more-books-from-the-1880s-than-the-1980s-blame-copyright/>.

Register of Copyrights Maria Pallante concurs. In a speech advocating the reintroduction of copyright formalities for the last twenty years of protection, Ms. Pallante stated:

The benefits of a lengthy term are meaningless if the current owner of the work cannot be identified or cannot be located. Often times, this is complicated by the fact that the current owner is not the author or even the author's children or grandchildren. As the Copyright Office recognized in one of its key revision studies of the 1950s, it seems questionable whether copyright term should be extended to benefit remote heirs or assignees, "long after the purpose of the protection has been achieved."⁵

Efforts to amend the copyright term should be grounded in economic evidence. The independent Hargreaves report commissioned by the government of the United Kingdom noted that lengthier copyright terms do not incentivize further creation:

Economic evidence is clear that the likely deadweight loss to the economy exceeds any additional incentivising effect which might result from the extension of copyright term beyond its present levels. This is doubly clear for retrospective extension to copyright term given the impossibility of incentivising the creation of already existing works, or work from artists already found dead. Despite this, there are frequent proposals to increase term . . . The UK Government assessment found it to be economically detrimental. An international study found term extensions to have no impact on output.⁶

Similarly, in her 2011 article published in the *Review of Economic Research on Copyright Issues*, Ruth Towse noted that:

Almost all economists are agreed that the copyright term is now inefficiently long with the result that costs of compliance most likely exceed any financial benefits from extensions (and it is worth remembering that the term of protection for a work in the 1709 Statute of Anne was 14 years with the possibility of renewal as compared to 70 years plus life for authors in most developed countries in the present, which means a work could be protected for well over 150 years). Moreover, difficulties of tracing copyright owners and of so-called "orphan" works has prevented access to copyrighted material and inhibited both future creation and access to culturally valuable material by the public.⁷

⁵ Maria Pallante, Register of Copyrights and Director, U.S. Copyright Office, *David Nelson Memorial Keynote Address: The Curious Case of Copyright Formalities* (Apr. 18, 2013), <http://www.law.berkeley.edu/files/Pallante-BerkeleyKeynote.pdf> (quoting U.S. COPYRIGHT OFFICE LAW REVISION, STUDY NO. 30, DURATION OF COPYRIGHT, at 80 (1961), available at <http://www.copyright.gov/history/studies/study30.pdf>).

⁶ Ian Hargreaves, DIGITAL OPPORTUNITY: A REVIEW OF INTELLECTUAL PROPERTY GROWTH 19 (2011), <http://www.ipo.gov.uk/ipreview-finalreport.pdf> (citations omitted).

⁷ Ruth Towse, *What We Know, What we Don't and What Policy-makers Would Like Us to Know About the Economics of Copyright*, 8 REVIEW OF ECONOMIC RESEARCH ON COPYRIGHT ISSUES 101, 105 (2011). Notably, this journal focusing on economic research on copyright did not exist at the time of the Copyright Term Extension Act. Since the last copyright term extension, there has been heightened interest in providing an

Longer copyright terms diminish the public domain, harm access to knowledge, worsen the orphan works problem, and are not grounded in economic evidence. Accordingly, LCA respectfully submits that Congress should not lengthen the present term any further. Indeed, we urge the Subcommittee and Congress to explore ways to shorten the present term and/or mitigate its harms by, for example, adopting Ms. Pallante's proposal to reintroduce formalities "by reverting works to the public domain after a period of life plus fifty years unless heirs or successors register their interests with the Copyright Office."⁸

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evidence basis for copyright policy. The Hargreaves Report, for example, recommended "that in future, policy on Intellectual Property issues is constructed on the basis of evidence . . .".

⁸ Statement of Maria A. Pallante, Register of Copyrights, *The Register's Call for Updates to U.S. Copyright Law*, United States Copyright Office before the Subcommittee on Courts, Intellectual Property and the Internet, Committee on the Judiciary, 113 Cong., 1st Sess., (Mar. 20, 2013), available at <http://www.copyright.gov/regstat/2013/regstat03202013.html>. By requiring registration during the last twenty years of protection, numerous works would likely enter the public domain. For those works that are renewed for an additional twenty years, the rightholder would be more easily identified and found.