

ELDRED v. ASHCROFT

Supreme Court of the United States, 2003
537 U.S. 186

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority the Constitution assigns to Congress to prescribe the duration of copyrights. The Copyright and Patent Clause of the Constitution, Art. I, § 8, cl. 8, provides as to copyrights: "Congress shall have Power . . . to promote the Progress of Science . . . by securing [to Authors] for limited Times . . . the exclusive Right to their . . . Writings." In 1998, in the measure here under inspection, Congress enlarged the duration of copyrights by 20 years. Copyright Term Extension Act (CTEA), Pub. L. 105-298, § 102(b) and (d), 112 Stat. 2827-2828 (amending 17 U.S.C. §§ 302, 304). As in the case of prior extensions, principally in 1831, 1909, and 1976, Congress provided for application of the enlarged terms to existing and future copyrights alike.

Petitioners are individuals and businesses whose products or services build on copyrighted works that have gone into the public domain. They seek 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. Under the 1976 Copyright Act, copyright protection generally lasted from the work's creation until 50 years after the author's death. Pub. L. 94-553, § 302(a), 90 Stat. 2572 (1976 Act). Under the CTEA, most copyrights now run from creation until 70 years after the author's death. 17 U.S.C. § 302(a). Petitioners do not challenge the "life-plus-70-years" time span itself. "Whether 50 years is enough, or 70 years too much," they acknowledge, "is not a judgment meet for this Court." Brief for Petitioners 14.¹ Congress went awry, petitioners maintain, not with respect to newly created works, but in enlarging the term for published works with existing copyrights. The "limited Time" in effect when a copyright is secured, petitioners urge, becomes the constitutional boundary, a clear line beyond the power of Congress to extend. See *ibid.* 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.

In accord with the District Court and the Court of Appeals, we reject petitioners' challenges to the CTEA. In that 1998 legislation, as in all previous copyright term extensions, Congress placed existing and future copyrights in

¹ JUSTICE BREYER's dissent is not similarly restrained. He makes no effort meaningfully to distinguish existing copyrights from future grants. See, *e.g.*, *post*, at 1, 13-19, 23-25. Under his reasoning, the CTEA's 20-year extension is globally unconstitutional.

parity. In prescribing that alignment, we hold, Congress acted within its authority and did not transgress constitutional limitations.

I

A

We evaluate petitioners' challenge to the constitutionality of the CTEA against the backdrop of Congress' previous exercises of its authority under the Copyright Clause. The Nation's first copyright statute, enacted in 1790, provided a federal copyright term of 14 years from the date of publication, renewable for an additional 14 years if the author survived the first term. Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124 (1790 Act). The 1790 Act's renewable 14-year term applied to existing works (*i.e.*, works already published and works created but not yet published) and future works alike. *Ibid.* Congress expanded the federal copyright term to 42 years in 1831 (28 years from publication, renewable for an additional 14 years), and to 56 years in 1909 (28 years from publication, renewable for an additional 28 years). Act of Feb. 3, 1831, ch. 16, §§ 1, 16, 4 Stat. 436, 439 (1831 Act); Act of Mar. 4, 1909, ch. 320, §§ 23-24, 35 Stat. 1080-1081 (1909 Act). Both times, Congress applied the new copyright term to existing and future works, 1831 Act §§ 1, 16; 1909 Act §§ 23-24; to qualify for the 1831 extension, an existing work had to be in its initial copyright term at the time the Act became effective, 1831 Act §§ 1, 16.

In 1976, Congress altered the method for computing federal copyright terms. 1976 Act §§ 302-304. For works created by identified natural persons, the 1976 Act provided that federal copyright protection would run from the work's creation, not--as in the 1790, 1831, and 1909 Acts--its publication; protection would last until 50 years after the author's death. § 302(a). In these respects, the 1976 Act aligned United States copyright terms with the then-dominant international standard adopted under the Berne Convention for the Protection of Literary and Artistic Works. See H. R. Rep. No. 94-1476, p. 135 (1976). For anonymous works, pseudonymous works, and works made for hire, the 1976 Act provided a term of 75 years from publication or 100 years from creation, whichever expired first. § 302(c).

These new copyright terms, the 1976 Act instructed, governed all works not published by its effective date of January 1, 1978, regardless of when the works were created. §§ 302-303. For published works with existing copyrights as of that date, the 1976 Act granted a copyright term of 75 years from the date of publication, § 304(a) and (b), a 19-year increase over the 56-year term applicable under the 1909 Act.

The measure at issue here, the CTEA, installed the fourth major duration extension of federal copyrights.² Retaining the general structure of the 1976 Act, the CTEA enlarges the terms of all existing and future copyrights by 20 years. For works created by identified natural persons, the term now lasts from creation until 70 years after the author's death. 17 U.S.C. § 302(a). This standard harmonizes the baseline United States copyright term with the term adopted by the European Union in 1993. See Council Directive 93/98/EEC of 29 October 1993 Harmonizing the Term of Protection of Copyright and Certain Related Rights, 1993 Official J. Eur. Cmty. 290 (EU Council Directive 93/98). For anonymous works, pseudonymous works, and works made for hire, the term is 95 years from publication or 120 years from creation, whichever expires first. 17 U.S.C. § 302(c).

Paralleling the 1976 Act, the CTEA applies these new terms to all works not published by January 1, 1978. §§ 302(a), 303(a). For works published before 1978 with existing copyrights as of the CTEA's effective date, the CTEA extends the term to 95 years from publication. § 304(a) and (b). Thus, in common with the 1831, 1909, and 1976 Acts, the CTEA's new terms apply to both future and existing copyrights.³

B

Petitioners' suit challenges the CTEA's constitutionality under both the Copyright Clause and the First Amendment. On cross-motions for judgment on the pleadings, the District Court entered judgment for the Attorney General (respondent here). *Eldred v. Reno*, 74 F. Supp. 2d 1 (DC 1999). The court held that the CTEA does not violate the "limited Times" restriction of the Copyright Clause because the CTEA's terms, though longer than the 1976 Act's terms, are still limited, not perpetual, and therefore fit within Congress' discretion. *Id.*, at 3. The

² Asserting that the last several decades have seen a proliferation of copyright legislation in departure from Congress' traditional pace of legislative amendment in this area, petitioners cite nine statutes passed between 1962 and 1974, each of which incrementally extended existing copyrights for brief periods. See Pub. L. 87-668, 76 Stat. 555; Pub. L. 89-142, 79 Stat. 581; Pub. L. 90-141, 81 Stat. 464; Pub. L. 90-416, 82 Stat. 397; Pub. L. 91-147, 83 Stat. 360; Pub. L. 91-555, 84 Stat. 1441; Pub. L. 92-170, 85 Stat. 490; Pub. L. 92-566, 86 Stat. 1181; Pub. L. 93-573, Title I, 88 Stat. 1873. As respondent (Attorney General Ashcroft) points out, however, these statutes were all temporary placeholders subsumed into the systemic changes effected by the 1976 Act. Brief for Respondent 9.

³ Petitioners argue that the 1790 Act must be distinguished from the later Acts on the ground that it covered existing *works* but did not extend existing *copyrights*. Reply Brief 3-7. The parties disagree on the question whether the 1790 Act's copyright term should be regarded in part as compensation for the loss of any then existing state- or common-law copyright protections. See Brief for Petitioners 28-30; Brief for Respondent 17, n. 9; Reply Brief 3-7. Without resolving that dispute, we underscore that the First Congress clearly did confer copyright protection on works that had already been created.

court also held that "there are no First Amendment rights to use the copyrighted works of others." *Ibid.*

The Court of Appeals for the District of Columbia Circuit affirmed. *Eldred v. Reno*, 239 F.3d 372, 345 U.S. App. D.C. 89, (2001). In that court's unanimous view, *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 85 L. Ed. 2d 588, 105 S. Ct. 2218 (1985), foreclosed petitioners' First Amendment challenge to the CTEA. 239 F.3d at 375. Copyright, the court reasoned, 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. *Id.*, 239 F.3d at 375-376.

A majority of the Court of Appeals also upheld the CTEA against petitioners' contention that the measure exceeds Congress' power under the Copyright Clause. Specifically, the court rejected petitioners' plea for interpretation of the "limited Times" prescription not discretely but with a view to the "preambular statement of purpose" contained in the Copyright Clause: "To promote the Progress of Science." *Id.*, 239 F.3d at 377-378. Circuit precedent, *Schnapper v. Foley*, 215 U.S. App. D.C. 59, 667 F.2d 102 (CADC 1981), the court determined, precluded that plea. In this regard, the court took into account petitioners' acknowledgment that the preamble itself places no substantive limit on Congress' legislative power. 239 F.3d at 378.

The appeals court found nothing in the constitutional text or its 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.'" *Id.*, 239 F.3d at 379. The court recounted that "the First Congress made the Copyright Act of 1790 applicable to subsisting copyrights arising under the copyright laws of the several states." *Ibid.* That construction of Congress' authority under the Copyright Clause "by [those] contemporary with [the Constitution's] formation," the court said, merited "very great" and in this case "almost conclusive" weight. *Ibid.* (quoting *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 57, 28 L. Ed. 349, 4 S. Ct. 279, 1884 Dec. Comm'r Pat. 186 (1884)). As early as *McClurg v. Kingsland*, 1 How. 202, 42 U.S. 202, 11 L. Ed. 102 (1843), the Court of Appeals added, this Court had made it "plain" that the same Clause permits Congress to "amplify the terms of an existing patent." 239 F.3d at 380. The appeals court recognized that this Court has been similarly deferential to the judgment of Congress in the realm of copyright. *Ibid.* (citing *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 78 L. Ed. 2d 574, 104 S. Ct. 774 (1984); *Stewart v. Abend*, 495 U.S. 207, 109 L. Ed. 2d 184, 110 S. Ct. 1750 (1990)).

Concerning petitioners' assertion that Congress might evade the limitation on its authority by stringing together "an unlimited number of 'limited Times,'" the Court of Appeals stated that such legislative misbehavior "clearly is not the situation before us." 239 F.3d at 379. Rather, the court noted, the CTEA "matches"

the baseline term for "United States copyrights [with] the terms of copyrights granted by the European Union." *Ibid.* "In an era of multinational publishers and instantaneous electronic transmission," the court said, "harmonization in this regard has obvious practical benefits" and is "a 'necessary and proper' measure to meet contemporary circumstances rather than a step on the way to making copyrights perpetual." *Ibid.*

Judge Sentelle dissented in part. He concluded that Congress lacks power under the Copyright Clause to expand the copyright terms of existing works. *Id.*, 239 F.3d at 380-384. The Court of Appeals subsequently denied rehearing and rehearing en banc. *Eldred v. Ashcroft*, 347 U.S. App. D.C. 121, 255 F.3d 849 (2001).

We granted certiorari to address two questions: whether the CTEA's extension of existing copyrights exceeds Congress' power under the Copyright Clause; and whether the CTEA's extension of existing and future copyrights violates the First Amendment. *Eldred v. Ashcroft*, 534 U.S. 1126, 151 L. Ed. 2d 966, 122 S. Ct. 1062 (2002).and [534 U.S.] 1160, 152 L. Ed. 2d 115, 112 S. Ct. 1170 (2002).We now answer those two questions in the negative and affirm.

II

A

We address first the determination of the courts below that Congress has authority under the Copyright Clause to extend the terms of existing copyrights. Text, history, and precedent, we conclude, confirm that the Copyright Clause empowers Congress to prescribe "limited Times" for copyright protection and to secure the same level and duration of protection for all copyright holders, present and future.

The CTEA's baseline term of life plus 70 years, petitioners concede, qualifies as a "limited Time" as applied to future copyrights.⁴ Petitioners contend, however, that existing copyrights extended to endure for that same term are not "limited." Petitioners' argument essentially reads into the text of the Copyright Clause the command that 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, that word meant what it means today: "confined within certain bounds," "restrained," or "circumscribed." S. Johnson, *A Dictionary of the English Language* (7th ed. 1785); see T. Sheridan, *A Complete*

⁴ We note again that JUSTICE BREYER makes no such concession. See *supra*, at 2, n. 1. He does not train his fire, as petitioners do, on Congress' choice to place existing and future copyrights in parity. Moving beyond the bounds of the parties' presentations, and with abundant policy arguments but precious little support from precedent, he would condemn Congress' entire product as irrational.

Dictionary of the English Language (6th ed. 1796) ("confined within certain bounds"); Webster's Third New International Dictionary 1312 (1976) ("confined within limits"; "restricted in extent, number, or duration"). Thus understood, a time span appropriately "limited" as applied to future copyrights does not automatically cease to be "limited" when applied to existing copyrights. And as we observe, *infra*, at 18, there is no cause to suspect that a purpose to evade the "limited Times" prescription prompted Congress to adopt the CTEA.

To comprehend the scope of Congress' power under the Copyright Clause, "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349, 65 L. Ed. 963, 41 S. Ct. 506 (1921) (Holmes, J.). 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. As earlier recounted, see *supra*, at 3, the First Congress accorded the protections of the Nation's first federal copyright statute to existing and future works alike. 1790 Act § 1.⁵ Since then,

⁵ This approach comported with English practice at the time. The Statute of Anne, 1710, 8 Ann. c. 19, provided copyright protection to books not yet composed or published, books already composed but not yet published, and books already composed and published. See *ibid.* ("The author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer."); *ibid.* ("The author of any book or books already printed . . . or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer.").

JUSTICE STEVENS stresses the rejection of a proposed amendment to the Statute of Anne that would have extended the term of existing copyrights, and reports that opponents of the extension feared it would perpetuate the monopoly position enjoyed by English booksellers. *Post*, at 12, and n. 9. But the English Parliament confronted a situation that never existed in the United States. Through the late 17th century, a government-sanctioned printing monopoly was held by the Stationers' Company, "the ancient London guild of printers and booksellers." M. Rose, *Authors and Owners: The Invention of Copyright* 4 (1993); see L. Patterson, *Copyright in Historical Perspective* ch. 3 (1968). Although that legal monopoly ended in 1695, concerns about monopolistic practices remained, and the 18th century English Parliament was resistant to any enhancement of booksellers' and publishers' entrenched position. See Rose, *supra*, at 52-56. In this country, in contrast, competition among publishers, printers, and booksellers was "intense" at the time of the founding, and "there was not even a rough analog to the Stationers' Company on the horizon." Nachbar, *Constructing Copyright's Mythology*, 6 *Green Bag* 2d 37, 45 (2002). The Framers guarded against the future accumulation of monopoly power in booksellers and publishers by authorizing Congress to vest copyrights only in "Authors." JUSTICE STEVENS does not even attempt to explain how Parliament's response to

Congress has regularly applied duration extensions to both existing and future copyrights. 1831 Act §§ 1, 16; 1909 Act §§ 23-24; 1976 Act §§ 302-303; 17 U.S.C. §§ 302-304.⁶

Because the Clause empowering Congress to confer copyrights also authorizes patents, congressional practice with respect to patents informs our inquiry. We count it significant that early Congresses extended the duration of numerous individual patents as well as copyrights. See, *e.g.*, Act of Jan. 7, 1808, ch. 6, 6 Stat. 70 (patent); Act of Mar. 3, 1809, ch. 35, 6 Stat. 80 (patent); Act of Feb. 7, 1815, ch. 36, 6 Stat. 147 (patent); Act of May 24, 1828, ch. 145, 6 Stat. 389 (copyright); Act of Feb. 11, 1830, ch. 13, 6 Stat. 403 (copyright); see generally Ochoa, Patent and Copyright Term Extension and the Constitution: A Historical Perspective, 49 *J. Copyright Society* 19 (2001). The courts saw no "limited Times" impediment to such extensions; renewed or extended terms were upheld in the early days, for example, by Chief Justice Marshall and Justice Story sitting as circuit justices. See *Evans v. Jordan*, 8 F. Cas. 872, 874, F. Cas. No. 4564, F. Cas. No. 4564 (No. 4,564) (CC Va. 1813) (Marshall, J.) ("The construction of the constitution which admits the renewal of a patent is not controverted. A renewed patent . . . confers the same rights, with an original."), *aff'd*, *Evans v. Jordan & Morehead*, 13 U.S. 199, 9 Cranch 199, 3 L. Ed. 704 (1815); *Blanchard v. Sprague*, 3 F. Cas. 648, 650, F. Cas. No. 1518, F. Cas. No. 1518 (No. 1,518) (CC Mass. 1839) (Story, J.) ("I never have entertained any doubt of the constitutional authority of congress" to enact a 14-year patent extension that "operates retrospectively"); see also *Evans v. Robinson*, 8 F. Cas. 886, 888, F. Cas. No. 4571, F. Cas. No. 4571 (No. 4,571) (CC Md. 1813) (Congresses "have the exclusive right . . . to limit the times for which a patent right shall be granted, and are not restrained from renewing a patent or prolonging" it.).⁷

England's experience with a publishing monopoly may be construed to impose a constitutional limitation on Congress' power to extend copyrights granted to "Authors."

⁶ Moreover, the precise duration of a federal copyright has never been fixed at the time of the initial grant. The 1790 Act provided a federal copyright term of 14 years from the work's publication, renewable for an additional 14 years *if* the author survived and applied for an additional term. § 1. Congress retained that approach in subsequent statutes. See *Stewart v. Abend*, 495 U.S. 207, 217, 109 L. Ed. 2d 184, 110 S. Ct. 1750 (1990) ("Since the earliest copyright statute in this country, the copyright term of ownership has been split between an original term and a renewal term."). Similarly, under the method for measuring copyright terms established by the 1976 Act and retained by the CTEA, the baseline copyright term is measured in part by the life of the author, rendering its duration indeterminate at the time of the grant. See 1976 Act § 302(a); 17 U.S.C. § 302(a).

⁷ JUSTICE STEVENS would sweep away these decisions, asserting that *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966), "flatly contradicts" them. *Post*, at 17. Nothing but wishful thinking underpins that assertion. The controversy in *Graham* involved no patent extension. *Graham* addressed an invention's

Further, although prior to the instant case this Court did not have occasion to decide whether extending the duration of existing copyrights complies with the "limited Times" prescription, the Court has found no constitutional barrier to the legislative expansion of existing patents.⁸ *McClurg v. Kingsland*, 42 U.S. 202, 1 How. 202, 11 L. Ed. 102, (1843), is the pathsetting precedent. The patentee in that case was unprotected under the law in force when the patent issued because he had allowed his employer briefly to practice the invention before he obtained the patent. Only upon enactment, two years later, of an exemption for such allowances did the patent become valid, retroactive to the time it issued. *McClurg* upheld retroactive application of the new law. The Court explained that the legal regime governing a particular patent "depends on the law as it stood at the emanation of the patent, together with such changes as have been since made; for though they may be retrospective in their operation, that is not a sound objection to their validity." *Id.*, 1 How. at 206.⁹ Neither is it a sound objection to the validity of a

very eligibility for patent protection, and spent no words on Congress' power to enlarge a patent's duration.

⁸ JUSTICE STEVENS recites words from *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 11 L. Ed. 2d 661, 84 S. Ct. 784, 1964 Dec. Comm'r Pat. 425 (1964), supporting the uncontroversial proposition that a State may not "extend the life of a patent beyond its expiration date," *id.*, at 231, then boldly asserts that for the same reasons Congress may not do so either. See *post*, at 1, 5. But *Sears* placed no reins on Congress' authority to extend a patent's life. The full sentence in *Sears*, from which JUSTICE STEVENS extracts words, reads: "Obviously a State could not, consistently with the Supremacy Clause of the Constitution, extend the life of a patent beyond its expiration date or give a patent on an article which lacked the level of invention required for federal patents." 376 U.S., at 231. The point insistently made in *Sears* is no more and no less than this: *States* may not enact measures inconsistent with the federal patent laws. *Ibid.* ("[A] State cannot encroach upon the federal patent laws directly . . . [and] cannot . . . give protection of a kind that clashes with the objectives of the federal patent laws."). A decision thus rooted in the Supremacy Clause cannot be turned around to shrink congressional choices.

Also unavailing is JUSTICE STEVENS' appeal to language found in a private letter written by James Madison. *Post*, at 9, n. 6; see also dissenting opinion of BREYER, J., *post*, at 5, 20. Respondent points to a better "demonstration," *post*, at 5, n. 3 (STEVENS, J., dissenting), of Madison's and other Framers' understanding of the scope of Congress' power to extend patents: "Then-President Thomas Jefferson--the first administrator of the patent system, and perhaps the Founder with the narrowest view of the copyright and patent powers--signed the 1808 and 1809 patent term extensions into law; . . . James Madison, who drafted the Constitution's 'limited Times' language, issued the extended patents under those laws as Secretary of State; and . . . Madison as President signed another patent term extension in 1815." Brief for Respondent 15.

⁹ JUSTICE STEVENS reads *McClurg* to convey that "Congress cannot change the bargain between the public and the patentee in a way that disadvantages the patentee." *Post*, at 19. But *McClurg* concerned no such change. To the contrary, as JUSTICE STEVENS acknowledges, *McClurg* held that use of an invention by the patentee's employer did not

copyright term extension, enacted pursuant to the same constitutional grant of authority, that the enlarged term covers existing copyrights.

Congress' consistent historical practice of applying newly enacted copyright terms to future and existing copyrights reflects a judgment stated concisely by Representative Huntington at the time of the 1831 Act: "Justice, policy, and equity alike forbid" that an "author who had sold his [work] a week ago, be placed in a worse situation than the author who should sell his work the day after the passing of [the] act." 7 Cong. Deb. 424 (1831); accord Symposium, *The Constitutionality of Copyright Term Extension*, 18 *Cardozo Arts & Ent. L. J.* 651, 694 (2000) (Prof. Miller) ("Since 1790, it has indeed been Congress's policy that the author of yesterday's work should not get a lesser reward than the author of tomorrow's work just because Congress passed a statute lengthening the term today."). The CTEA follows this historical practice by keeping the duration provisions of the 1976 Act largely in place and simply adding 20 years to each of them. Guided by text, history, and precedent, we cannot agree with petitioners' submission that extending the duration of existing copyrights is categorically beyond Congress' authority under the Copyright Clause.

Satisfied that the CTEA complies with the "limited Times" prescription, we turn now to whether it is a rational exercise of the legislative authority conferred by the Copyright Clause. On that point, we defer substantially to Congress. *Sony*, 464 U.S., at 429 ("It is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors . . . in order to give the public appropriate access to their work product.").¹⁰

invalidate the inventor's 1834 patent, "even if it might have had that effect prior to the amendment of the patent statute in 1836." *Post*, at 18. In other words, *McClurg* evaluated the patentee's rights not simply in light of the patent law in force at the time the patent issued, but also in light of "such changes as had been since made." 1 How., at 206. It is thus inescapably plain that *McClurg* upheld the application of expanded patent protection to an existing patent.

¹⁰ JUSTICE BREYER would adopt a heightened, three-part test for the constitutionality of copyright enactments. *Post*, at 3. He would invalidate the CTEA as irrational in part because, in his view, harmonizing the United States and European Union baseline copyright terms "apparently" fails to achieve "significant" uniformity. *Post*, at 23. But see *infra*, at 15. The novelty of the "rational basis" approach he presents is plain. Cf. *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 383, 148 L. Ed. 2d 866, 121 S. Ct. 955 (2001) (BREYER, J., dissenting) ("Rational-basis review--with its presumptions favoring constitutionality--is 'a paradigm of judicial restraint.'" (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 314, 124 L. Ed. 2d 211, 113 S. Ct. 2096 (1993))). Rather than subjecting Congress' legislative choices in the copyright area to heightened judicial scrutiny, we have stressed that "it is not our role to alter the delicate balance Congress has labored to achieve." *Stewart v. Abend*, 495 U.S., at 230; see *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 429, 78 L. Ed. 2d 574, 104 S. Ct. 774 (1984).

The CTEA reflects judgments of a kind Congress typically makes, judgments we cannot dismiss as outside the Legislature's domain. As respondent describes, see Brief for Respondent 37-38, a key factor in the CTEA's passage was a 1993 European Union (EU) directive instructing EU members to establish a copyright term of life plus 70 years. EU Council Directive 93/98, p. 4; see 144 Cong. Rec. S12377-S12378 (daily ed. Oct. 12, 1998) (statement of Sen. Hatch). Consistent with the Berne Convention, the EU directed its members to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term. See Berne Conv. Art. 7(8); P. Goldstein, *International Copyright* § 5.3, p. 239 (2001). By extending the baseline United States copyright term to life plus 70 years, Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts.¹¹ The CTEA may also provide greater incentive for American and other authors to create and disseminate their work in the United States. See Perlmutter, *Participation in the International Copyright System as a Means to Promote the Progress of Science and Useful Arts*, 36 *Loyola (LA) L. Rev.* 323, 330 (2002) ("Matching the level of [copyright] protection in the United States [to that in the EU] can ensure stronger protection for U.S. works abroad and avoid competitive disadvantages vis-a-vis foreign rightholders."); see also *id.*, at 332 (the United States could not "play a leadership role" in the give-and-take evolution of the international copyright system, indeed it would "lose all flexibility," "if the only way to promote the progress of science were to provide incentives to create new works").¹²

In addition to international concerns,¹³ Congress passed the CTEA in light of demographic, economic, and technological changes, Brief for Respondent 25-

Congress' exercise of its Copyright Clause authority must be rational, but JUSTICE BREYER's stringent version of rationality is unknown to our literary property jurisprudence.

¹¹ Responding to an inquiry whether copyrights could be extended "forever," Register of Copyrights Marybeth Peters emphasized the dominant reason for the CTEA: "There certainly are proponents of perpetual copyright: We heard that in our proceeding on term extension. The Songwriters Guild suggested a perpetual term. However, our Constitution says limited times, but there really isn't a very good indication on what limited times is. The reason why you're going to life-plus-70 today is because Europe has gone that way . . ." Copyright Term, Film Labeling, and Film Preservation Legislation: Hearings on H. R. 989 et al. before the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary, 104th Cong., 1st Sess., 230 (1995) (hereinafter *House Hearings*).

¹² The author of the law review article cited in text, Shira Perlmutter, currently a vice president of AOL Time Warner, was at the time of the CTEA's enactment Associate Register for Policy and International Affairs, United States Copyright Office.

¹³ See also Austin, *Does the Copyright Clause Mandate Isolationism?* 26 *Colum.-VLA J. L. & Arts* 17, 59 (2002) (cautioning against "an isolationist reading of the Copyright Clause

26, 33, and nn. 23 and 24,¹⁴ and rationally credited projections that longer terms would encourage copyright holders to invest in the restoration and public distribution of their works, *id.*, at 34-37; see H. R. Rep. No. 105-452, p. 4 (1998) (term extension "provides copyright owners generally with the incentive to restore older works and further disseminate them to the public").¹⁵

that is in tension with . . . America's international copyright relations over the last hundred or so years").

¹⁴ Members of Congress expressed the view that, as a result of increases in human longevity and in parents' average age when their children are born, the pre-CTEA term did not adequately secure "the right to profit from licensing one's work during one's lifetime and to take pride and comfort in knowing that one's children--and perhaps their children--might also benefit from one's posthumous popularity." 141 Cong. Rec. 6553 (1995) (statement of Sen. Feinstein); see 144 Cong. Rec. S12377 (daily ed. Oct. 12, 1998) (statement of Sen. Hatch) ("Among the main developments [compelling reconsideration of the 1976 Act's term] is the effect of demographic trends, such as increasing longevity and the trend toward rearing children later in life, on the effectiveness of the life-plus-50 term to provide adequate protection for American creators and their heirs."). Also cited was "the failure of the U.S. copyright term to keep pace with the substantially increased commercial life of copyrighted works resulting from the rapid growth in communications media." *Ibid.* (statement of Sen. Hatch); cf. *Sony*, 464 U.S., at 430-431 ("From its beginning, the law of copyright has developed in response to significant changes in technology As new developments have occurred in this country, it has been the Congress that has fashioned the new rules that new technology made necessary.").

¹⁵ JUSTICE BREYER urges that the economic incentives accompanying copyright term extension are too insignificant to "move" any author with a "rational economic perspective." *Post*, at 14; see *post*, at 13-16. Calibrating rational economic incentives, however, like "fashioning . . . new rules [in light of] new technology," *Sony*, 464 U.S., at 431, is a task primarily for Congress, not the courts. Congress heard testimony from a number of prominent artists; each expressed the belief that the copyright system's assurance of fair compensation for themselves and their heirs was an incentive to create. See, e.g., House Hearings 233-239 (statement of Quincy Jones); Copyright Term Extension Act of 1995: Hearings before the Senate Committee on the Judiciary, 104th Cong., 1st Sess., 55-56 (1995) (statement of Bob Dylan); *id.*, at 56-57 (statement of Don Henley); *id.*, at 57 (statement of Carlos Santana). We would not take Congress to task for crediting this evidence which, as JUSTICE BREYER acknowledges, reflects general "propositions about the value of incentives" that are "undeniably true." *Post*, at 14.

Congress also heard testimony from Register of Copyrights Marybeth Peters and others regarding the economic incentives created by the CTEA. According to the Register, extending the copyright for existing works "could . . . provide additional income that would finance the production and distribution of new works." House Hearings 158. "Authors would not be able to continue to create," the Register explained, "unless they earned income on their finished works. The public benefits not only from an author's original work but also from his or her further creations. Although this truism may be illustrated in many ways, one of the best examples is Noah Webster[,] who supported his entire family from the earnings on his speller and grammar during the twenty years he took to complete his dictionary." *Id.*, at 165.

In sum, we find that the CTEA is a rational enactment; we are not at liberty to second-guess congressional determinations and policy judgments of this order, however debatable or arguably unwise they may be. Accordingly, we cannot conclude that the CTEA--which continues the unbroken congressional practice of treating future and existing copyrights in parity for term extension purposes--is an impermissible exercise of Congress' power under the Copyright Clause.

B

Petitioners' Copyright Clause arguments rely on several novel readings of the Clause. We next address these arguments and explain why we find them unpersuasive.

1

Petitioners contend that even if the CTEA's 20-year term extension is literally a "limited Time," permitting Congress to extend existing copyrights allows it to evade the "limited Times" constraint by creating effectively perpetual copyrights through repeated extensions. We disagree.

As the Court of Appeals observed, a regime of perpetual copyrights "clearly is not the situation before us." 239 F.3d at 379. 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.¹⁶ Critically, we again emphasize,

¹⁶ JUSTICE BREYER agrees that "Congress did not intend to act unconstitutionally" when it enacted the CTEA, *post*, at 15, yet in his very next breath, he seems to make just that accusation, *ibid*. What else is one to glean from his selection of scattered statements from individual members of Congress? He does not identify any statement in the statutory text that installs a perpetual copyright, for there is none. But even if the statutory text were sufficiently ambiguous to warrant recourse to legislative history, JUSTICE BREYER's selections are not the sort to which this Court accords high value: "In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent the considered and collective understanding of those [members of Congress] involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S. 70, 76, 83 L. Ed. 2d 472, 105 S. Ct. 479 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186, 24 L. Ed. 2d 345, 90 S. Ct. 314 (1969)). The House and Senate Reports accompanying the CTEA reflect no purpose to make copyright a forever thing. Notably, the Senate Report expressly acknowledged that the Constitution "clearly precludes Congress from granting unlimited protection for copyrighted works," S. Rep. No. 104-315, p. 11 (1996), and disclaimed any intent to contravene that prohibition, *ibid*. Members of Congress instrumental in the CTEA's passage spoke to similar effect. See, *e.g.*, 144 Cong. Rec. H1458 (daily ed. Mar. 25, 1998)

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. See *supra*, at 3-5; Austin, *supra*, n. 13, at 56 ("If extending copyright protection to works already in existence is constitutionally suspect," so is "extending the protections of U. S. copyright law to works by foreign authors that had already been created and even first published when the federal rights attached."). Those earlier Acts did not create perpetual copyrights, and neither does the CTEA.¹⁷

2

Petitioners dominantly advance a series of arguments all premised on the proposition that Congress may not extend an existing copyright absent new consideration from the author. They pursue this main theme under three headings. Petitioners contend that the CTEA's extension of existing copyrights (1) overlooks the requirement of "originality," (2) fails to "promote the Progress of Science," and (3) ignores copyright's *quid pro quo*.

Petitioners' "originality" argument draws on *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 113 L. Ed. 2d 358, 111 S. Ct. 1282(1991). In *Feist*, we observed that "the *sine qua non* of copyright is originality," *id.*, at 345,

(statement of Rep. Coble) (observing that "copyright protection should be for a limited time only" and that "perpetual protection does not benefit society").

JUSTICE BREYER nevertheless insists that the "economic effect" of the CTEA is to make the copyright term "virtually perpetual." *Post*, at 1. Relying on formulas and assumptions provided in an *amicus* brief supporting petitioners, he stresses that the CTEA creates a copyright term worth 99.8% of the value of a perpetual copyright. *Post*, at 13-15. If JUSTICE BREYER's calculations were a basis for holding the CTEA unconstitutional, then the 1976 Act would surely fall as well, for--under the same assumptions he indulges--the term set by that Act secures 99.4% of the value of a perpetual term. See Brief for George A. Akerloff et al. as *Amici Curiae* 6, n. 6 (describing the relevant formula). Indeed, on that analysis even the "limited" character of the 1909 (97.7%) and 1831 (94.1%) Acts might be suspect. JUSTICE BREYER several times places the Founding Fathers on his side. See, *e.g.*, *post*, at 5, 20. It is doubtful, however, that those architects of our Nation, in framing the "limited Times" prescription, thought in terms of the calculator rather than the calendar.

¹⁷ Respondent notes that the CTEA's life-plus-70-years baseline term is expected to produce an average copyright duration of 95 years, and that this term "resembles some other long-accepted durational practices in the law, such as 99-year leases of real property and bequests within the rule against perpetuities." Brief for Respondent 27, n. 18. Whether such referents mark the outer boundary of "limited Times" is not before us today. JUSTICE BREYER suggests that the CTEA's baseline term extends beyond that typically permitted by the traditional rule against perpetuities. *Post*, at 15-16. The traditional common-law rule looks to lives in being plus 21 years. Under that rule, the period before a bequest vests could easily equal or exceed the anticipated average copyright term under the CTEA. If, for example, the vesting period on a deed were defined with reference to the life of an infant, the sum of the measuring life plus 21 years could commonly add up to 95 years.

and held that copyright protection is unavailable to "a narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually nonexistent," *id.*, at 359. Relying on *Feist*, petitioners urge that even if a work is sufficiently "original" to qualify for copyright protection in the first instance, any extension of the copyright's duration is impermissible because, once published, a work is no longer original.

Feist, however, did not touch on the duration of copyright protection. Rather, the decision addressed the core question of copyrightability, *i.e.*, the "creative spark" a work must have to be eligible for copyright protection at all. Explaining the originality requirement, *Feist* trained on the Copyright Clause words "Authors" and "Writings." *Id.*, at 346-347. The decision did not construe the "limited Times" for which a work may be protected, and the originality requirement has no bearing on that prescription.

More forcibly, petitioners contend that the CTEA's extension of existing copyrights does not "promote the Progress of Science" as contemplated by the preambular language of the Copyright Clause. Art. I, § 8, cl. 8. To sustain this objection, petitioners do not argue that the Clause's preamble is an independently enforceable limit on Congress' power. See 239 F.3d at 378 (Petitioners acknowledge that "the preamble of the Copyright Clause is not a substantive limit on Congress' legislative power." (internal quotation marks omitted)). Rather, they maintain that the preambular language identifies the sole end to which Congress may legislate; accordingly, they conclude, the meaning of "limited Times" must be "determined in light of that specified end." Brief for Petitioners 19. The CTEA's extension of existing copyrights categorically fails to "promote the Progress of Science," petitioners argue, because it does not stimulate the creation of new works but merely adds value to works already created.

As petitioners point out, we have described the Copyright Clause as "both a grant of power and a limitation," *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 5, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966), and have said that "the primary objective of copyright" is "to promote the Progress of Science," *Feist*, 499 U.S., at 349. The "constitutional command," we have recognized, is that Congress, to the extent it enacts copyright laws at all, create a "system" that "promotes the Progress of Science." *Graham*, 383 U.S., at 6.¹⁸

¹⁸ JUSTICE STEVENS' characterization of reward to the author as "a secondary consideration" of copyright law, *post*, at 6, n. 4 (internal quotation marks omitted), understates the relationship between such rewards and the "Progress of Science." As we have explained, "the economic philosophy behind the [Copyright] Clause . . . is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors." *Mazer v. Stein*, 347 U.S. 201, 219, 98 L. Ed. 630, 74 S. Ct. 460, 1954 Dec. Comm'r Pat. 308 (1954). Accordingly,

We have also stressed, however, that it is generally for Congress, not the courts, to decide how best to pursue the Copyright Clause's objectives. See *Stewart v. Abend*, 495 U.S., at 230 ("The evolution of the duration of copyright protection tellingly illustrates the difficulties Congress faces . . . It is not our role to alter the delicate balance Congress has labored to achieve."); *Sony*, 464 U.S., at 429 ("It is Congress that has been assigned the task of defining the scope of [rights] that should be granted to authors or to inventors in order to give the public appropriate access to their work product."); *Graham*, 383 U.S., at 6 ("Within the limits of the constitutional grant, the Congress may, of course, implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim."). The justifications we earlier set out for Congress' enactment of the CTEA, *supra*, at 14-17, provide a rational basis for the conclusion that the CTEA "promotes the Progress of Science."

On the issue of copyright duration, Congress, from the start, has routinely applied new definitions or adjustments of the copyright term to both future works and existing works not yet in the public domain.¹⁹ Such consistent congressional practice is entitled to "very great weight, and when it is remembered that the rights thus established have not been disputed during a period of [over two] centuries, it is almost conclusive." *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 57, 28 L. Ed. 349, 4 S. Ct. 279, 1884 Dec. Comm'r Pat. 186. Indeed, "this Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long

"copyright law *celebrates* the profit motive, recognizing that the incentive to profit from the exploitation of copyrights will redound to the public benefit by resulting in the proliferation of knowledge . . . The profit motive is the engine that ensures the progress of science." *American Geophysical Union v. Texaco Inc.*, 802 F. Supp. 1, 27 (SDNY 1992), *aff'd*, 60 F.3d 913 (CA2 1994). Rewarding authors for their creative labor and "promoting . . . Progress" are thus complementary; as James Madison observed, in copyright "the public good fully coincides . . . with the claims of individuals." *The Federalist* No. 43, p. 272 (C. Rossiter ed. 1961). JUSTICE BREYER's assertion that "copyright statutes must serve public, not private, ends" *post*, at 6, similarly misses the mark. The two ends are not mutually exclusive; copyright law serves public ends by providing individuals with an incentive to pursue private ones.

¹⁹ As we have noted, see *supra*, at 5, n. 3, petitioners seek to distinguish the 1790 Act from those that followed. They argue that by requiring authors seeking its protection to surrender whatever rights they had under state law, the 1790 Act enhanced uniformity and certainty and thus "promoted . . . Progress." See Brief for Petitioners 28-31. This account of the 1790 Act simply confirms, however, that the First Congress understood it could "promote . . . Progress" by extending copyright protection to existing works. Every subsequent adjustment of copyright's duration, including the CTEA, reflects a similar understanding.

term of years, fixes the construction to be given [the Constitution's] provisions." *Myers v. United States*, 272 U.S. 52, 175, 71 L. Ed. 160, 47 S. Ct. 21, 62 Ct. Cl. 773 (1926). Congress' unbroken practice since the founding generation thus overwhelms petitioners' argument that the CTEA's extension of existing copyrights fails *per se* to "promote the Progress of Science."²⁰

Closely related to petitioners' preambular argument, or a variant of it, is their assertion that the Copyright Clause "imbeds a quid pro quo." Brief for Petitioners 23. They contend, in this regard, that Congress may grant to an "Author" an "exclusive Right" for a "limited Time," but only in exchange for a "Writing." Congress' power to confer copyright protection, petitioners argue, is thus contingent upon an exchange: The author of an original work receives an "exclusive Right" for a "limited Time" in exchange for a dedication to the public thereafter. Extending an existing copyright without demanding additional consideration, petitioners maintain, bestows an unpaid-for benefit on copyright holders and their heirs, in violation of the *quid pro quo* requirement.

We can demur to petitioners' description of the Copyright Clause as a grant of legislative authority empowering Congress "to secure a bargain--this for that." Brief for Petitioners 16; see *Mazer v. Stein*, 347 U.S. 201, 219, 98 L. Ed. 630, 74 S. Ct. 460, 1954 Dec. Comm'r Pat. 308 (1954) ("The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.'). But the legislative evolution earlier recalled demonstrates what the bargain entails. Given the 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 "this" 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.²¹ Congress could rationally seek to "promote . . . Progress" by

²⁰ JUSTICE STEVENS, *post*, at 15, refers to the "legislative veto" held unconstitutional in *INS v. Chadha*, 462 U.S. 919, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983), and observes that we reached that decision despite its impact on federal laws geared to our "contemporary political system," *id.*, at 967 (White, J., dissenting). Placing existing works in parity with future works for copyright purposes, in contrast, is not a similarly pragmatic endeavor responsive to modern times. It is a measure of the kind Congress has enacted under its Patent and Copyright Clause authority since the founding generation. See *supra*, at 3-5.

²¹ Standard copyright assignment agreements reflect this expectation. See, *e.g.*, A. Kohn & B. Kohn, *Music Licensing* 471 (3d ed. 1992-2002) (short form copyright assignment for musical composition, under which assignor conveys all rights to the work, "including the copyrights and proprietary rights therein and in any and all versions of said musical composition(s), and any renewals and extensions thereof (whether presently available *or subsequently available as a result of intervening legislation*)" (emphasis added)); 5 M. Nimmer & D. Nimmer, *Copyright* § 21.11[B], p. 21-305 (2002) (short form copyright

including in every copyright statute an express guarantee that authors would receive the benefit of any later legislative extension of the copyright term. Nothing in the Copyright Clause bars Congress from creating the same incentive by adopting the same position as a matter of unbroken practice. See Brief for Respondent 31-32.

Neither *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 11 L. Ed. 2d 661, 84 S. Ct. 784, 1964 Dec. Comm'r Pat. 425 (1964), nor *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 103 L. Ed. 2d 118, 109 S. Ct. 971 (1989), is to the contrary. In both cases, we invalidated the application of certain state laws as inconsistent with the federal patent regime. *Sears*, 376 U.S., at 231-233; *Bonito*, 489 U.S., at 152. Describing Congress' constitutional authority to confer patents, *Bonito Boats* noted: "The Patent Clause itself reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and useful Arts.'" *Id.*, at 146. *Sears* similarly stated that "patents are not given as favors . . . but are meant to encourage invention by rewarding the inventor with the right, limited to a term of years fixed by the patent, to exclude others from the use of his invention." 376 U.S., at 229. Neither case concerned the extension of a patent's duration. Nor did either suggest that such an extension might be constitutionally infirm. Rather, *Bonito Boats* reiterated the Court's unclouded understanding: "It is for Congress to determine if the present system" effectuates the goals of the Copyright and Patent Clause. 489 U.S., at 168. And as we have documented, see *supra*, at 10-13, Congress has many times sought to effectuate those goals by extending existing patents.

We note, furthermore, that patents and copyrights do not entail the same exchange, and that our references to a *quid pro quo* typically appear in the patent context. See, e.g., *J. E. M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U.S. 124, 142, 151 L. Ed. 2d 508, 122 S. Ct. 593 (2001) ("The disclosure required by the Patent Act is 'the *quid pro quo* of the right to exclude.'" (quoting *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 484, 40 L. Ed. 2d 315, 94 S. Ct. 1879 (1974))); *Bonito Boats*, 489 U.S., at 161 ("the *quid pro quo* of substantial creative effort required by the federal [patent] statute"); *Brenner v. Manson*, 383 U.S. 519, 534, 16 L. Ed. 2d 69, 86 S. Ct. 1033, 1966 Dec. Comm'r Pat. 74 (1966) ("The basic *quid pro quo* . . . for granting a patent monopoly is the benefit derived by the public from an invention with substantial utility."); *Pennock v. Dialogue*, 2 Pet. 1, 23, 27 U.S. 1, 7 L. Ed. 327 (1829) (If an invention is already commonly known and used when the patent is sought, "there might be sound reason for presuming, that the

assignment under which assignor conveys all assets relating to the work, "including without limitation, copyrights and renewals and/or extensions thereof"); 6 *id.*, § 30.04[B][1], p. 30-325 (form composer-producer agreement under which composer "assigns to Producer all rights (copyrights, rights under copyright and otherwise, whether now or hereafter known) and all renewals and extensions (as may now or hereafter exist)").

legislature did not intend to grant an exclusive right," given the absence of a "*quid pro quo*."). This is understandable, given that immediate disclosure is not the objective of, but is *exacted from*, the patentee. It is the price paid for the exclusivity secured. See *J. E. M. Ag Supply*, 534 U.S., at 142. For the author seeking copyright protection, in contrast, disclosure is the desired objective, not something exacted from the author in exchange for the copyright. Indeed, since the 1976 Act, copyright has run from creation, not publication. See 1976 Act § 302(a); 17 U.S.C. § 302(a).

Further distinguishing the two kinds of intellectual property, copyright gives the holder no monopoly on any knowledge. A reader of an author's writing may make full use of any fact or idea she acquires from her reading. See § 102(b). The grant of a patent, on the other hand, does prevent full use by others of the inventor's knowledge. See Brief for Respondent 22; *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 103, n. 16 (CA2 1951) (The monopoly granted by a copyright "is not a monopoly of knowledge. The grant of a patent does prevent full use being made of knowledge, but the reader of a book is not by the copyright laws prevented from making full use of any information he may acquire from his reading." (quoting W. Copinger, *Law of Copyright* 2 (7th ed. 1936))). In light of these distinctions, one cannot extract from language in our patent decisions--language not trained on a grant's duration--genuine support for petitioners' bold view. Accordingly, we reject the proposition that a *quid pro quo* requirement stops Congress from expanding copyright's term in a manner that puts existing and future copyrights in parity.²²

3

As an alternative to their various arguments that extending existing copyrights violates the Copyright Clause *per se*, petitioners urge heightened judicial review of such extensions to ensure that they appropriately pursue the purposes of the Clause. See Brief for Petitioners 31-32. Specifically, petitioners ask us to apply the "congruence and proportionality" standard described in cases evaluating exercises of Congress' power under § 5 of the Fourteenth Amendment. See, e.g., *City of Boerne v. Flores*, 521 U.S. 507, 138 L. Ed. 2d 624, 117 S. Ct. 2157 (1997). But we have never applied that standard outside the § 5 context; it does not hold sway for judicial review of legislation enacted, as copyright laws are, pursuant to Article I authorization.

²² The fact that patent and copyright involve different exchanges does not, of course, mean that we may not be guided in our "limited Times" analysis by Congress' repeated extensions of existing patents. See *supra*, at 10-13. If patent's *quid pro quo* is more exacting than copyright's, then Congress' repeated extensions of existing patents without constitutional objection suggests even more strongly that similar legislation with respect to copyrights is constitutionally permissible.

Section 5 authorizes Congress to *enforce* commands contained in and incorporated into the Fourteenth Amendment. Amdt. 14, § 5 ("The Congress shall have power to *enforce*, by appropriate legislation, the provisions of this article." (emphasis added)). 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*, 383 U.S., at 6. It would be no more appropriate for us to subject the CTEA to "congruence and proportionality" review under the Copyright Clause than it would be for us to hold the Act unconstitutional *per se*.

For the several reasons stated, we find no Copyright Clause impediment to the CTEA's extension of existing copyrights.

III

Petitioners separately argue that the CTEA is a content-neutral regulation of speech that fails heightened judicial review under the First Amendment.²³ We reject petitioners' plea for imposition of uncommonly strict scrutiny on a copyright scheme that incorporates its own speech-protective purposes and safeguards. The Copyright Clause and First Amendment were adopted close in time. This proximity indicates that, in the Framers' view, copyright's limited monopolies are compatible with free speech principles. Indeed, copyright's purpose is to *promote* the creation and publication of free expression. As *Harper & Row* observed: "The Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." 471 U.S., at 558.

In addition to spurring the creation and publication of new expression, copyright law contains built-in First Amendment accommodations. See *id.*, at 560. First, it distinguishes between ideas and expression and makes only the latter eligible for copyright protection. Specifically, 17 U.S.C. § 102(b) provides: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or

²³ Petitioners originally framed this argument as implicating the CTEA's extension of both existing and future copyrights. See Pet. for Cert. i. Now, however, they train on the CTEA's extension of existing copyrights and urge against consideration of the CTEA's First Amendment validity as applied to future copyrights. See Brief for Petitioners 39-48; Reply Brief 16-17; Tr. of Oral Arg. 11-13. We therefore consider petitioners' argument as so limited. We note, however, that petitioners do not explain how their First Amendment argument is moored to the prospective/retrospective line they urge us to draw, nor do they say whether or how their free speech argument applies to copyright duration but not to other aspects of copyright protection, notably scope.

embodied in such work." As we said in *Harper & Row*, this "idea/expression dichotomy strikes a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression." 471 U.S., at 556 (internal quotation marks omitted). Due to this distinction, every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication. See *Feist*, 499 U.S., at 349-350.

Second, the "fair use" defense allows the public to use not only facts and ideas contained in a copyrighted work, but also expression itself in certain circumstances. Codified at 17 U.S.C. § 107, the defense provides: "The fair use of a copyrighted work, including such use by reproduction in copies . . ., for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." The fair use defense affords considerable "latitude for scholarship and comment," *Harper & Row*, 471 U.S., at 560, and even for parody, see *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 127 L. Ed. 2d 500, 114 S. Ct. 1164 (1994) (rap group's musical parody of Roy Orbison's "Oh, Pretty Woman" may be fair use).

The CTEA itself supplements these traditional First Amendment safeguards. First, it allows libraries, archives, and similar institutions to "reproduce" and "distribute, display, or perform in facsimile or digital form" copies of certain published works "during the last 20 years of any term of copyright . . . for purposes of preservation, scholarship, or research" if the work is not already being exploited commercially and further copies are unavailable at a reasonable price. 17 U.S.C. § 108(h); see Brief for Respondent 36. Second, Title II of the CTEA, known as the Fairness in Music Licensing Act of 1998, exempts small businesses, restaurants, and like entities from having to pay performance royalties on music played from licensed radio, television, and similar facilities. 17 U.S.C. § 110(5)(B); see Brief for Representative F. James Sensenbrenner, Jr., et al. as *Amici Curiae* 5-6, n. 3.

Finally, the case petitioners principally rely upon for their First Amendment argument, *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994), bears little on copyright. The statute at issue in *Turner* required cable operators to carry and transmit broadcast stations through their proprietary cable systems. Those "must-carry" provisions, we explained, implicated "the heart of the First Amendment," namely, "the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Id.*, at 641.

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. Protection of that order does not raise the free speech concerns present when the government compels or burdens the communication of particular facts or ideas. 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. To the extent such assertions raise First Amendment concerns, copyright's built-in free speech safeguards are generally adequate to address them. We recognize that the D. C. Circuit spoke too broadly when it declared copyrights "categorically immune from challenges under the First Amendment." 239 F.3d at 375. But when, as in this case, Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary. See *Harper & Row*, 471 U.S., at 560; cf. *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522, 97 L. Ed. 2d 427, 107 S. Ct. 2971 (1987).²⁴

IV

If petitioners' vision of the Copyright Clause held sway, it would do more than render the CTEA's duration extensions unconstitutional as to existing works. Indeed, petitioners' assertion that the provisions of the CTEA are not severable would make the CTEA's enlarged terms invalid even as to tomorrow's work. The 1976 Act's time extensions, which set the pattern that the CTEA followed, would be vulnerable as well.

As we read the Framers' instruction, the Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause. See *Graham*, 383 U.S., at 6 (Congress may "implement the stated purpose of the Framers by selecting the policy which *in its judgment* best effectuates the constitutional aim." (emphasis added)). Beneath the facade of their inventive constitutional interpretation, petitioners forcefully urge that Congress pursued very bad policy in prescribing the CTEA's long terms. The wisdom of Congress' action, however, is not within our province to second guess. Satisfied that the legislation before us remains inside the domain the Constitution assigns to the First Branch, we affirm the judgment of the Court of Appeals.

It is so ordered.

(Dissenting opinions of STEVENS, J., and BREYER, J., omitted.)

²⁴ We are not persuaded by petitioners' attempt to distinguish *Harper & Row* on the ground that it involved an infringement suit rather than a declaratory action of the kind here presented. As respondent observes, the same legal question can arise in either posture. See Brief for Respondent 42. In both postures, it is appropriate to construe copyright's internal safeguards to accommodate First Amendment concerns. Cf. *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78, 130 L. Ed. 2d 372, 115 S. Ct. 464 (1994) ("It is . . . incumbent upon us to read the statute to eliminate [serious constitutional] doubts so long as such a reading is not plainly contrary to the intent of Congress.").

