Renewal Term Extensions under the 1909 Copyright Act

Extending Term to December 31, 1965

EXTENDING THE DURATION OF COPYRIGHT PROTECTION IN CERTAIN CASES

MAY 28, 1962.--Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.J. Res. 627]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 627) extending the duration of copyright protection in certain cases, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution do pass.

The amendment is as follows:

On lines 5 and 6 delete "1967" and insert in lieu thereof "1965".

PURPOSE AND EFFECT OF THE AMENDMENT

The amendment shortens by 2 years the interim prolongation of the life of expiring renewal terms of copyright which would be effectuated by the joint resolution. It is the view of the committee that incentive for achieving a prompt overall revision of the copyright law (in which permanent extension of copyright term would be only one element) might be unduly impaired by suspending all expirations beyond 1965.

PURPOSE AND EFFECT OF THE JOINT RESOLUTION AS AMENDED

House Joint Resolution 627, as amended, would continue until December 31, 1965, the renewal term of any copyright, subsisting on the date of approval of the measure, where such renewal term would otherwise expire prior to December 31, 1965. The purpose of the joint resolution is to provide an interim suspension of copyright expirations pending the perfection and enactment of detailed overall **[2]** copyright legislation, including a contemplated substantial increase in copyright term.

The measure has been carefully drawn to provide only for a continuation and prolongation of the subsisting renewal term, and not for the creation of a new or independent term of copyright. There has been no effort, in this emergency measure, to settle the difficult and fundamental questions involving rights in a permanently extended copyright term. Existing contractual arrangements which affect subsisting renewal terms will not be impaired by this interim extension; the status quo will be maintained for all persons having an interest in these copyrights. Of course, this does not foreclose the possibility that a different result may be reached in the contemplated general revision of the copyright law.

STATEMENT

House Joint Resolution 627 is a byproduct of a project initiated in 1955 under the auspices and with the authorization of Congress. The U.S. Copyright Act was enacted in 1909 and is more than half a century old. It has become outmoded by technical developments and changes in the media of communications, education, and entertainment and is in need of general revision.

In 1955 Congress authorized a study of the U.S. copyright system to be made by the Copyright Office preparatory to such a revision of the Copyright Act, and in July of last year, the Register of Copyrights submitted a report containing his recommendations for a new act. This report was transmitted to Congress by the Librarian of Congress and has been printed for the use of this committee. The recommendations of the Register's report have been undergoing intensive discussion during the past year by a panel of specialists under the auspices of the Copyright Office. There is a lack of unanimity on many of the recommendations made in the report, and the process of perfecting new legislation will require additional time.

One of the criticisms of our present copyright system made in the Register's report is that the duration of copyright is no longer adequate. The present term of copyright is 28 years from the first publication or registration, renewable by

certain persons for a second period of 28 years. The Register's report recommends that the maximum term to be increased from 56 to 76 years. The basic term would continue to run for 28 years, and would be renewable for a second term of 48 years. In reaching this conclusion, the Register's report states:

We are sympathetic to the view that the author during his old age, or his dependents if he dies prematurely, should continue to have the benefits afforded by copyright. The maximum term of 56 years is not enough to assure this in all cases.

The original Copyright Act of 1790 provided for a term of 14 years, with a renewal for an additional 14. In 1831, the original term was extended to 28 years, but the renewal term remained at 14 years, for an aggregate term of 42 years. It was in 1909, that the renewal term was also extended so that copyright presently endures for an aggregate of 56 years. It has been suggested that the term of copyright has been lengthened from time to time in a manner reflecting the increased life expectancy of our population.

[3] Another circumstance motivating the Register's recommendation is that today the United States is the only important Western Power in which it is possible for a copyright to expire during the life of the author. The leading countries of Western Europe, notably England, France, Italy, and the Scandinavian countries provide that copyright shall continue for the life of the author and for 50 years after his death. On this point the report of the Register states:

We are also sympathetic to the view that our maximum term should be generally comparable to the term given our works in most other countries. The term of 56 years, measured from public dissemination, is considerably shorter on the average than the term of 50 years after the author's death.

Although there is no unanimity concerning the ultimate form which an extension of the term of copyright should take, or with respect to the most equitable distribution of the rights that would be created by such an extension, it appears to be generally conceded that the term of copyright should be substantially extended. The testimony elicited by Subcommittee No. 3 at its hearing on the joint resolution reflects this overwhelming consensus.

Although it is not possible to revive expired terms of copyright, it seems to the committee to be desirable to suspend further expiration of copyright for a period long enough to enable the working out of remaining obstacles to the overall revision of the copyright law, but not so long that it will impair the incentive of interested parties to reach a workable agreement.

OBJECTIONS TO THE JOINT RESOLUTION

In his testimony on House Joint Resolution 627, the Register of Copyrights made two objections to the proposed legislation. He stated that House Joint Resolution 627 in its original form was not satisfactory because it did not assure that the author or his heirs would be benefited, and because he was concerned about the possible adverse effect of the interim legislation upon the general revision of the copyright law.

With respect to the first of the Register's objections, the committee is of the opinion that it would not be practicable in this interim legislation to attempt to refashion existing contractual rights and obligations for the benefit of surviving authors and their families where the original copyright term began between 1906 and 1909 and the renewal term, between 1934 and 1937. As stated above, however, this does not foreclose the possibility that a different result may be reached in the contemplated general revision of the copyright law.

The Register's second objection, however, seems to the committee to have merit. The committee believes that an interim continuance of all renewal terms to the end of 1967 might unduly impair the incentive of interested parties for achieving an acceptable consensus that would enable a reasonable prompt overall revision. In conformity with the Register's suggestion, therefore, the committee has amended the joint resolution to limit the interim suspension of expirations to copyright renewal terms which would otherwise expire prior to December 31, 1965.

[4] More serious objections to the joint resolution were raised by the Department of Justice. In essence, the Department stated that copyrights (and patents) are forms of monopoly and should not be extended for periods longer than now provided by law; that the existing 56-year monopoly is adequate to reward authors for their contribution to society; and that it is unwise to extend the term of copyright because the public is interested in the early passing of copyrighted material into the public domain.

With great respect, the committee is of the opinion that the Department of Justice has overstated the monopolisic thrust of copyright protection. Unlike a patent, a copyright does not establish exclusivity over ideas or areas of thought. While it protects an author against those who would copy his work, it gives him no right to prevent independent creation

by others. The Federal Constitution lays upon Congress an injunction 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. Manifestly there is a public interest in copyright protection. The question before Congress is what should be the duration of such protection.

In the opinion of the committee the conclusion that the present 56-year aggregate copyright term is adequate ignores the dictates of international practice. Increasingly in modern times international treaties and conventions make it imperative that reciprocal copyright privileges shall be at least roughly equivalent. The committee has in mind the testimony at the hearing on House Joint Resolution 627 offered by Helen Sousa Abert, the daughter of the famous John Philip Sousa. Mrs. Abert told the committee that although she is still receiving royalties on her father's "The Stars and Stripes Forever," these royalties, ironically, come to her exclusively from foreign sources; the American copyright has expired.

Finally, although there may be some merit in the contention that the public has an interest in works of art coming into the public domain, it was persuasively testified at the hearing that the benefit arising from the expiration of copyright does not necessarily pass to the public. The cost of tickets to a concert featuring music in the public domain, it was contended, is no less than the cost of tickets to a concert featuring the copyrighted music of contemporary composers. On balance the committee is of the opinion that the protection of copyright, on a scale roughly equivalent to that afforded elsewhere in the free world, outweighs the advantage allegedly to be realized from retaining the present 56-year term.

AGENCY REPORTS

Attached hereto and made part hereof are the reports of the Librarian of Congress, the Department of Justice, the Department of Commerce, and the Department of State on House Joint Resolution 627.

[5]THE LIBRARY OF CONGRESS,
Washington, D.C., March 29, 1962.

Form

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CELLER: This is in reply to your letter of February 21, 1962, requesting our comments on House Joint Resolution 627.

The effect of this resolution would be to extend, until December 31, 1967, all subsisting copyrights whose renewal term would otherwise expire before that date. It is intended as an interim measure, to keep those copyrights in force until a general revision of the copyright law has been enacted.

The duration of copyright is discussed at some length in *chapter V* of the "Report of the Register of Copyrights on the General Revision of the Copyright Law," which was printed and issued by your committee in July 1961. The report recommends that, in revising the law, the 28-year duration of the first term of copyright be retained, but that the second term be lengthened from 28 to 48 years. The report not only proposes to add 20 years to the maximum copyright term, increasing it from 56 to 76 years, but also recommends that the same period of 20 years be added to the renewal term of copyrights still in force when the new law becomes effective.

It is perfectly understandable that copyright owners, anticipating that the eventual enactment of a new copyright law will extend the duration of all copyrights then subsisting, should seek to continue protection for copyrighted works that would otherwise fall into the public domain within the next few years. Were this purpose fully consistent with the other recommendations of the Register's report, we would have no hesitation in commending the resolution to your favorable consideration. There are, however, other factors which must be weighed before we could justifiably support this proposal.

Under the present statute the second 28-year term of copyright is not a mere extension of duration. With certain exceptions, ownership of the renewal term is intended to revert to the author or other specified beneficiaries, without

regard to ownership of the first term. The Register's report makes clear that the principal reason for lengthening the term is to assure the benefits of copyright to the author during his old age, or to his dependents if he dies prematurely.

Statistics compiled in the Copyright Office show that, if the resolution were adopted as of July 1, 1962, and extended subsisting renewal copyrights to December 31, 1967, some 47,700 copyrights would be affected. Approximately 70 percent of these copyrights cover musical compositions, 15 percent cover books, and 10 percent cover periodicals. Further study would be needed to determine the present use and value of these works.

The extension of term proposed in House Joint Resolution 627 would create an entirely new right, granted to works that would otherwise be a part of the public domain. In considering who would receive the benefits of the proposed 20-year extension of existing copyrights, the Register's report states that "we believe there would be little justification for lengthening the term unless the author or his heirs were to receive some benefit from it; at the same time, the interests of their assignees must also be considered." The report deals with this problem in the context of a balancing of interests and **[6]** complete revision of the statute, and concludes that a share of the benefits of the added term should be assured to the author or his heirs. There may, of course, be various methods of achieving this result.

There is no assurance in the language of the resolution that authors or their heirs will share in the benefits of the extension. Your committee will no doubt wish to discover who would actually receive the benefits from the added term. It is also vital to determine whether this proposal will delay the sorely needed revision of the copyright law as a whole.

Sincerely yours,

L. QUINCY MUMFORD,
Librarian of Congress.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 2, 1962

Form

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on House Joint Resolution 627, a joint resolution extending the duration of copyright protection in certain cases.

Article I, section 8, of the Constitution provides that Congress shall have the power "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." With respect to copyrights, existing law provides protection for an original period of 28 years with the right of renewal for an additional 28-year period--a total possible period of 56 years *(17 U.S.C. 24).*

The resolution provides: "That in any case in which the renewal term of copyright subsisting in any work on the date of approval of this resolution would expire prior to December 31, 1967, such term is hereby continued until December 31, 1967." The effect of the resolution on all renewal copyrights expiring between the date of approval of the resolution and 1968 would be to automatically extend them until 1968. This could result in extending the renewal term for an additional period of more than 5 years, if, for example, the resolution is approved July 1, 1962, and a renewal copyright is subsisting on that date but expires July 2, 1962.

It is understood that the resolution is based on the speculative theory that legislation will be enacted by December 31, 1967, which will extend the present renewal period of copyrights from 28 years to 48 years thus providing a total possible copyright period of 76 years. The Department of Justice is opposed to lengthening the period of copyrights. Copyrights (and patents) are forms of monopolies and should not be extended for periods longer than those now provided by law. The present 56-year monopoly granted to authors is in our view fully adequate to reward authors for their contributions to society. Considering this matter from the viewpoint of the public, which is interested in the early passing of copyrighted material into the public domain, it would seem unwise to extend further the copyright monopoly.

[7] The resolution also is undesirable in that if it is enacted, and the contemplated legislation extending the present renewal period is not enacted, the result would be to extend arbitrarily the period of copyrights for a limited class of persons and for varying periods of time.

In view of the foregoing considerations the Department of Justice is strongly opposed to the enactment of the resolution.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Acting Deputy Attorney General.

Form

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., April 26, 1962.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to House Joint Resolution 627, a joint resolution extending the duration of copyright protection in certain cases.

This legislation does not deal with subject matter within the purview of this Department's responsibilities. Accordingly we would defer to Register of Copyrights, Library of Congress.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BURT W. ROPER,
Assistant General Counsel for Legislation.

DEPARTMENT OF STATE,
Washington, April 11, 1962.

Form

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: I am writing in reply to your letter of March 28, 1962, regarding the public hearings by Subcommittee No. 3 on House Joint Resolution 627, extending the duration of copyright protection in certain cases.

Since this resolution affects only domestic copyright protection, I do not believe it will be necessary for the Department to have a representative testify at the hearing or to submit a statement for inclusion in the record.

Thank you very much for your courtesy in extending this invitation to the Department.

Respectfully,

FREDERICK G. DUTTON,
Assistant Secretary
(For the Secretary of State).

Public Law 87-668

87th Congress, H. J. Res. 627
September 19, 1962
76 Stat. 555

JOINT RESOLUTION

Extending the duration of copyright protection in certain cases.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which the renewal term of copyright subsisting in any work on the date of approval of this resolution would expire prior to December 31, 1965, such term is hereby continued until December 31, 1965.

Approved September 19, 1962.