Renewal Term Extensions under the 1909 Copyright Act

Extending Term to December 31, 1972

COPYRIGHT PROTECTION IN CERTAIN CASES

JULY 21, 1971.--Ordered to be printed

Mr. MCCLELLAN, from the Committee on the Judiciary, submitted the following
R E P O R T
[To accompany S.J. Res. 132]

The Committee on the Judiciary, to which was referred the joint resolution (S.J. Res. 132) extending the duration of copyright in certain cases, having considered the same, reports favorably thereon and recommends that the joint resolution do pass.

PURPOSE

The purpose of this legislation is to continue until December 31, 1972, the renewal term of any copyright subsisting on the date of approval of this joint resolution, or the term as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, or Public Law 91-555 (or by all or certain said laws) where such term would otherwise expire prior to December 31, 1972. The joint resolution would provide an interim extension of the renewal term of copyrights pending the enactment by the Congress of a general revision of the copyright laws, including a proposed increase in the length of the copyright term. The most recent extension (Public Law 91-555) will expire on December 31, 1971.

This legislation merely provides for the prolongation of the renewal term of copyright and does not involve creation of a new term of copyright.

STATEMENT

This legislation arises from a study of the U.S. copyright system authorized by the Congress in 1955. After extensive preparatory work, copyright revision bills were introduced in both Houses during the 88th Congress and again in the 89th and 90th Congresses. The House of Representatives on April 11, 1967, passed H.R. 2512 of the 90th Congress for the general revision of the copyright law. This committee's Subcommittee on Patents, Trademarks, and Copyrights held 17 days of hearings on copyright law revision, and in 1969 reported S. 543 for the general revision of the copyright law. No further action was taken on that legislation. On February 8, Senator John L. McClellan introduced S. 644 for the general revision of the copyright law.

Both S. 644 and the bill passed by the House of Representatives in the 90th Congress, would increase the copyright term of new works from the present 28 years, renewable for a second period of 28 years, to a term for the life of the author and for 50 years thereafter. They also provide for a substantial extension of the term of subsisting copyrights.

It is apparent that the Congress cannot complete action during this session on the legislation for general revision of the copyright law. The copyright revision bill as been delayed for several years principally because of the cable television controversy. More recently the Congress has been awaiting action by the Federal Communications Commission on the necessarily related communications aspects of CATV. The Congress has now been advised by the Chairman of the Federal Communications Commission that the Commission anticipates completing of its current CATV rulemaking proceedings before the start of the summer recess of the Congress. Clearly, however, adequate time will not remain for action on the revision bill and, therefore, it is necessary to consider another temporary extension of copyrights.

Since the general revision bill has been unavoidably delayed, it seems desirable that the terms of expiring copyrights should be extended so that the copyright holders may enjoy the benefit of any increase in term that may be enacted by the Congress. It is the view of the committee that the same considerations that led to the enactment of the previous extensions warrant the approval of this joint resolution.

After a study of the joint resolution, the committee recommends that the legislation be favorably considered.

EXTENDING THE DURATION OF COPYRIGHT PROTECTION IN CERTAIN CASES

NOVEMBER 3, 1971.--Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany S.J. Res. 132]

The Committee on the Judiciary, to whom was referred the joint resolution (S.J. Res. 132) extending the duration of copyright protection in certain cases, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

PURPOSE

The purpose of this legislation is to continue until December 31, 1972, the renewal term of any copyright subsisting on the date of approval of this joint resolution, or the term as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, or by Public Law 91-555 (or by all or certain said laws) where such term would otherwise expire prior to December 31, 1972. The joint resolution would provide an interim extension of the renewal term of copyrights pending the enactment by the Congress of a general revision of the copyright laws, including a proposed increase in the length of the copyright term. The most recent extension (Public Law 91-555) will expire on December 31, 1971.

This legislation merely provides for the prolongation of the renewal term of copyright and does not involve creation of a new term of copyright.

STATEMENT

For its report herein the committee adopts the report of the Senate Committee on the Judiciary (S. Report No. 92-277) to accompany Senate Joint Resolution 132 substantially as follows:

This legislation arises from a study of the U.S. copyright system authorized by the Congress in 1955. After extensive preparatory work, copyright revision bills were introduced in both Houses during the 88th Congress and again in the 89th and 90th Congresses. The House of Representatives on April 11, 1967, passed H.R. 2512 of the House of Representatives on April 11, 1967, passed H.R. 2512 of the 90th Congress for the general revision of the copyright law. The Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary held 17 days of hearings on copyright law revision of the copyright law. No further action was taken on that legislation. On February 8, 1971, Senator John L. McClellan introduced S. 644 for the general revision of the copyright law.

Both S. 644 and the bill passed by the House of Representatives in the 90th Congress, would increase the copyright term of new works from the present 28 years, renewable for a second period of 28 years, to a term for the life of the author and for 50 years thereafter. They also provide for a substantial extension of the term of subsisting copyrights.

It is apparent that the Congress cannot complete action during this session on the legislation for general revision of the copyright law. The copyright revision bill has been delayed for several years principally because of the cable television controversy. More recently the Congress has been awaiting action by the Federal Communications Commission on the necessarily related communications aspects of CATV. The Congress has been advised by the Chairman of the Federal Communications Commission that the Commission anticipates completing of its current CATV rulemaking proceedings before the start of the summer recess of the Congress. Clearly, however, adequate time will not remain for action on the revision bill and, therefore, it is necessary to consider another temporary extension of copyrights.

Since the general revision bill has been unavoidably delayed, it seems desirable that the terms of expiring copyrights should be extended so that the copyright holders may enjoy the benefit of any increase in term that may be enacted by the Congress. It is the view of the committee that the same considerations that led to the enactment of the previous extensions warrant the approval of this joint resolution.

It must always be remembered that both the House copyright revision bill of 1967 (H.R. 2512, 90th Congress) and the pending Senate copyright revision bill (S. 644) contemplate a 19-year extension of all renewal terms subsisting on the effective date of the revision, from 28 to 47 years. In this context, the series of interim extension measures, of which Senate Joint Resolution 132 is the latest, stand revealed as legislation directed to the end that presently subsisting

copyrights should, as far as possible, remain eligible for the advantage of longer term that will be derived by holders of copyrights that have not expired by the effective date. In short, the intent and purpose of the Congress has been to avoid lapses of copyright protection on the eve of the revision, rather than to select a particular term of years apart from the revision.

As a result, copyright holders have a real and reasonable expectancy that their copyright interests will survive long enough to benefit from the revision, despite those delays of the other body that have prevented a revision bill from taking effect. This expectancy should not now be thwarted.

After a study of the joint resolution, the committee recommends that the legislation be favorably considered.

COST

Enactment of Senate Joint Resolution 132 will entail no cost to the Government of the United States.

AGENCY REPORT

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Attached hereto an made part hereof is the report of the Librarian of Congress on Senate Joint Resolution 132.

THE LIBRARIAN OF CONGRESS,
*Washington, D.C., September 30, 1971.*

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

DEAR MR. CELLER: This is in response to your request for a report on Senate Joint Resolution 132, extending the duration of copyright protection in certain cases. This joint resolution, which passed the Senate on July 23, 1971, continues until December 31, 1972, the renewal term of copyrights that would otherwise expire before that date, including renewal copyrights previously extended to December 31, 1971, by Public Laws 87-668, 89-442, 90-141, 90-416, 91-147, and 91-555.

If enacted, the joint resolution would be the seventh in a series of interim extensions to continue temporarily the renewal term of expiring copyrights, pending enactment of a comprehensive revision of the present copyright law. The proposed new copyright law, which was passed by the House of Representatives on April 11, 1967 (H.R. 2512, 90th Congress) and is now pending in the Senate Judiciary Committee (S. 644, 92d Congress), extends the total duration of subsisting copyrights that have been renewed, from 56 to 75 years. The purpose of the joint resolution, as of the previous interim extensions, is to prevent works already in their renewal term from falling into the public domain for the time being, so that they will have the benefit of the 75-year term when the anticipated new copyright law is enacted.

The six previous interim extensions of renewed copyrights that would otherwise have expired preserved the copyright in a total of about 86,800 works. Senate Joint Resolution 132 would add about 12,700 more works to that number, thus preserving until December 31, 1972, the copyrights in a total of about 99,500 works. Of this new total number, about 69,000 represent musical compositions, 15,000 represent books, 10,000 represent periodicals, and 2,500 represent dramas and lectures.

Senator McClellan, Chairman of the Senate Judiciary Subcommittee, has stated that, because of the still unresolved issue of cable television carriage of broadcasts of copyrighted material, action on the legislation for general revision of the copyright law cannot be completed this year. The extension of subsisting renewal copyrights provided for by the joint resolution is necessary to preserve them pending enactment of the general revision bill. We support Senate Joint Resolution 132, with the fervent hope that enactment of the general revision bill can be accomplished before the end of the next session of the Congress.

Sincerely yours,

L. QUINCY MUMFORD,
*Librarian of Congress.*

DISSENTING VIEWS OF HON. ROBERT W. KASTENMEIER

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I regret that I can no longer concur in the action of my colleagues in the matter of these annually recurring, ostensibly "interim," extensions of expiring copyrights.

If this measure (S.J. Res. 132) is enacted it will mark the seventh occasion over the past 10 years on which the normal expiration of the renewal terms of subsisting copyrights will have been prevented by Congress. What began in 1962 with a 3-year extension, in anticipation of prompt copyright law revision, was followed in 1965 with a further 2-year extension, and since then by four annual 1-year extensions. Legislation of this character has come to occupy a familiar place at the end of each legislative session.

Meanwhile, although the House sent a copyright revision bill (H.R. 2512) to the other body in 1967, and although a copyright revision bill (S. 644) is pending there today, it has become increasingly evident that we cannot predict when, if ever, a revision bill will clear the Senate.

Although I supported interim extension legislation on a number of occasions I have reached the conclusion that this may have been a mistake. In any event, I now believe that Senate Joint Resolution 132 affords a windfall to the holders of copyrights in their renewal term, where such term would otherwise expire this year. I find it impossible to identify any public interest that would be served by the enactment of this measure.

The most frequently heard defense of the legislation invokes compassion for elderly authors and composers whose retirement income is threatened by the expiration of their copyrights. What is lost sight of here is that we are talking about copyrights that are between 56 and 65 years old, so that their present owners are in all but very rare cases descendants and assignees, including commercial, corporate assignees, of authors and composers rather than the creators of the copyrighted works themselves. Also, there is the likelihood that persons acquiring copyright interests from authors and composers will have bargained and paid for interest in a 28-year renewal term, not a 37- or 38-year term.

But even with respect to the authors and composers, themselves, there is no discernible equity underlying their claim for an extension. The legislation makes what amounts to a retrospective reward for authorship at the expense of the public domain, in a situation in which the constitutional prescription "...to promote the progress of useful Arts ..." cannot directly be served.

I note that the Librarian of Congress, in his comments on the 1969 version of the annual extension legislation said: "It is important that this fifth interim extension of subsisting copyright be the last of the series ..." Although the Librarian now supports Senate Joint Resolution 132, it is "with the fervent hope that enactment of the general revision bill can be accomplished before the end of the next session of the Congress." The Librarian's dilemma is understandable in view of his affirmative interest in a copyright law revision. For my part, however, I believe that we must stop relying on the pending revision as an excuse for or explanation of indefensible legislation.

ROBERT W. KASTENMEIER, M.C.

**Public Law 92-170**
**92nd Congress, S.J. Res. 132**
**November 24, 1971**

JOINT RESOLUTION

Extending the duration of copyright protection in certain cases.

*Resolved by the Senate and House 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, or the term thereof as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, or by Public Law 91-555 (or by all or certain of said laws) would expire prior to December 31, 1972, such term is hereby continued until December 31, 1972.

Approved November 24, 1971.