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Justices to Review Copyright Extension

By LINDA GREENHOUSE

WASHINGTON, Feb. 19 — The Supreme Court agreed today to decide whether the 1998 law that extended the duration of existing copyrights by 20 years was constitutional. The court's action took the world of copyright holders and users by surprise and held the potential of producing the most important copyright case in decades.

A challenge to the law, the Sonny Bono Copyright Term Extension Act, which many had regarded as a fanciful academic exercise, suddenly looked very different once the Supreme Court declared its interest.

The issue is whether the Constitution's grant of authority to Congress to issue copyrights and patents "for limited times" to "promote the progress of science and useful arts" contains any real limitation on how that power is to be exercised. That question has implications for future cases as the battle over the ownership of intellectual property focuses on the Internet.

As a practical matter, the consequences could be enormous, both for those with stakes in copyrights that are running out and for the growing community of people — represented by the plaintiffs in this case — trying to use the Internet to expand the boundaries of the public domain. If the 20-year extension was unconstitutional, early Mickey Mouse depictions would no longer belong exclusively to the Walt Disney Company — although Disney would retain trademark protection for the character.

Two lower federal courts here had rejected arguments by a coalition of publishers and individuals that the latest extension of copyright protection — the 11th in the last 40 years — defeated the original intent of the Copyright Clause, in which the framers sought to grant a limited monopoly that would encourage and reward the creation of works while ensuring eventual public access. The initial Copyright Act, which Congress amended only once in the next 150 years, provided for a 14-year term, with a 14-year renewal only if the author was still alive.

Continued on Page 6

SPOTLIGHT THROWN ON PUBLIC DOMAIN

The Supreme Court's decision to hear the copyright case is likely to focus attention on which works should be in the public domain, legal experts said. Page C7.

Continued From First Business Page

The plaintiffs had argued unsuccessfully that extending copyright protection for existing works did nothing to promote new creativity while subverting the concept of "limited times." They had also argued that the extension restricted free speech in violation of the First Amendment. They lost in a 2-to-1 ruling by the United States Court of Appeals for the District of Columbia Circuit one year ago.

After the plaintiffs filed their Supreme Court appeal last October, the Bush administration urged the Supreme Court to reject the case, Eldred v. Ashcroft, No. 01-618. The administration pointed out that there were no conflicting rulings on the validity of the 1998 law — with lower court disagreement being the most important criterion for Supreme Court review — and "no decision of any court holding that Congress cannot, consistent with the Copyright Clause, enact legislation that extends the term of existing copyrights."

The 1998 extension was a result of intense lobbying by a group of powerful corporate copyright holders, most visibly Disney, which faced the imminent expiration of copyrights on depictions of its most famous cartoon characters. Mickey Mouse, first copyrighted in 1928, would have been the first to go under the old law, which gave a 75-year copyright to works created for hire and owned by corporations. That became 95 years under the new law, both prospectively and for existing works; material created by individuals, previously protected for the life of the artist or author, plus 50 years, also received 20 more years.

Support for the extension also came from those who argued that it was necessary to match the copyright term granted by the European Union.

The plaintiffs' Supreme Court appeal, filed by Prof. Lawrence Lessig of Stanford Law School, garnered support from concerned groups including the American Library Association and other libraries. Now that the court has agreed to hear the case, with arguments to be held in the fall, briefs will undoubtedly pour into the court from copyright holders as well as from public domain advocates.

The libraries' brief accused Congress of "transforming a limited monopoly into a virtually limitless one." Prof. Peter Jaszi, a copyright expert at American University, whose law students wrote the brief, said today that he was "flabbergasted and delighted" that the justices had accepted the case.

While "copyright is good," he said, the challenge was "based on the proposition that constitutionally, you can have too much of a good thing." He said that while the court had interpreted Congress's exercise of its copyright authority many times, it had never before taken on a direct challenge to that authority.

The plaintiffs' direct challenge to Congress in fact may have made their case attractive to justices who might otherwise not have been interested in a copyright dispute. The court is in the midst of its most active and skeptical scrutiny of Congressional action in more than 50 years. In his appeal, Professor Lessig cited recent decisions curbing Congress's exercise of another of its powers under Article I, Section 8, of the Constitution, the power to regulate interstate commerce.

He also argued that the 20-year extension would block "an extraordinary range of creative invention" from entering the public domain "just at the time that the Internet is enabling a much broader range of individuals to draw upon and develop this creative work."