

CINE-GT 1804: Copyright, Legal Issues, and Policy
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Assignment 3

One area of copyright law that I believe needs to be reformed is the potential for bias towards well-funded copyright holders, who are more likely to have the resources to bring potentially precedent-setting cases to federal court. To that end, I believe the section on copyright duration (17 U.S. Code § 302) should be reformed. I believe that durations extending far past the life of the author of the work should be reduced, and that no work should remain in copyright for more than 25 years after the life of the author. It is my belief that financial restitutions past this do little to serve the purpose of copyright law. As noted by the Supreme Court:

The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts. The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.¹

The current duration of copyright, by definition, goes beyond stimulating and rewarding creativity; no author is able to benefit (creatively or financially) from their work 70 years after their own death. While descendants of the author should be able to benefit to a degree, the current duration of copyright protection is more likely to benefit a party with the resources of a large organization. A small family estate is unlikely to have the time or money to pursue a copyright claim. There is a copyright provision that could potentially help with this, which states: "In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs."² Nonetheless, this is likely not enough to assuage the risk of not recovering from the initial investment of bringing a case to court. A case not always being decided in favor of larger institutions is irrelevant in this regard; if these smaller cases are not brought to court, then the cases setting precedents are inherently biased towards the types of cases that are brought (which are more likely to be those from well-funded parties).

The U.S. Copyright Office identified solving the difficulty of bringing small claims to courts as a priority in 2011.³ Addressing this is another potential avenue towards limiting the bias towards wealthy copyright holders, although the recommendations in the U.S. Copyright Office

¹ *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975)

² 17 U.S. Code § 505

³ Maria A. Pallante, "Priorities and Special Projects of the United States Copyright Office," *United States Copyright Office*, October 2011, <http://www.copyright.gov/docs/priorities.pdf>.

report on small claims issued in 2013 may complicate the possibility. The report collected the testimony of many different groups that represent individuals who rarely have the resources to bring small claims to court. The issue is not unique to copyright disputes, but the ramifications within copyright are potentially very serious. The Copyright Office report recommended a solution that would provide an alternative forum for small claims at the Copyright Office itself. This recommendation would alleviate the expense of a copyright claim, and small claims that otherwise would not have been brought to court would be addressed. This appears to be worth exploring, and would likely have a positive effect, but the recommendation that “determinations of the small claims tribunal would be binding only with respect to the parties and claims at issue and would have no precedential effect” could have a dangerous effect.⁴ Even if the “[f]inal determinations could be filed in federal court, if necessary, to ensure their enforceability,” it seems unlikely that this would happen, if the copyright claim was already too small so as to require the alternative venue at the Copyright Office.⁵

Although it would be a difficult fight, I believe it would not be difficult to find supporters, especially those who viewed the copyright extension in 1998 as the “Mickey Mouse Protection Act,” where a large corporation (Disney in this case) took things away from the public (domain).⁶ Nonetheless, there would probably be many opponents to my proposition, especially those larger institutions who currently benefit greatly from copyright law. Many organizations would balk at reducing the amount of time before a work falls into the public domain. Part of the argument here is that those who fund, produce, and support creative works should be able to benefit from them. While I agree with this, I would counter by saying that the current duration benefits organizations and institutions more than creative individuals. Some copyright holders may also push back against this because it would limit future royalties that would benefit their estate (i.e. family). This concern would likely be brought up by a wide range of copyright holders, including some of those my proposed changes are intended to benefit. My counter in this case would be that it is not the intent of copyright to look out for the family/estate of a copyright holder, and that the long-term benefit of my proposed change (or, at least, the intended effect) would outweigh this concern.

⁴ “Copyright Small Claims: A Report of the Register of Copyrights,” *United States Copyright Office*, September 2013, <http://copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

⁵ Ibid.

⁶ Mike Masnick, “Disney Claims House Of Mouse Built With Copyright, Ignores Public Domain Foundation,” *TechDirt*, September 11, 2012, <https://www.techdirt.com/articles/20120910/02485220325/disney-claims-house-mouse-built-with-copyright-ignores-public-domain-foundation.shtml>.

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17 U.S. Code § 505.

17 U.S. Code § 302.

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