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ADDITIONAL DEVELOPMENTS—CONSTITUTIONAL LAW, PART II

GOLAN V. ASHCROFT

310 F. Supp. 2d 1215 (D. Colo. 2004)

LUCK'S MUSIC LIBRARY, INC. V. ASHCROFT

321 F. Supp. 2d 107 (D.D.C. 2004)

Two district courts reached opposite conclusions regarding the validity of an act of Congress granting a retroactive extension of copyright protection to works that had already passed into the public domain. A district court in Colorado ruled to allow constitutional challenges to the Uruguay Round Agreements Act (URAA), while in Washington, D.C., the district court ruled that Congress can constitutionally extend copyright protection to works that have already fallen into the public domain, and thus granted the government's motion to dismiss.

Section 514 of the URAA implemented Article 18 of the Berne Convention by providing copyright protection to foreign works that, for one of three reasons, had entered the public domain in the United States because their authors did not comply with since-repealed copyright formalities; because of lack of subject matter protection (for sound recordings before 1972); or because the United States did not recognize copyrights from their origin country.

In *Golan v. Ashcroft*, plaintiff artists and art sellers sued to prevent enforcement of § 514, claiming that it exceeded Congress's power under the Intellectual Property Clause, violated the First Amendment, and violated their rights to substantive due process. The court denied the defendant's motion to dismiss for failure to state a claim, finding that the URAA, in making previously public domain works protectable, changed copyright law sufficiently to warrant First Amendment scrutiny. The court also found that the URAA might violate substantive due process rights by unsettling plaintiffs' reasonable expectations about which works would be in the public domain. The court consequently denied the motion to dismiss, though noting that the plaintiffs' claims might ultimately be unsuccessful.

Plaintiffs also pled a constitutional challenge to the Copyright Term Extension Act (CTEA), which extended existing copyright terms for an additional twenty years. The court granted defendant's motion to dismiss with respect to this claim, holding that it was foreclosed by the Supreme Court's decision in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), which upheld the constitutionality of the CTEA.

In *Luck's Music Library, Inc. v. Ashcroft*, brought by sellers of public domain music and movies, the court considered similar arguments. However, in this case the court granted the government's motion to dismiss for failure to state a claim. The court found that Congress had consistently granted retroactive copyrights that removed works from the public domain in the past. In particular, Congress granted retroactive protection to existing works when it passed the first Copyright Act in 1790. The court rejected the argument that the Act merely federalized an existing right, finding that state common law

copyrights did not exist prior to 1790. The court also referred to World War I- and II-era laws that extended copyright protection to foreign authors who were unable to comply with U.S. copyright formalities due to the hostilities. In those cases, works were also in the public domain until they were retroactively granted protection. The court further rejected the argument that the UPAA failed to “promote the Progress of Science and useful Arts” because the Act’s purpose was to procure copyright protection for work by U.S. citizens in foreign countries, and found that the UPAA did not violate the constitutional originality requirement. Finally, the court found the UPAA did not violate the First Amendment. Relying on *Eldred v. Ashcroft*, the court held that copyright law’s traditional limits, including the idea/expression dichotomy and fair use, were enough to satisfy the First Amendment. The court consequently held the extension of copyright protection to be constitutional.