No. 01-618

In the Supreme Court of the United States

ERIC ELDRED, ET AL.,
Petitioners,
v.
JOHN D. ASHCROFT, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICI CURIAE* OF THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL (NSAI) IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICI CURIAE*[1]

This brief *amici curiae* in support of respondent is submitted by The Nashville Songwriters Association International (NSAI) pursuant to Rule 37 of the Rules of this Court. NSAI, with nearly 5,000 members, is the world's largest not-for-profit songwriter trade organization, and was an active participant in the legislative process which led up to the passing of the Sony Bono Copyright Term Extension Act of 1998 (CTEA), Pub. L. No. 105-298, 112 Stat. 2827 (1998). NSAI was founded in 1967 and is incorporated as a not-for-profit organization in Tennessee.

> NSAI *consists of a body of creative minds, including songwriters from all genres of music, professional and amateur, who are committed to protecting the rights and future of the profession of songwriting, and to educate, elevate, and celebrate the songwriter and to act as a unifying force within the music community and the community at large.*

NSAI mission statement.

Among its many activities, NSAI operates workshops to educate and develop amateur songwriters throughout the U.S. and Canada. Although many of its members are famous songwriters, the majority of NSAI's members are songwriters

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[1] Counsel for Respondent and Petitioners have consented to the filing of this brief and their consent letters have been filed with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no person or entity other than amici curiae, or the Counsel of Record, made a monetary contribution to the preparation or submission of this brief. Amici Curiae recognizes and thanks Bart Herbison, Executive Director of NSAI and Brian Casper for their contributions to the preparation of this work.

that are probably unfamiliar to this Court. Song writing is a difficult career taking incredible dedication, hard work, and a faith that what you create today, will sustain you and your family in the future. The members of NSAI are proud to be songwriters. They are deeply concerned that if this Court overturns the CTEA it will discourage and regress the progress of science and the useful arts. NSAI is relying on this Court to protect their interests in today's global economy.

While the NSAI takes the position that the CTEA does not violate the First Amendment, it will only comment herein on the first question presented: *Whether the D.C. Circuit Court of Appeals Erred in Holding that Congress has the Power under the Copyright Clause to extend retrospectively the term of existing copyrights*.

INTRODUCTION

In passing the CTEA, Congress considered the longstanding recognition that laws require change and amendment as dictated by changes in the world in which they operate. NSAI asks this Court to consider the following quote from Thomas Jefferson:

> I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy….

Intellectual Property and the National Information Infrastructure: the Report of the Working Group on Intellectual Property Rights 13 (September 1995) [hereinafter *IPNII]* (Inscription at the Jefferson Memorial).

In passing the CTEA, Congress determined that "the coat [was] getting a little tight." *Id*. at 212. Congress decided that in order to progress American arts, the term of protection for subsisting works needed to be extended. Congress adjusted the "coat" to fit the growth of today's American authors, who like the majority of Americans are more educated, enlightened and have a more sophisticated understanding of their rights. Congress also adjusted the coat to fit the worldwide entertainment industry and the need to maintain the United States' competitive advantage in the global marketplace.

SUMMARY OF ARGUMENT

Past extensions, the views of the framers, case law, and the terms of the Constitution show that Congress had the power to enact the CTEA, and to retrospectively extend the term of protection for existing works. By its enactment Congress maintained the United States' position as the home of the greatest authors in the world, and directly benefitted the specific class of individuals meant to be protected by Article 1, §8, clause 8 of the Constitution — authors. Congress did not simply decide to award Hollywood with an undeserved windfall. Congress promoted and progressed the art form of songwriting and the human condition of America's authors.

Petitioners mistakenly equate the public domain with the public good. The public domain is but one element considered in determining the public good. Only Congress can determine the appropriate balance between the interests of authors and the public. Congress advanced the public good by encouraging and rewarding authors.

Congress did not arbitrarily choose to extend the term of protection for existing works, nor did Congress make copyright protection perpetual. By extending the term of protection for existing works, Congress promoted the progress of science for the following non-exhaustive reasons: (i) international term harmonization and the encouragement of global licensing of American songs; (ii) sustaining our copyright trade surplus; (iii) greater access to literary works; (iv) expansion of exceptions and limitations to copyright; (v) author incentives and rewards; (vi) reinvestment in the creation of new works, and greater dissemination and preservation of existing works; (vii) providing greater employment for authors; (viii) quality control for existing works; and (ix) the funding of foundations which encourage writing.

ARGUMENT

I. THE COURT DID NOT ERR IN HOLDING THAT CONGRESS HAD THE POWER UNDER THE COPYRIGHT CLAUSE TO EXTEND RETROSPECTIVELY THE TERM OF EXISTING COPYRIGHTS; CONGRESS DOES HAVE, AND HAS ALWAYS HAD THE POWER TO RETROSPECTIVELY EXTEND THE TERM OF EXISTING COPYRIGHTS.

The Constitution gives Congress 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" U.S. CONST. art. 1, § 8, cl. 8.

A. Past Extensions And The Views Of The Framers Make Congressional Power Clear.

Congress has always had the power to extend retrospectively the term of existing copyrights. It has done so without challenge in every significant copyright extension to

date. Prior to 1998, Congress extended the term of copyright protection for new and subsisting copyrighted works in 1831, in 1909 and in 1976.[2] In 1790 the First Congress provided copyright protection for works "already printed" as well as for those that would be "thereafter made and composed."[3] This alone should be dispositive. The men who wrote the Constitution recognized that the incentive to create is promoted by protecting works already created just as much as the protection of works yet unborn. The construction of the Constitution "by [those] contemporary with its formation, many of whom were members of the convention which framed it, is of itself entitled to very great weight, and when it is remembered that the rights thus established have not been disputed [for this long], it is almost conclusive." *Eldred v. Reno*, 239 F.3d 372, 379 (2001) (citing *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 57 (1884); *see also*, *Wisconsin v. Pelican Ins. Co.,* 127 U.S. 265, 297 (1888) (an act "passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true meaning.").

James Madison, a principle drafter of the Copyright Clause, observed without objection, the Congressional term

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[2] Act of Feb. 3, 1831, §§1-3, 4 Stat. 436-37; Act of Mar. 4, 1909, §24, 35 Stat. 1075-88; Pub. L. No. 94-553, 90 Stat. 2541 (codified as amended at 17 U.S.C. §§101 *et seq.*).

[3] Act of May 31, 1790 § 1, 1 Stat. 124. Petitioners argument that the 1790 extension as to existing works under the laws of the states, is not equivalent to an extension of federally protected existing works, is a red herring. Congress brought state law copyrights under federal control and extended those terms as necessary to harmonize term protection in the U.S. Accordingly, the state works became federal works and as existing federal works, their term was extended.

extension for existing works which occurred in 1831. Madison understood the value of copyright to an author and his heirs, and that copyrighted works grow more valuable with time. In his letter to Samuel Smith of February 2, 1827, Madison responded to a request that he publish his notes of the proceedings of the Revolutionary Congress and the General Convention of 1787. "Hardly a year passed from the close of the Convention to the day of Madison's death that he was not urged to publish the notes he had taken as semi-official reporter." Adriene Koch, *introduction* to NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787 at viii (Reported by James Madison). In the letter he stated "the older such things grow, the more they are relished as new; the distance of time, like that of space, from which they are received, giving them that attractive character." *Id*. at ix. In fact, Madison's notes were not published until after the 1831 term extension had taken place. In his will he bequeathed the rights, including the expected income from the sale of his notes to his wife. *Id*.

B. This Court Has Made Clear That Congress' Power Under The Patent And Copyright Clause Is Almost Absolute.

This Court has made clear that "the powers of Congress to legislate upon the subject of patents is plenary by the terms of the Constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify them at their pleasure." *McClurg v. Kingsland*, 42 U.S. 202, 206 (1843). Congress' power to legislate upon the subject of copyrights is clearly the same.

"[A]s the text of the Constitution makes plain, it is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors and inventors in order to give the appropriate public access to their work product;" [that] "task involves a difficult balance

between [competing interests]." [Thus,] "our patent and copyright statutes have been amended repeatedly." *Sony Corp. v. Universal City Studios*, 464 U.S. 417, 429 (1984); *see also*, *Stewart v. Abend*, 495 U.S. 207, 230 (1990). ("Th[e] evolution of the duration of copyright protection tellingly illustrates the difficulties Congress faces [in exercising its copyright power] . . . [I]t is not our role to alter the delicate balance Congress has labored to achieve.").

The CTEA extension was originally recommended by the executive branch after careful study by the Secretary of Commerce. *See*, *IPNII*, *supra* p. 2. Congress spent over five years listening to testimony, commissioning reports and deliberating the proper balance of interests for this new age.

In *Sony*, this Court wrote of the difficulties faced in finding the "balance between the interests of authors and inventors in the control and exploitation of their writings and discoveries on the one hand, and society's competing interest in the free flow of ideas, information, and commerce on the other hand." 464 U.S. at 429. This Court made it clear that the Constitution assigns this task to the legislative branch. *See*, *id*. The balancing of these conflicting interests is purely a matter of public policy. This Court has noted that the fluidity of this balance has been recognized since the advent of the printing press.[4] Sound principles council against the courts deciding these types of policy issues in the guise of constitutional

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[4] *See*, *Sony*, 464 U.S. at 429 n. 12. ("Copyright protection became necessary with the invention of the printing press and had its early beginnings in the British censorship laws…Successive ages have drawn different balances among the interest of the writer in the control and exploitation of his intellectual property, the related interest of the publisher, and the competing interest of society in the untrammeled dissemination of ideas." (quoting B. KAPLAN, AN UNHURRIED VIEW OF COPYRIGHT vii-viii (1967)).

interpretation.[5] The constitution has vested this power in Congress precisely because it is best suited to make these decisions. The judiciary is not apt to do what is necessary to strike the balance. Moreover, judge made law is not as readily malleable in the face of technological and social change.[6] Congress balanced substantial evidence pro and con while drafting and voting on this legislation. With that evidence before them, it was reasonable for Congress to determine that the benefits of a longer term outweighed the costs to the public.

C. The CTEA Does Not Violate The "Limited Times" Requirement, And This Court Has Made Clear That It Is For Congress To Decide What Is A "Limited Time."

Petitioners argue that what makes the CTEA unconstitutional as opposed to prior extensions of existing copyrights is that enough is enough — that when all of the

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[5] "[W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." *Planned Parenthood v. Casey*, 505 U.S. 833, 876 (1992) (Scalia J., concurring in part and dissenting in part (quoting *Dred Scott v. Sandford*, 60 U.S. 393, 621 (1857) (Curtis J., dissenting)).

[6] *See*, Sony, 464 U.S. at 431 ("Sound policy, as well as history, supports our consistent deference to Congress when major technological innovations alter the market for copyrighted materials. Congress has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology.").

extensions over the history of the U.S. Copyright Act are combined, Congress is providing for perpetual protection piecemeal, and is going beyond the textual limitation of the Copyright Clause that exclusive rights only be granted for "limited times." *See,* Pet. at 18. However, the CTEA's twenty-year extension is by definition for a limited time. Petitioners also argue that absent the requirement that Congress "promote the Progress of Science" there would be no Copyright Clause reason to restrict Congress' power over the public domain. Pet. at 12. Yet, the only Copyright Clause restriction on Congress' power over the public domain is in the words "limited times." Petitioners admit, there is no public domain clause in the Constitution. *Id*. The only Copyright Clause reason for a requirement that some public domain exist is implied by the words "limited times." *See*, U.S. CONST. art 1, § 8, cl. 8. Accordingly, the scope of the public domain is to be determined by the Congressional policy of what constitutes the appropriate "limited times."

Petitioners misread *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The question before the Court was "what effect the 1952 Patent Act had upon traditional statutory and judicial tests of patentability and what definitive tests were then required." *Id.* Nowhere in *Graham* was the issue of "limited times" or the scope of the public domain addressed. Petitioners suggest that in order for Congress to act in any way under the Copyright Clause, the action must "promote the progress of science." Pet. at 19. However, this introductory language is not a limit on Congressional power but is merely "conclusory, reflecting the belief of the framers of the Constitution that to grant exclusive rights would promote the progress of science." *See*, WILLIAM F. PATRY, I COPYRIGHT LAW AND PRACTICE 124 (1994); *cf*. MELVILLE NIMMER & DAVID NIMMER, I NIMMER ON COPYRIGHTS § 1.03 (2001). The only inherent requisite this Court mentioned in

respect to the Constitutional command to "promote the Progress of Science and the useful Arts" was that of "Innovation, advancement, and things which add to the sum of useful knowledge." *Graham*, 383 U.S. at 5. Even if this language could be analogised to reflect a standard of copyrightability, its breadth does not address duration of protection.

The internal logic of *Graham* poses no problems for the CTEA.[7] This Court stated that "Congress in the exercise of the patent power may not overreach the restraints imposed by the stated constitutional purpose." *Graham*, 383 U.S. at 6. However, in explaining the scope of this restraint, this Court emphasized that Congress has broad discretion. *Id*. ("Within the limits of the constitutional grant, the Congress may, of course, implement the stated purpose of the Framers by selecting the policy which *in its judgment* best effectuates the constitutional aim.") (emphasis added).

Additionally, this Court has made it clear that it is the role of Congress to determine the scope of what constitutes the most appropriate "limited times." *See*, *Pennock v. Dialogue*, 27 U.S. 1, 16-17 (1829) (this exclusive right shall exist but for a limited time, and that period shall be subject to the discretion of Congress); *see also*, *Sony*, 464 U.S at 429.

D. New Originality Is Not Required To Extend Copyright Protection For Existing Works.

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[7] Additionally, the retroactive extension of the copyright term did not effect any works already in the public domain. By definition, the works covered under the existing term were not "already available." Because of the idea/expression dichotomy, copyright never removes any existing knowledge from the public domain. It merely postpones the legal piracy of a particular way of expressing that knowledge.

Petitioners' reliance on *Feist Publ'ns v. Rural Tel. Ser. Co.*, 499 U.S. 340 (1991) and *Harper & Row v. Publishers v. National Enters.*, 471 U.S. 539 (1985) to argue that the requirements of "originality" restrict Congressional power to extend the term of copyright for existing works is completely misplaced. *See*, Pet. at 32-33. Their sole authority for this interpretation is a quote from *Feist* taken out of context. Petitioners claim that *Feist* "characterized material 'in the public domain' as 'not original.'" *Id.* citing *Feist*, 499 U.S. at 350 quoting *Harper*, 471 U.S. at 548 ("copyright does not prevent subsequent users from copying from a prior author's work those constituent elements that are not original — for example . . . materials in the public domain."). However, this quote does not mean that works in the public domain are not original. This Court was speaking of constituent parts that are not original to a prior authors work.

These cases do not stand for the proposition that works in the public domain are not original, nor for the proposition that in order to extend term protection for existing works some "new originality" must be found.

Harper and *Feist* stand for the proposition that even compilations of facts, or historic recollections can be protected by copyright if they have some modicum of originality. *See*, *Feist*, 499 U.S. at 346. But those portions that are not part of the author's original creation are not protected. *Id.* at 350-51. These cases say nothing at all about the originality of the public domain.

E. The Public Good And The Public Domain Are Not One In The Same. The Constitution Specifically Protects Authors. Nowhere Is The Public Domain Mentioned Except Implicitly By The Language "Limited Times."

1. The encouragement of individual effort by personal gain is the best way to advance public welfare.

Copyright is a balance – authors' interests along side the public's interest. However, the public domain is just one element of what is considered in support of the public good. The public domain should not be balanced with a weight even remotely equivalent to that of the interests of authors. Instead, one must ask, to what extent does the public benefit when literary works enter the public domain? This Court has provided the answer: "The economic philosophy behind the [copyright] clause . . . is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare...Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." *Mazer v. Stein*, 347 U.S. 201, 219 (1954).

2. Musical works are more accessible to the public when they are protected by copyright than when they fall into the public domain.

In practice, commercial music users prefer to rely upon copyright protection. Most film and television production companies prefer to license a copyrighted song rather than use a public domain song. *See*, AL KOHN & BOB KOHN, ON MUSIC LICENSING 783 (3d ed. 2002). The reason is liability. If users license a song from a publisher, that publisher represents and warrants that it has the rights to the song. *See*, *id*. at 594. Licensing a copyright protected song takes the production company off the hook. *See*, *id*. at 783-84. Film and television producers require worldwide rights. It is of little value if a song is in the public domain in one country, when it is still protected in another country.

Companies that publish public domain works usually sell them at or above the price of contemporary works of the same genre. Blockbuster Video rents *It's a Wonderful Life* for the same amount as the rest of its classic movies, even though it entered the public domain in 1974.[8] "Once a work falls into the public domain there is no guarantee that the work will be more widely available or cheaper." *Hearing on S. 483*, *supra* note 8 (statement of Bruce Lehman, Assistant Sec. of Commerce and Comm'r of Patents and Trademarks). When publishers of public domain works sell them to the public at or around the same price as copyrighted works, they reap a windfall by not having to pay royalties. With these higher profit margins there is no reason they cannot pay for the occasional license or royalty fee.

3. Petitioners are merely attempting to transfer wealth from authors and authors' heirs into their own pockets.

Petitioners have made clear that they are authors of derivative works. Pet. at 5. Authors of derivative works (even derivatives of public domain works) have rights in their unique arrangement, selection, and in any new original work that they may introduce into the public domain work. *See*,

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[8] *See*, *Copyright Term Extension Act of 1995: Hearing on S. 483 Before the Senate Judiciary Comm.*, 104th Cong. (1995) [hereinafter Hearing on S. 483] (testimony of Alan Menken: "This is MOBY DICK, written by Herman Melville in 1851 . . . This is THE CHAMBER, written by John Grisham in 1994. The price of MOBY DICK is twelve dollars and ninety-five cents. The price of THE CHAMBER is seven dollars and fifty cents. The publisher of MOBY DICK pays no royalties to the Meville Estate, while John Grisham of course, derives royalties from the sale of his book. However, no benefit is passed on to the consumer from the sale of MOBY DICK — only the publisher benefits."

Feist, 499 U.S. at 348. Accordingly, once a work falls into the public domain, it is not free to the public because users must still pay the owner of the derivative version of the work. Petitioners reason for challenging the CTEA is clear — they want to transfer the royalty payments that are currently being paid to authors and their publishers into their own pockets.

4. Without copyright ownership, there is insufficient incentive to actively promote and develop older works, which results in new generations losing access.

Last year's Grammy Award winner for "Album of the Year" was the "O Brother Where Art Thou" movie soundtrack. *See*, Ray Waddell, *Down From The Mountain Upping Its Profile*, BILLBOARD (Mar. 23, 2002). It is a prime example of older and lesser-known music that found a new generation of listeners. This was due to the fact that the copyright owners had a financial incentive to exploit and market their works. As is industry practice, the film's music supervisors contacted music publishers requesting the genre of songs they thought would fit the film. DONALD PASSMAN, ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS 395 (1994). Publishers of early bluegrass music responded to the requests, and the result has been a resurgence in bluegrass music, a cultural treasure that the public had all but lost.

The songs used in the film have financially benefited their authors and heirs, including NSAI members Jimmie Davis ("You Are My Sunshine"), A.P. Carter ("Keep on the Sunny Side"), Albert E. Brumley ("I'll Fly Away") and Jimmie Rodgers ("In the Jailhouse Now"). Had these songs gone into the public domain, the publishers would likely have discarded them from their libraries. These songs would not have been included in the sets of songs sent to the film's music supervisors absent the publishers' ownership.

F. The CTEA Is Not Perpetual Protection Piecemeal, The Development Of Copyright Law Is An Ongoing Domestic As Well As International Process.

International standards have always been a guiding force in the development of U.S. copyright law.[9] All of the significant U.S. copyright term extensions were due to higher protection in the international community, and a desire to treat American authors equally as well as their foreign counterparts.

The first copyright act of 1790 was based on the British Statute of Anne. *Compare*, Act of May 31, 1790, 1 Stat. 124, *with* 8 Anne, ch. 19, 1710. The next extension occurred in 1831 due to higher protection internationally. REPORT OF THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES, 7 Reg. Deb., app. c xix (Dec. 17, 1830). The stated purpose of the 1831 extension was "to enlarge the period for the enjoyment of copyright, and thereby to place authors in this country more nearly upon an equality with authors of other countries." *Id*. The extension of 1909 was also due to higher international term protection. S. REP. NO. 59-6187 at 7 (1907). The term of copyright protection was extended again in 1976 to meet international standards. H.R. REP. NO. 94-1476 at 135 (1976). So it is no surprise that in 1998, in the midst of the information age and the global economy, Congress again felt that American authors should receive term protection at least as strong as their foreign counterparts. *See*, H.R. REP NO. 105-452 at 4 (1998).

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[9] The CTEA was not a stand-alone piece of legislation. It was considered and recommended along side the Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, § 404, 112 Stat. 2860 (1998). The overriding impetus behind the DMCA was also international in scope, to comply with U.S. obligations under the WIPO Treaties.

The CTEA is not perpetual protection piecemeal. Petitioners claim that Congress has extended the term eleven times in the last forty years. Pet. at 2. However, this is misleading. Nine of the last eleven extensions were merely placeholders designed so that works would not fall into the public domain while Congress was deliberating what became the 1976 Copyright Act. *See*, H.R. REP. NO. 94-1476 at 47-49. Congress spent over twenty years fine-tuning the 1976 Act before it became law. *See*, H.R. REP. NO. 94-1476 at 47. By 1965 it was apparent that the term was going to be extended to life plus fifty years. *See*, *id*. In reality, only two term extensions have been enacted in the last forty years, and only four in the last two hundred.

The term chosen was not arbitrary. It was specifically chosen to harmonize the term of protection under American copyright law with that of the European Union. *Hearing on S. 483*, *supra* note 8. (statement of Comm'r Lehman) ("The primary reason for changing the copyright term by twenty years [was] to bring U.S. law into conformity with that of the European Union.")[10]

Jonathan Tasini[11] explained to Congress that the overriding issue in term extension was global harmonization

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[10] Petitioners' claim that the CTEA actually disharmonized international copyright term is completely uninformed as it compares mostly third world countries with those of the world's most powerful nations. Pet. at 43. If America is to be a leader, or intends to at least compete in the global economy of intellectual property, it should not aspire to match the type of protection afforded by countries such as Kazakstan, Liechtenstein, Qatar, Paraguay and Malawi.

[11] Tasini was a successful plaintiff in *N.Y. Times v. Tasini*, 533 U.S. 483 (2001).

which was underscored by the EU's term extension of 1993. Prior to 1998 the U.S. term was the shortest possible under the Berne Convention, which adopted its minimum at a time when life expectancy was approximately 52 years. He explained that with life expectancy averaging 76 years, the current term did not allow an author's heirs to enjoy the economic benefit of a work. S. REP. NO. 104-315, at 146-47 (1995) (Letter from National Writers Union, Jonathan Tasini, President).

In today's global economy, harmonization of the term of protection for literary works is imperative for the smooth operation of licensing and other business transactions. If the U.S. provides weaker copyright protection than other first-world countries, it may create an incentive for America's greatest writers to take citizenship elsewhere. The U.S. should be focused on retaining its great writers and on attracting the world's greatest talent to become Americans.

G. Congress Reasonably Extended The Term For Existing Works In The Interest Of U.S. Trade And Considered The Rule Of The Shorter Term.

The United States has seen unsurpassed growth in the foreign consumption of its creative products. *See generally*, STEPHEN E. SIWECK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY THE 2002 REPORT (2002) [hereinafter SIWECK]. Congress acted in light of this growth when it advanced the copyright law to "keep pace with the times." Congress recognized that the U.S. has international obligations to protect copyright under the Berne Convention. Pursuant to the Convention's rule of the shorter term, member countries are only obliged to protect the work of foreign authors to the same extent that they would be protected in their own country. Congress knew that failure to extend our copyright term would cost the U.S. millions of dollars in export revenues,

and that our balance of trade would suffer commensurately. *See*, 144 CONG. REC. H1459 (daily ed. March 25, 1998) (statement of Rep. Howard Berman).

Senator Orrin Hatch stated:

> America exports more copyrighted intellectual property than any country in the world, a huge percentage of it to the nations of the European Union. Intellectual property is, in fact, our second largest export; it is an area in which we possess a large trade surplus. At a time when we face trade deficits in many other areas, we cannot afford to abandon 20 years worth of valuable overseas protection.

Hearing On S. 483, *supra* note 8.

In 1994, the U.S. copyright industry contributed approximately $40 billion in foreign sales to the U.S. economy and stood as a net exporter of intellectual property products to the EU. Congress reasonably determined that an additional twenty years of protection would likely increase the trade balance of the U.S. *Id*. (statement of Comm'r Lehman).

This economic reality continues to the present time. In 2001, the U.S. copyright industries accounted for 5.24% of U.S. Gross Domestic Product (GDP), or $535.1 billion. *See*, SIWECK, *supra* p. 15 at 3. Over the last 24 years (1977-2001), the U.S. copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy (7.0% vs. 3.0%). *Id*. at 4. Between 1977 and 2001, employment in the U.S. copyright industries more than doubled to 4.7 million workers, which is now 3.5% of total U.S. employment. *Id*. In 2001, the U.S. copyright industries achieved estimated foreign sales and exports of $88.97 billion, again leading all major industry sectors. *Id*.

This Court should not overrule the clear Congressional policy decision that the extension of term protection for subsisting works is good for U.S. trade.

H. In Enacting The CTEA, Congress Did Not Merely Extend The Term Of Copyright. It Balanced Users' Interests By Significantly Cutting Back The Rights Of Copyright Owners.

Copyright is often characterized as "a bundle of rights." While the sticks in the bundle may appear to be getting longer, constant legislative chipping-away, is also making them thinner. In 1998, Congress significantly cut back the rights of copyright owners. The history of American copyright legislation shows a clear trend of cutting-back copyright rights. Congressional balancing between the rights of authors and users is a continuous process.

The cut-back in 1998 of most significance to American songwriters was the Fairness in Music Licensing Act (FMLA), Pub. L. No. 105-298, 112 Stat. 2827 (1998) (title II of the CTEA). Restaurant and bar owners lobbied Congress—just as the Petitioners could now—to obtain the free use of music. *See*, 144 CONG. REC. H1457 (March 25, 1998) (comments of Rep. Sensenbrenner). The FMLA gives an exemption to small businesses and restaurants from paying performance royalties on music played from radio or television to their customers. 17 U.S.C. § 110 (2001). This cut-back has had a substantial economic impact on authors and publishers.

Additionally, a new fair use provision was added for libraries and archives for purposes of preservation, scholarship, or research. 17 U.S.C. § 108 *amended* by the Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, § 404, 112 Stat. 2860, 2889 (1998). Online service providers were exempted from liability for infringements. 17

U.S.C. § 512. Non-profit educational institutions were exempted from liability for infringements by faculty members and graduate students. *Id*. An exemption for computer maintenance and repair was created. *See*, 17 U.S.C. § 117 *amended* by DMCA § 302, 112 Stat. at 2887. A statutory license was granted to traditional analog broadcasters to make non-subscription webcasts. 17 U.S.C. § 112 *amended* by DMCA § 402, 112 Stat. at 2888. Broadcasters were exempted from liability for making copies of recordings for technical reasons related to transmissions. *Id*. The Library of Congress was given the power to recommend distance education programs which could potentially cut-back copyright owners' rights. DMCA § 403, 112 Stat. at 2889. Additionally, a compulsory licensing scheme was created for subscription services and certain non-subscription services, and the Librarian of Congress was given the power to determine a schedule of rates and terms which are binding on copyright owners. 17 U.S.C. § 108 *amended* by DMCA § 405, 112 Stat. at 2890.

These types of limitations are nothing new. The 1976 Act is riddled with exceptions and exemptions. Over half of the sections in Chapter 1 of Title 17 are dedicated to somehow limiting the rights of copyright owners.

The doctrine of fair use is a massive exception to a copyright owner's exclusive bundle of rights. As an example, 17 U.S.C. § 107 allows the free use of copyrighted works for purposes such as criticism, comment, parody, news reporting, teaching, scholarship, and research. Further, § 107 is meant to be illustrative and not meant to limit what may be considered fair use. *See*, PATRY at 722-23. The 1976 Act's codification of fair use is regarded as an expansion of the fair use rights present under the 1909 Copyright Act. *Id*.

Other exemptions which affect songwriters are those for broadcasters relating to ephemeral recordings: § 112; a statutory licensing scheme for digital transmissions: *Id.*; a compulsory license for making and distributing phono records containing musical works: § 115; the public broadcasting exemption: § 118; the "first sale" doctrine: § 109; the ten exceptions to the performance right (includes: face to face instruction, educational broadcasting, religious performances, non-profit performances, the small business exemption, agricultural and horticultural fairs, record stores, for the blind or handicapped, for non-profit veterans and fraternal organizations): § 110 (1-10); a compulsory license for secondary transmissions by cable and other broadcasters: §§ 111, 119; a compulsory license for jukeboxes: § 116; and a five year statute of limitations for criminal proceedings and three years for civil actions: § 507.

II. RETROSPECTIVE COPYRIGHT TERM EXTENSION PROMOTES THE PROGRESS OF SCIENCE.

A. Petitioners' Presumption That Copyright Is Granted To Writers Only For The Purpose Of An Incentive To Create New Works Is Flawed. Promoting The Progress Of Science Is Not Limited To New Creation.

Copyright is "intended definitely to grant valuable, enforceable rights to authors. . . to afford greater encouragement to the production of literary works of lasting benefit to the world." *Cf. Washingtonian Publ'g v. Pearson*, 306 U.S. 30, 36 (1939). "To induce release to the public of the products of his creative genius." *U.S. v. Paramount Pictures*, 334 U.S. 131, 158 (1948). What promotes the progress of the sciences is broad in nature, and at least includes anything that adds to the sum of artistic knowledge.

Petitioners' sole reason for claiming that the CTEA does not promote the progress of the sciences is that the extension cannot act as an incentive for the creation of new works. Pet. at 19-22. Neither the Copyright Clause nor case law provides authority for the proposition. Quite the contrary, promoting the progress of science is to be read broadly. *See*, *McClurg*, 42 U.S. at 206; I NIMMER, supra p. 8, at § 1.03.

There are numerous reasons that the CTEA promotes the progress of science including as stated above: (i) harmonization of the term of protection in the U.S. with that of the EU smoothes the operation of global licensing and business transactions and encourage the use of American songs; (ii) building American intellectual property wealth by avoiding the rule of the shorter term; (iii) providing greater public access to literary works through copyright protection; and (iv) providing a better balance between the rights of copyright owners and users of copyrighted works through an expansion of exceptions and limitations to copyright.

However the CTEA also promotes the progress of the sciences by, among other things: (i) providing authors incentives and rewards to continue the art of songwriting; (ii) providing capital to copyright owners to be reinvested in the creation of new works, and the greater dissemination, preservation and restoration of existing works; (iii) providing greater employment opportunities for authors; (iv) providing mechanisms to ensure quality control of existing works; and (v) providing for funding of foundations, authorship development programs, scholarships, grants, awards and other activities which encourage writing and benefit the public.

B. Congress Knew That The Extension Of Existing Works Would Help To Foster The Creation Of New Musical Works.

As this Court stated in *Harper*:

> Copyright is intended to increase . . . the harvest of knowledge . . . [T]he scheme established by the Copyright Act . . . foster[s] the original works that provide the seed and substance of this harvest. The rights conferred by copyright are designed to assure contributors to the store of knowledge a fair return for their labors.

471 U.S. at 545-546 (citing *Twentieth Century Music v. Aiken*, 422 U.S. 151, 156 (1975)).

Congress was aware that income earned by copyright owners from another twenty years of copyright protection for existing works allowed copyright owners to reinvest that money into the creative process — to increase the harvest. *Continued Hearings on the Copyright Term Extension Act of 1995: Hearing on H.R. 989 Before the Subcomm. On Courts and Intellectual Property, Comm. on the Judiciary*, 104th CONG. (July 13 1995), (statement of Marybeth Peters, Register of Copyrights) ("It appears reasonable to conclude that a longer revenue stream for copyrighted material is to the public good because funds become available for the creation of new works"). Music publishers routinely sign many songwriters in the hope that some of them will pen the hit songs that will subsidize the business. Congress knew term extension would allow publishers to hire more songwriters who would have the opportunity to write new songs. Publishers would in turn be able to invest money into the exploitation of new unproven works. *Id.* The greatest benefactor of this result is the public.

Petitioners argue that the CTEA will not induce George Gershwin to write any more works for the benefit of the public. Pet. at 22. However, Petitioners are missing the

forest for the trees. The income earned from the continued exploitation of existing works like those of George Gershwin, allows new authors the opportunity to become songwriters, and provides incentives to copyright owners to further disseminate existing works.

The financial rewards of the CTEA directly benefit songwriters. Unlike the film industry, the standard in music publishing is that 50% of the royalties earned from a song are distributed to the songwriters (or the songwriters' heirs) for the full term of copyright. *See*, PASSMAN, supra p. 13. at 215. Additionally, many major songwriters and artist-songwriters retain their publishing rights (i.e. they are their own publisher, retaining ownership of their copyrights and perhaps hiring someone to do the clerical function of administration). *Id. at 218.* Accordingly, any extension of the term of protection directly enhances the return a songwriter or his heirs will receive from the exploitation of his or her life work.

Commissioner Lehman testified: the extra twenty years "would result in greater financial rewards for the authors of the works, which will in turn, encourage these authors to create more new works for the public to enjoy." *Hearing on S. 483*, *supra* note 8.

C. Congress Determined That Sound Recordings And Films Were More Likely To Be Restored Through Retrospective Term Extension.

Congress made the reasonable determination that retrospective term extension would positively effect the restoration and preservation of American culture. Senator Hatch explained that many works were preserved in perishable media, and could be better preserved and disseminated in digital formats. Congress knew if the substantial investment in digitizing was to be made, private

parties needed an economic incentive and recoupment of their investment. Congress determined that extending copyright for an additional two decades would provide this incentive. *Hearing on S. 483*, *supra* note 8 (statement of Sen. Hatch); *See also*, (statement of Comm'r Lehman).

D. Congress Determined That The Promise Of Longer Royalty Income Flowing To A Songwriter's Heirs Is An Incentive To Create New Works.

Songwriters must hope that the public's taste finds favor with their works even for a fleeting moment. Many songwriters are living below the poverty level, with no retirement savings and have nothing to leave to their children. 144 CONG. REC. S12434, (daily ed. Oct. 12, 1998) (statement of Sen. Thompson). The average songwriter earns only $5,000 in royalties per year. *Id.* There is no 401k program for songwriters. Accordingly, the promise of long term royalty participation for their legacy is an enormous incentive to continue on in the endeavor of songwriting.[12]

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[12] Opponents of term extension have often relied on a speech by MaCaulay (delivered in the House of Commons (Feb. 5, 1841)) to argue that leaving a legacy to one's heirs is not an incentive to authors. *See generally*, THOMAS MACAULAY, SPEECHES ON COPYRIGHT (C. Gaston ed. 1914). This argument falls flat. MaCaulay made this argument with the belief that copyright was purely personal property and would always end up in the hands of publishers. It was his belief that authors would never realistically share in any future income, so authors would never perceive a legacy as an incentive. However, Congress has made sure that authors' heirs can terminate transfers made to publishers, and because royalties are paid on splits between authors and publishers, heirs are guaranteed to see income. Thus, MaCaulay's basic presumption has crumbled.

Congress acted upon evidence that creators want to pass on the income derived from the exploitation of their works to their children and grandchildren. Congress reasonably determined that extending the term of protection for existing works would give writers greater incentive to write new works.

Songwriter Alan Menken's testimony highlighted the fact that "the continuing ability to provide for one's family, both during and after one's lifetime, would certainly be a factor [in choosing a career]." *Hearing on S. 483*, *supra* note 8. If it becomes clear that insufficient copyright protection is available to provide that support, there will be less incentive to try to make one's living as a creator. *Id*. It was reasonable for Congress to infer that an extra twenty years might allow those who create to continue doing so, with greater confidence that their families will be taken care of.

Bob Dylan, whose first song was published in 1961, also testified that it was his impression that his songs would remain in his family and that they would one day be the property of his children and grandchildren. *Hearing on S. 483*, *supra* note 8. Carlos Santana reiterated Dylan's understanding. *Id*.

Congress heard another reason for the need to modify the incentives that sustain the craft of songwriting: people now live longer. Songwriters testified that under the prior term of protection, the right to earn income from their works would pass into the public domain before their children were out of their thirties, or worse yet, during their own lifetimes. "My catalogue will begin to fall into public domain when my youngest child is 30 years old. I have no desire to see my children be denied that which I intended for them." *Id*. (statement of Quincy Jones). "American works created before January 1, 1978. . . are only afforded copyright protection for

a total of 75 years from creation... In several instances, works, such as Irving Berlin's "Alexander's Ragtime Band," have fallen into the public domain while the author is still living." *Id.* (statement of Alen Menken).

Perhaps the best example of the need for extended protection in order to provide for one's family came from the genre of classical music. Congress heard that for serious music, even 70 years after death is sometimes insufficient. For example, J.S. Bach's music had to wait almost 100 years after the composer's death before it was discovered. Randol Schoenberg explained that had his grandfather not had faith in the ability of his copyrights to support his family, he would not have been able to devote the time that his groundbreaking work required. *Id*. (statement of E. Randol Shoenberg, grandson of Arnold Schoenberg). Congress determined that the prior term of protection was not sufficient.

E. The Continued Royalty Flow Which Has Occurred For Existing Works Due To The CTEA Directly Funds Non Profit Foundations, Authorship Development Programs, Scholarships, Grants, Awards, And Other Activities Which Encourage Writing And Benefit The Public.

In the songwriting community alone, there are numerous examples where monies earned from existing copyrights are being poured back into the development of new authorship. For example, the American Society of Authors and Composers (ASCAP) Foundation is "dedicated to nurturing the musical talent of tomorrow, . . . and sustaining the creative incentive for today's creators through a variety of educational, professional, and humanitarian programs and activities which benefit the entire music community." ASCAP Foundation Mission statement. ASCAP, a performing rights

society, collects various royalties worldwide earned from the use of existing copyrighted musical compositions. Its members, board of directors and officers are made up exclusively of musical authors, composers and publishers, who provide the services of their employees to administer the ASCAP Foundation. Additionally, many ASCAP members use the money earned from the payment of royalties from their existing works to fund the Foundation and its many programs. A substantial list of these scholarships, awards, grants and other program can be found in the Appendix. Among many others, existing works which provide revenue to support these programs include: "Hound Dog," "Jailhouse Rock," "Stand By Me," "On Broadway," "Mona Lisa," "Que Sera Sera," "Take Me Out to the Ballgame," "Hello Dolly," and works from the musicals "Oklahoma," "The King and I," "The Sound of Music," "Porgy and Bess," "They all Laughed," "My Fair Lady," and "Camelot."

The other major American performing rights society Broadcast Music Incorporated (BMI), administers the BMI Foundation for the encouragement of young composers. The BMI Foundation is dedicated to encouraging the creation, performance and study of music through awards, scholarships, commissions and grants. BMI Mission statement. Many of the songwriters affiliated with BMI use the money they earn from copyright royalties to fund the BMI Foundation and its many programs. Some of these are also listed in the Appendix.

Without the royalty income earned from existing copyrighted works, these incentives to young composers and authors could not be sustained and the public would lose access to many great new works, the creation of which simply could not be financially possible. Nowhere is this more apparent that in the genre of classical music. Without commissions and scholarships this treasure of American

culture could be lost forever. Copyright allows the genre to survive so that younger generations will have continued access to these great works, and hopefully the genre will reemerge due to their interest.

F. Petitioners Have Other Alternatives To Achieve Their Desired Goal — The Free Use Of Copyrighted Works. Petitioners Are Attempting To Use An Axe Where They Should Be Using A Scalpel.

The exceptions and limitations to copyright discussed above make it abundantly clear that those who wish to use copyrighted works freely have options at their disposal other than the broad taking of twenty years of copyright protection. Numerous special interests, from veterans organizations, 17 U.S.C. §110(10), to Internet Service Providers, DMCA § 202 (Limit on ISP liability), have successfully lobbied Congress for their own custom tailored exemptions. In addition to legislation, Congress has brokered agreements between copyright owners and certain special interest groups. *See*, H.R. REP. NO. 101-1015 at 77 (1991) (Subcommittee Chairman Robert W. Kastenmeier encouraged copyright owners and representatives of nursing homes to resolve their differences. On August 3, 1990, in a ceremony in the full House Judiciary Committee room, an agreement was formalized.). Petitioners can also request gratis licenses, which are frequently granted by copyright owners.

This Court has encouraged copyright users to seek non-judicial means to gain access to copyrighted works. *See*, *N.Y. Times v. Tasini*, 533 U.S. 483, 505 (2001). Many of the Amici, writing on behalf of Petitioners, lobbied against the term extension. *See*, *Hearing on S. 483*, *supra* note 8. (statement of Peter Jaszi); *Hearing on S. 989*, supra p. 22 (statement of Dennis Karjala,) Congress listened to their concerns and rejected their position.

The self-interests of a handful of public domain publishers should not dictate the copyright policy of the U.S. The policy Petitioners seek offers inferior protection to authors and publishers. If Petitioners feel otherwise, they are free to lobby Congress to make the changes they feel necessary.

CONCLUSION

NSAI cannot stress enough how important the CTEA is to the health of the songwriting community. If this Court overturns the CTEA, it will cause grave repercussions to American authors and to the bounty of America's creative harvest. For all of the reasons expressed above, Congress had the power to extend retrospectively the term of protection for existing works and the CTEA does not violate the Constitution.

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APPENDIX

1. The Louis Armstrong Award, funded by the Louis Armstrong Educational Foundation. This award gives two scholarships to junior year students at Mt. Vernon High School based on abilities in music performance and composition.

2. The Leiber and Stoller Music Scholarships, funded by Jerry Leiber and Mike Stoller, writers of such hits as "Hound Dog," "Kansas City," "Jailhouse Rock," "Stand By Me," and "On Broadway." This scholarship is awarded each year to a freshman at Berklee College of Music in Boston and to a recipient at the Young Musicians Foundation in Los Angeles.

3. The Ira Gershwin Scholarship, funded by the late author's heirs. This scholarship is awarded each year to a junior year student at Fiorello H. LaGuardia High School of Music and Art.

4. The Michael Masser Scholarship, funded by Mr. Masser who co-wrote Whitney Houston's hit songs "The Greatest Love of All," "Didn't We Almost Have It All," and "Saving All My Love For You." This scholarship is awarded each year to a student at Fiorello H. LaGuardia High School of Music and Art.

5. The Boosey & Hawkes Young Composer Award, funded jointly by ASCAP and Aaron Copland's publisher. This Scholarship is awarded each year to a graduating senior at Fiorello H. LaGuardia High School of Music and Art.

6. The Livingston & Evans Music Scholarship, funded by Jay Livingston and Ray Evans, writers of "Mona Lisa" and "Que Sera, Sera." This scholarship supports aspiring songwriters and musicians at The Young Musicians Foundation in Los Angeles.

7. The Louis Armstrong Jazz Scholarships, funded by the Louis Armstrong Educational Foundation.These two scholarships are awarded each year to undergraduate students of jazz composition at UCLA.

8. The Louis Dreyfus/ Warner-Chappell City College Scholarship. This scholarship honors George and Ira Gershwin, and is named for their publisher, and is presented each year to a composition student for a score written for dance, film/video or theatre at City College/City University of New York.

9. The Louis Armstrong Scholarship, funded by Louis Armstrong Educational Foundation. This scholarship is presented each year to a jazz composition student at the Aaron Copland School of Music at Queens College/City University of New York.

10. The Frederick Loewe Scholarship, funded by the Frederick Loewe Foundation. Mr. Loewe composed the music for "My Fair Lady," "Camelot," "Brigadoon," and "Gigi." Presented each year to a student of musical theatre composition at the Tisch School of Arts at New York University.

11. The Max Dreyfus Scholarship, funded by the Max and Victoria Dreyfus Foundation. This scholarship was created to encourage the study of musical theatre and is presented each year to a student at the Tisch School of Arts at New York University.

12. The Raymond Hubbell Music Scholarship, funded by a trust created by Estelle Hubbell widow of the late composer. This scholarship is given to a select number of composition students at accredited colleges, conservatories and universities around the country.

13. The Henry Mancini Composer Scholarship. This ASCAP Foundation program provides the funds to support two full scholarships for composer positions at the Henry Mancini Institute.

14. The ASCAP Foundation Young Jazz Composer Awards, supported by the Joseph and Rosalie Meyer Fund. These awards are granted annually to encourage talented young jazz composers.

15. The Morton Gould Young Composer Awards, initially funded by the Jack and Amy Northworth Memorial Fund (Jack wrote such standards as "Shine On Harvest Moon" and "Take Me Out To the Ballgame"). These awards are granted each year to several young composers to encourage development of musical talent in all genres.

16. The Sammy Cahn Award, funded by Tita Cahn. This cash award is given each year to a promising lyricist.

17. The Richard Rogers New Horizons Award established by the daughter of the great composer of such classics as "Pal Joey," "Oklahoma," "Carousel," "The King and I" and "The Sound of Music" and funded by the Rogers Family Foundation. This is an annual award to young composers.

18. The ASCAP Foundation Songwriter Workshop Series. ASCAP sponsors workshops that help develop young songwriters in cities throughout America.

19. The Kennedy Center Musical Theatre Initiative. Funded by ASCAP, the Kennedy Center and Walt Disney Feature Animation to nurture the development of new musicals.

20. The ASCAP Foundation Demo2deal Program. This program gives songwriters the opportunity to record at a state-of-the-art facility and have their music heard by major recording companies.

21. The ASCAP Foundation Commission Program. This program supports commissions awarded to emerging concert composers.

22. The ASCAP Foundation Composer-in-Residence Programs. These programs bring classroom teachers and their students together with professional songwriters and publishers to encourage students to write.

23. The Fellowship for Film Scoring and Composition at Aspen. This ASCAP program enables students to study film composition and film scoring at the Aspen Music Festival and School.

24. The John Denver Camp Scholarship Program; funded by Rosalie Meyer, widow of Joseph Meyer who wrote "If You Knew Susie," and "California Here I Come" and John Denver's publisher. Three students are offered scholarships to the Perry Mansfield Performing Arts School in Colorado.

25. The Henry Mancini Scholarship program, funded by Ginny Mancini, widow of Henry who wrote "Days of Wine and Roses" and "Breakfast at Tiffany's." This scholarship program allows three music composition students to attend the Henry Mancini Institute during the summer.

26. The Jerry Herman Legacy Series, funded by Mr. Herman who wrote "Hello Dolly," "Mame," and "La Cage aux Folles." This ASCAP program brings musical theatre to student across the country with seminars, which include the craft of writing and master classes in musical performance and with focus on composer/lyricist contributions.

27. The Manhattan School of Music Summer Camp. The camp provides tuition free, intensive, high quality music instruction to talented students in grades 5-8 who are enrolled in the New York City Public School System and have little access to musical training.

28. Music in the Schools. ASCAP and VH-1 support music education by providing musical instruments, folios, sheet music, band arrangements and method books to public schools nationwide.

29. The John Lennon Scholarship Fund, funded by Yoko Ono. This scholarship fund offers cash awards to young writers of original songs.

30. The Carlos Surinach Fund. This fund is dedicated to the encouragement and support of young composers of classical music.

31. The Pete Carpenter Film Composing Internship. This internship gives aspiring young film and TV composers a financial subsidy and the opportunity of a personalized tutorial program in Los Angeles working with established film composers.

32. The Lionel Newman Conducting Internship. This internship gives young conductors the opportunity to work for a three-year period with the Los Angeles Young Musicians Foundation Debut Orchestra. Includes the opportunity to work with well-known conductors and to conduct works independently.

33. The Jerry Bock Musical Theatre Award. This award offers financial assistance to graduates of the BMI Lehman Engel Musical Theatre Workshop to aid in the development of a project.

34. The Boudleaux Bryant Fund. This fund commissions a chamber music work by a young composer.

35. The Jean Pratt Memorial Fund. This fund provides an award for musical achievement to a student of Coffeyville Community College.

36. The Milton Adolphus Prize. This prize is awarded to a student at LaGuardia High School for the Performing Arts for proficiency in the field of jazz.