

# **The Copyright Protection Act of 1995: Hearings on S. 483 Before the Senate Judiciary Committee, 104th Cong. (1995)**

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## **A Plea for Keeping Alive the U.S. Film Industry's Competitive Energy**

Copyright term extension has a simple but compelling enticement: it is very much in America's economic interests.

At a time when our marketplace is besieged by an avalanche of imports, at a time when the phrase 'surplus balance of trade' is seldom heard in the corridors of Congress, at a time when our ability to compete in international markets is under assault, whatever can be done ought to be done to amplify America's export dexterity in the global arena.

Europe is girding its economic loins. One small piece of that call to marketplace arms is the European Union decision to lengthen its copyright term to 70 years plus life of the author. Europe's planners understand all too clearly how the market works. In that kind of audiovisual locale, the U.S. copyright term has to be put on the same time span as our competitors in Europe: 70 years *plus* life of the author or 95 years for works made for hire.

There are four major reasons which command our attention and verify the need for copyright term extension:

First, while the Berne Convention has a minimum term (life of the author plus fifty) any nation can provide longer terms. But, and this is pivotal, that nation does not have to protect other countries' creative works beyond what those other countries provide for their works. To put it plainly, Europe would not guard American works beyond the American term limit, whereas European works would have longer security and revenues in the marketplace. The Commissioner of Patents & Trademarks, the U.S. authority on these issues has endorsed copyright term extension in testimony before the House Judiciary Committee's Subcommittee on Courts and Intellectual Property. So has Congress' own expert, the Register of Copyrights.

Second, this means that American works would go into public domain in Europe earlier than European works, thereby cutting off revenues for American copyright owners, and transferring those revenues into European hands.

Third, American creative works are the most globally popular, the most patronized, and the most sought after by cinema audiences, television and home video viewers, world wide. Which is why U.S. movies/TV programs and home video are America's most wanted exports delivering back to our country more than \$4. Billion in *surplus* balance of trade. Intellectual property, consisting of the core copyright industries, movies, TV programs, home video, books, musical recordings and computer software comprise almost 4% of the nation's Gross Domestic Product, gather in some \$45 Billion in revenues abroad, and has grown its employment at a rate four times faster than the annual rate of growth of the overall U.S. economy. Whatever shrinks that massive asset is *not* in America's best interests. Which is why the United States Trade Representative has also endorsed the initiative.

The case for copyright term extension is that simple. What are the contrary views?

Some academics plead that the consumer would be benefited because more public domain works would find wider circulation at cheaper prices. What academics do not observe or do not know is that while an American public domain work may be *sold* cheaper to exhibitors in many international markets, consumers are *not* granted cheaper prices. Not at all. The theater ticket remains the same price. TV station, home video stores give no discounts to the public. Advertising rates do not come down.

Academics also assert that when copyrighted works lose their protection, they become more widely available to the public. Again what academics do not observe or do not know is a simple 'marketplace' truth: Whatever work is not owned is a work that no one protects and preserve. The quality of the print is soon degraded. There is no one who will invest the funds for enhancement because there is no longer an incentive to rehabilitate and preserve something that anyone can offer for sale. A public domain work is an orphan. No one is responsible for its life. But everyone exploits its use, until that time certain when it becomes soiled and haggard, barren of its previous virtues. How does the consumer benefit from the steady decline of a film's quality? What academics offer in numbing detail are the arcane drudgeries of graphs and charts, all of which dwell in ivory tower isolation, separated from the realisms of the marketplace.

And that brings us to the Fourth reason why it is necessary to extend copyright term limits.

The Congress can, without any harm to consumers magnify the revenue reach of copyright owners, and thereby help, perhaps modestly, but help nonetheless, in the reduction of our trade deficit, as well as encouraging the preservation and nourishment of this nation's great, unmatched trade prize: the American movie. In the global intellectual property world of tomorrow, competition will reach a ferocity even more brutal than it is today. The Congress must equip American owners of intellectual property with a full measure of protection, else competition, in Europe particularly, becomes skewed and U.S. copyright owners are reduced in their reach and their effectiveness. That is why it is in the economic best interest of this country to extend copyright term limits. Now.