

## THE HAND THAT GIVETH, TAKETH AWAY

By Mark Mahaffey

On Wednesday, January 15, 2003, the Supreme Court decided *Eldred v. Ashcroft*, upholding Congress' twenty-year extension of the duration of copyrights. Arguing against the extension were individuals like Eric Eldred, who ran a public web library, and businesses whose products or services build on works whose copyrights have lapsed. On the other side of the case were a number of large entertainment companies like the Walt Disney Company and AOL Time Warner, Inc., which stood to lose hundreds of millions of dollars when aging copyrights expired.

In 1998, Congress passed the Copyright Term Extension Act ("CTEA"), which added twenty years to the lives of existing and future copyrights. The bottom line: twenty more years of royalties. In an attempt to avoid paying those royalties, Eldred and the other petitioners argued that Congress' extension was invalid because Congress (1) acted outside of its authority and (2) violated the First Amendment's protections of free speech. The Court didn't buy it.

In a seven to two decision, the Court held that when it comes to defining the monopoly granted by copyright law, Congress is in the driver's seat. Justice Ginsburg, writing for the majority, stated, "we are not at liberty to second-guess congressional determinations and policy judgments of this order, however debatable or arguably unwise they may be." Thus, businesses which build on expired copyrights should be aware that, at any moment, Congress can change the rules of the game—don't get caught counting your proverbial chickens.

## NOT ONE, NOT TWO, NOT THREE, BUT SIX.

A case involving patent law highlights the importance of a proper infringement study. In *NTP, Inc. v. Research in Motion, Ltd.*, a federal district court in Virginia ruled that the Blackberry wireless e-mail system infringed six separate patents. The plaintiff, NTP, Inc., is the owner of six patents (5,436,960; 5,438,611; 5,625,670; 5,631,946; 5,819,172; and 6,067,451) involving the integration of electronic mail with wireless transmission. The defendant manufactures the Blackberry Pager, the Blackberry Enterprise Server, and the Blackberry "wireless e-mail solution." The court also found the defendant liable for inducing infringement and contributory infringement based on the defendant's advertising, offering to sell, and selling infringing products with knowledge that these actions induced others to infringe NTP, Inc.'s patents.

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- ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION
- GAMING
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- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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