



UPDATE Intellectual Property and Trade Secrets Litigation

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Supreme Court Upholds Congressional Right to Change Copyright Protection

On January 18, the U.S. Supreme Court issued a historic decision, signaling that Congress has broad power to shape U.S. copyright law, even in the face of constitutional challenges.

In [*Golan v. Holder*](#), the Supreme Court upheld, in a 6-2 opinion, a law that extends U.S. copyright protection to previously unprotected international works. See Uruguay Round Agreements Act, 17 U.S.C. §104A, 109(a) (URAA). The Court held that the URAA does not violate the U.S. Constitution's copyright and patent clause or the First Amendment.

While the immediate practical impact of the decision is limited to a certain class of foreign works that have already enjoyed U.S. copyright protection since 1994, the decision signals the Supreme Court's support for (1) broad Congressional authority to shape copyright law and (2) increased alignment of U.S. copyright law with international standards.

Before the URAA, the U.S. did not give certain international works copyright protection, even if the works were entitled to protection under foreign law. These unprotected works, therefore, became part of the U.S. public domain and could be used freely in the U.S. In 1994, the URAA extended U.S. copyright protection to foreign works that did not have U.S. copyright protection because they either did not meet certain U.S. regulations or were created in countries that did not have a treaty with the U.S. regarding copyright law.

In 2001, a group of "orchestra conductors, musicians, publishers, and others," who had enjoyed "free access" to these international works before 1994, challenged the URAA. They argued that once the works entered the public domain they could not be reclaimed under U.S. copyright protection. In *Golan*, the Court rejected this argument, stating, "Neither the copyright and patent clause nor the First Amendment, we hold, makes the public domain, in any and all cases, a territory that works may never exit."

Justice Ginsberg's majority opinion also emphasized that the URAA aligned U.S. copyright law with an important international copyright accord, the Berne Convention for the Protection of Literary and Artistic Works. The Court added that "[a] well-functioning international copyright system would likely encourage the dissemination of existing and future works."

The decision will not change works currently protected by U.S. copyright law. In the long run, however, the decision signals that this Supreme Court is unlikely to interfere with the power of Congress to change copyright law. The Supreme Court also sent this signal in its 2003 *Eldred v. Ashcroft* decision, in which the Court held that Congress had the power to extend the term of copyright protection.

CONTACT US

If you need assistance with your copyright holdings or you have any questions concerning the impact of *Golan*, lawyers in Robinson & Cole's [Intellectual Property and Trade Secrets Litigation Team](#) and [Intellectual Property and Technology Group](#) are available to assist you.

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