

RECEIVED MAR 25 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 01-B-1854 (BNB)

LAWRENCE GOLAN
RICHARD KAPP
S.A. PUBLISHING CO., INC., d/b/a ESS.A.Y RECORDINGS
SYMPHONY OF THE CANYONS
RON HALL d/b/a FESTIVAL FILMS
JOHN MCDONOUGH d/b/a TIMELESS VIDEO ALTERNATIVES INTERNATIONAL

Plaintiffs,

v.

ALBERTO R. GONZALES, in his official capacity as Attorney General of the United States,
and MARYBETH PETERS, Register of Copyrights, Copyright Office of the United States,

Defendants.

FINAL PRETRIAL ORDER

1. DATE AND APPEARANCES

A final pretrial conference is to be held on April 1, 2005 at 9:00 a.m. The names and addresses, and telephone numbers of counsel for each party who will appear at trial are as follows:

Counsel for Plaintiffs:

Theodore T. Herhold
Townsend and Townsend and Crew
379 Lytton Ave.
Palo Alto, CA 94301-1431
Phone: (650) 326-2400

Holly Gaudreau
Townsend and Townsend and Crew
Two Embarcadero Center
Eighth Floor
San Francisco, CA 94111-3834
Phone: (415) 576-0200

Lawrence Lessig
Jennifer S. Granick
Christopher Sprigman
Colette Vogele
Center for Internet and Society
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610

Counsel for Defendants:

Samuel C. Kaplan
Christopher R. Hall
Paul A. Diller
United State Department of Justice
Civil Division, Rm. 7128
P.O. Box 883
20 Massachusetts Ave., NW
Washington, D.C. 20001
Phone: (202) 514-4778

2. JURISDICTION

The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331 because the declaratory judgment action challenges the constitutionality of federal statutes. Plaintiffs also contend that the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1361 and 2201, but Defendants disagree. The Court also has personal jurisdiction over Defendants Gonzalez and Peters.

3. CLAIMS AND DEFENSES

A. Plaintiffs' Statement.

This action challenges the constitutionality of Section 514 of the Uruguay Round Agreement Act (URAA), by which Congress removed thousands of literary and artistic works from the public domain. Plaintiffs are orchestra conductors and motion picture distributors whose businesses and interests have been harmed by the URAA's restoration of copyright in a large number of public domain works that Plaintiffs previously performed or offered for sale. Plaintiffs' Second Amended Complaint in this action asserts three claims:

1) Section 514 of the URAA violates the constitutional limitation on Congress's power to grant copyright prescribed by Article I, § 8, cl. 8 of the Constitution. Congress's enumerated power under the Copyright (and Patent) Clause is expressly limited to enacting laws that are designed "[t]o promote the Progress of Science and useful Arts." The URAA's restoration of copyright in thousands of works previously in the public domain provides no incentive to authors to create new works, nor benefits the public in any way, and thus does not "promote progress", as the Constitution requires. In addition, the Copyright (and Patent) Clause permits Congress to grant exclusive rights only in "original" works. Granting copyright to works already in the public domain violates the Constitution's originality requirement.

2) Section 514 of the URAA restricts Plaintiffs' speech in a manner violative of the First Amendment. In particular, the Supreme Court established in *Eldred v. Ashcroft*, 537 U.S. 186 (2003) that changes to the copyright laws that alter a "traditional contour[] of copyright" are subject to "further First Amendment scrutiny." The URAA's deprivations from the public domain shifts a traditional contour of copyright by violating the long-standing "federal policy,

found in Article I, § 8, cl. 8 of the constitution and in the implementing federal statutes, of allowing free access to copy whatever the federal patent and copyright laws leave in the public domain.” *Bonito Boats v. Thunder Boats, Inc.*, 489 U.S. 141, 153 (1989) (quoting *Compco Corp. v. Day-Lite Lighting, Inc.*, 376 U.S. 234, 237 (1964)).

3) Section 514 of the URAA is retroactive legislation that unfairly deprives Plaintiffs of property without due process, in violation of the Constitution’s Due Process Clause, U.S. Const. Amend. V.

On the basis of the foregoing, Plaintiffs ask for relief including (i) an order that Section 514 of the URAA is unconstitutional; (ii) an order enjoining Defendant Gonzales and his successors from enforcing copyrights “restored” under Section 514; (iii) an order directing Defendant Peters and her successors to cancel all copyright registrations of works whose copyright status was “restored” under Section 514 of the URAA, and enjoining Peters and her successors from accepting any additional such registrations in the future; (iv) an order awarding Plaintiffs the costs of this action, including their reasonable attorney’s fees; and (v) an order setting forth any additional relief the Court deems appropriate.

B. Defendants’ Statement.

Section 514 of the URAA comports fully with the United States Constitution. Count One of Plaintiffs’ Second Amended Complaint fails because the Constitution does not prevent Congress from restoring copyright protection to works in the public domain. The URAA was validly enacted pursuant to the Copyright Clause and Congress’ power to implement treaties. Count Two fails because the URAA does not alter the traditional contours of copyright protection and, therefore, no claim under the First Amendment is cognizable. Count Three fails

because the URAA, inter alia, fulfilled the United States' obligations under the Berne Convention, and Congress's decision to enact the URAA was thus plainly rational. Additionally, the URAA is not "retroactive" in any legally significant sense. Further, while no heightened scrutiny standard is applicable as to any Court, the URAA would satisfy any such standard if it applied.

Because plaintiffs' facial challenge to the constitutionality of section 514 of the URAA presents only questions of law, the lawsuit can and should be resolved by dispositive motion. Both parties have filed such motions. Defendants filed a motion for summary judgment on June 22, 2004 [docket nos. 35-36]. Plaintiffs filed their response on November 4, 2004 [docket no. 73], and Defendants filed a reply to that response on November 24, 2004 [docket no. 79]. On February 16, 2005, Plaintiffs filed their own Motion for Partial Summary Judgment [docket no. 90], and Defendants filed their opposition on March 11, 2005 [docket no. 101]. Although Plaintiffs style their motion a Motion for "Partial" Summary Judgment, it is clear that they believe that its complete resolution in their favor would be case-dispositive. Plaintiffs' motion will be fully briefed and ripe for resolution when Plaintiffs file their reply, if any, which is due on or about March 28, 2005. Accordingly, both parties have demonstrated their belief that this action may be resolved as a matter of law without the need for a trial.

Resolution of this action as a matter of law on a motion for summary judgment is thus compelled by controlling authority and also makes sense as a matter of judicial economy. A bench trial on issues that can and should be decided as a matter of law would needlessly consume the resources of the Court, particularly given Plaintiffs' estimate that a bench trial of this matter should take between five and ten Court days. The parties also will unnecessarily

expend a significant amount of resources in preparing for and conducting a trial on the merits. For these reasons, the Court should vacate or continue the trial until such time as it has decided the case-dispositive issues of law raised by the parties' cross-motions for summary judgment.

4. STIPULATIONS

1. Defendant Alberto R. Gonzales ("Gonzalez") is the Attorney General of the United States and is responsible for the enforcement of the laws of the United States.

2. Defendant Marybeth Peters ("Peters") is the Register of Copyrights and is responsible for the administration of the United States Copyright Office.

3. Works restored by the URAA include those works listed in Plaintiffs' exhibits 67-86, among others. With respect to this stipulation, Defendants stipulate as to its accuracy but assert that it is not relevant.

5. PENDING MOTIONS

There are two motions for summary judgment currently pending: Defendants' motion for summary judgment was filed on June 22, 2004, and Plaintiffs' motion for partial summary judgment was filed on February 16, 2005. Plaintiffs filed their opposition to Defendants' motion on November 4, 2004. Defendants filed their reply on November 24, 2004. Defendants' motion, thus, is fully briefed. Defendants filed their opposition to Plaintiffs' motion on March 11, 2005. Plaintiffs' reply brief is due on March 28, 2005.

6. WITNESSES

a. Plaintiffs' non-expert witnesses:

(1) Witnesses who will be present at trial:

Lawrence Golan
1777 Larimer Street, #1805
Denver, CO 80202
303-871-6909

Kortney Stirland
14 East Center
Kanab, Utah 84741
435-644-2693

Ron Hall
6115 Chestnut Terrace
Shorewood, MN 55331
952-470-2172

John McDonough
109½ Broadway, 2nd Floor
Fargo, ND 58102
701-235-8575

Richard Kapp
50 Woodcrest Lane
Danbury, CT 06810
203-744-0840

Subject of testimony: All of these witnesses will testify, among other subjects, about how the URAA's restoration of copyright in a large number of literary and artistic works has harmed their business and other interests.

(2) witnesses who may be present at trial if the need arises:

Richard Prelinger
President, Prelinger Archives
PO BOX 590622
San Francisco, California 94159-0622
(415)601-3306

John Blackburn
255 Glen Summer Road
Pasadena, CA 91105
(626)440-0058

Randy Luck
President, Luck's Music Library
c/o Daniel Bromberg
Jones Day Reavis Pogue, LLP
51 Louisiana Avenue, NW
Washington, DC 20001-2113
(202)879-3939

Clark McAlister
Vice President & Editor-in-Chief
Edwin F. Kalmus & Co., Inc.
PO Box 5011
Boca Raton, Florida 33431
(800)434-6340

Cyrus Ginwala
Music Director
Symphony of the Mountains
1200 E. Center St., Box 13
Kingsport, TN 37650-4958
423-392-8432

Subject of testimony: All of the above witnesses will testify, among other subjects, about how the URAA's restoration of copyright in a large number of literary and artistic works has harmed their business and other interests.

Corporate Representative from M-G-M
2500 Broadway St.
Santa Monica, CA 90404
310-586-8101

Subject of testimony: This witness will testify regarding documents produced pursuant to subpoena.

Corporate Representative from G Schirmer
257 Park Ave. South,
NY, NY 10010
212-254-2100

Subject of testimony: This witness will testify regarding documents produced pursuant to subpoena.

Corporate Representative from ASCAP
One Lincoln Plaza,
NY, NY 10023
212-621-6000

Subject of testimony: This witness will testify regarding documents produced pursuant to subpoena.

Corporate Representative from Boosey & Hawkes:
35 E. 21st St.
NY, NY 10010-6212
212-358-5300

Subject of testimony: This witness will testify regarding documents produced pursuant to subpoena.

- (3) witnesses where testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony:

Richard Kapp (if unavailable for live testimony)
50 Woodcrest Lane
Danbury, CT 06810
203-744-0840

Subject of testimony: Mr. Kapp will testify, among other subjects, about how the URAA's restoration of copyright in a large number of literary and artistic works has harmed their business and other interests.

b. Plaintiffs' expert witnesses:

- (1) Witnesses who will be present at trial:

Hal R. Varian, Ph.D.
1198 Estates Drive
Lafayette, CA 94549
925-284-1605

Subject of testimony: Prof. Varian will testify about the economic harm caused by the URAA's restoration of copyright in a large number of

literary and artistic works.

Prof. Lionel Bently
Centre for Intellectual Property and Information Law,
Faculty of Law
University of Cambridge
10 West Rd
Cambridge
CB3 9DZ
011-44-1223-330081

Subject of testimony: Prof. Bently will testify about how other nations have acceded to the Berne Convention for the Protection of Literary and Artistic Works without resorting to the type of wholesale copyright restoration enacted by the URAA.

Mark Rose, Ph.D.
1135 Oriole Road
Santa Barbara, CA 93108
805-893-2622

Subject of testimony: Prof. Rose will testify about the lack of a historical precedent for the wholesale restoration of copyrights enacted under the URAA.

Karen D. Snyder, Ph.D.
The Strategy Team
64 Overbrook Drive
Columbus, Ohio 43214-3119
614-447-8844

Subject of testimony: Dr. Snyder will testify about a survey she conducted to document the harms that the URAA's restoration of copyright has inflicted on a large number of musicians, conductors, and music librarians.

Plaintiffs may call any and all expert witnesses named by Defendants.

c. Defendants' Non-Expert Witnesses:

Defendant may call any and all fact witnesses named by Plaintiffs.

d. Defendants' Expert Witnesses:

The following witnesses may be present at trial:

Michelle M. Burtis, Ph.D.
LECG
1725 Eye St., NW, Suite 800
Washington, D.C. 20006
(202) 973-0523

Subject of testimony: Dr. Burtis may testify about the purported economic effects of the URAA's restoration of copyright on certain literary and artistic works. In addition, Dr. Burtis may testify about any other matters in response to Plaintiffs' expert or fact testimony.

Douglas Usher, Ph.D.
The Mellman Group
1023 31st St., NW, Fifth Floor
Washington, D.C. 20007
(202) 625-0370

Subject of Testimony: Dr. Usher may testify about a survey conducted by Karen Snyder to document purported effects of the URAA's restoration of copyright on certain musicians, conductors, and music librarians. In addition, Dr. Usher may testify about any other matters in response to Plaintiffs' expert or fact testimony.

Howard B. Abrams
University of Detroit Mercy School of Law
651 East Jefferson Ave.
Detroit, MI 48226
(313) 596-0215

Subject of Testimony: Professor Abrams may testify about the question of historical precedent for restoration of copyright to works formerly in the public domain. In addition, Professor Abrams may testify about any other matters in response to Plaintiffs' expert or fact testimony.

Mihaly Ficsor
1165 Budapest, Matyasfold
Baross Gabor utca 56.
Hungary
011 361 405-7317

Subject of Testimony: Dr. Ficsor may testify about the requirements of the Berne

Convention and the assertion of Professor Bently that certain nations have acceded to the Berne Convention for the Protection of Literary and Artistic Works in a manner different from that of the United States. In addition, Dr. Ficsor may testify about any other matters in response to Plaintiffs' expert or fact testimony.

Defendant may call any and all expert witnesses named by Plaintiffs.

7. EXHIBITS

Plaintiffs:

No.	BATES RANGE	DESCRIPTION
1.		Subpoena in a Civil Case issued to Custodian of Records of Boosey & Hawkes on 12/15/04 (including attachments thereto)
2.		Responses and Objections of Non-Party Boosey & Hawkes, Inc. to Production Pursuant to FED.R.CIV P.45, dated 1-12-05
3.	BH 0001-2	Boosey & Hawkes Rental Agreement
4.	BH 0003-4, 0008-10	Lists of entities to whom NIEs were sent
5.	BH 0005-6	Schedule A/List of Composers and Works Restored under URAA/GATT
6.	BH 0007-8	Document entitled "Contacts for Licenses To use Works in the Boosey & Hawkes, Inc. Repertoire"
7.		Subpoena in a Civil Case issued to G. Schirmer Inc., Associate Music Publishers on 12/15/04 (including attachments thereto)
8.		Responses and Objections of G. Schirmer, Inc. and Associated Music Publishers to Plaintiffs' Third Party Subpoena (dated 1/12/05)
9.	SCH 0001	Rental Agreement
10.	SCH 0002-143	List of entities to whom NIEs were sent
11.	SCH 0144-173	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Arutiunian (Russia)
12.	SCH 0174-178	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Arnold (England)
13.	SCH 0179-234	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by DeFalla (England)
14.	SCH 0235-286	Summary report (dated 4/10/97) regarding NIEs filed for Dmitri Kabalevsky works

No.	BATES RANGE	DESCRIPTION
15.	SCH 0287-357	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related documents regarding works by Khachaturian (Russia)
16.	SCH 0358-362	Summary report (dated 4/10/97) regarding NIEs filed for Tikhon Khrennikov (Russia) works
17.	SCH 0363-374	Summary report (dated 4/10/97) regarding NIEs filed for Vissarion Shebalin (Russia) works
18.	SCH 0375-378	Summary report (dated 4/10/97) regarding NIEs filed for Yury Shaporin (Russia) works
19.	SCH 0379-381	Summary report (dated 4/10/97) regarding NIEs filed for Vladimir Shcherbachev (Russia) works
20.	SCH 0382-388	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Levitin (Russia)
21.	SCH 0389-400	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Mosolov (Russia)
22.	SCH 0401-404	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Muradeli (Russia)
23.	SCH 0405-506	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Miaskovsky (Russia)
24.	SCH 0507-543, SCH 0716-740, SCH 0912-1057, SCH 1109-1148, SCH 1157-1171	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by various other composers (Russia)
25.	SCH 0544-659	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Prokofiev (Russia)
26.	SCH 0660-694	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Schnittke (England)
27.	SCH 0695-715	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Shchedrin (Russia)
28.	SCH 0741-761	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Scheblin (Russia)

No.	BATES RANGE	DESCRIPTION
29.	SCH 0762-825	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Shostakovich (England)
30.	SCH 0826-0830	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Sebelius (Denmark)
31.	SCH 0831-840	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Stravinsky (Russia)
32.	SCH 0841-911	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Sviridov (Russia)
33.	SCH 1058-1108	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Gliere (Russia)
34.	SCH 1149-1156	Copyright Office Acknowledgements of Receipt under Uruguay Round Agreements Act and related document regarding works by Khachaturian (Russia)
35.	SCH 1172	Letter dated 2/21/97 from Music Sales Corporation to Musical Heritage Society re: mechanical licenses for Shostakovich works under GATT legislation
36.	SCH 1173-1175	Letter dated 1/28/97 (with enclosures -- Harry Fox Agency licenses) from Musical Heritage Society to Licensing Concepts Ltd. re: mechanical licenses and public domain works.
37.	SCH 1176	Letter dated 1/8/97 from G. Schirmer to XLNT Music re: mechanical licenses for Shostakovich works under GATT legislation
38.	SCH 1177	Letter dated 1/8/97 from G. Schirmer to Harry Fox Agency
39.	SCH 1178	Hand written note dated 1/7/97 from Peter Panos (Harry Fox Agency) to Ellen [Frank] (G. Schirmer)
40.	SCH 1179-1183	Letter dated 11/7/96 from XLNT Music to Harry Fox Agency re: Shostokovich works and errors in license agreement.
41.	SCH 1184-1187	Music Sales Corporation memo dated 12/9/96 re: mechanical licenses for copyright restorations.
42.	FF0001-0086	Festival Films invoices
43.		McDonough Deposition Exhibit 2 -- Listing of restored motion pictures
44.		Kapp Deposition Exhibit A -- PV Program dated 10/29/04
45.		Kapp Deposition Exhibit B--ASCAP Copyright Restoration Copy
46.		Kapp Deposition Exhibit C -- Kalmus Miniature Scores 1462 Dmitri Shostakovich's "Piano Concerto, Op. 35"

No.	BATES RANGE	DESCRIPTION
47.		Kap Deposition Exhibit D—"Concerto for Piano and Orchestra" for D. Shostakovich, Op. 35
48.		Kapp Deposition Exhibit E—Dmitri Shostakovich "Symphony No. 14, Op. 35," MCA Music
49.		Kapp Deposition Exhibit F—Kalmus Orchestra Library, "Peter and the Wolf, Op. 67," Conductor's Score
50.		Kapp Deposition Exhibit G—Prokofiev's "Classical Symphony Opus 25" Score, International Music Company
51.		Kapp Deposition Exhibit H—PV Library, July, 2004 document dated 10/29/04
52.		Kapp Deposition Exhibit I—Kalmus Editions for Miniature and Study Scores, Belwyn Mills Publishing Corp.
53.		Kapp Deposition Exhibit J—Jacket cover of ESS.A.Y Recordings Shostakovich, The Manhattan String Quartet
54.		Kap Deposition Exhibit K—Jacket cover of ESS.A.Y Recordings Shostakovich, The Manhattan String Quartet
55.		Kapp Deposition Exhibit L—Memo from ESS.A.Y Publications, Inc. dated July 22, 1991 to Rosemary Gawelko
56.		Kapp Deposition Exhibit M—Letter dated 4/10/92 from Ellen Frank to Richard Kapp with attachments
57.		Kapp Deposition Exhibit N—Cushion Concerts document with the Philharmonia Virtuosi
58.		Declaration of Plaintiff Richard Kapp in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits thereto)
59.		Stirland Deposition Exhibit A – Declaration of Kortney Stirland
60.		Golan Deposition Exhibit 1 – Declaration of Lawrence Golan in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (including exhibits thereto)
61.		Golan Deposition Exhibit 2 – Score markings from Petroushka, by Igor Stravinsky, one page
62.		Golan Deposition Exhibit 3 – Lamont Symphony Orchestra Concert Repertoire: 2001-2002
63.		Golan Deposition Exhibit 4 – Invoice from G. Schirmer, Inc. to University of Denver
64.		Golan Deposition Exhibit 5 – Lamont Symphony Orchestra Concert Repertoire: 2004-2005
65.		Lawrence Golan, Conductor Past Performances printed from the website of Lawrence Golan
66.		Lawrence Golan, Conductor Past Performances

No.	BATES RANGE	DESCRIPTION
67.		VHS Tape of Robert Bresson's "Diary of a Country Priest" (1950)
68.		VHS Tape of "The Passion of Joan of Arc"
69.		VHS Tape of Jean Renoir's "Baudu Saved from Drowning"
70.		VHS Tape of "La Jetee" (The Pier)
71.		VHS Tape of Jean Renoir's "Rules of the Game"
72.		DVD of AMC Movies Vivien Leigh Hollywood Classics featuring "Dark Journey," "Fire Over England," "Sidewalks of London," "Storm in a Teacup"
73.		DVD of Triple Feature Horror Classics featuring "Nosferatu," "The Phantom of the Opera" and "Metropolis"
74.		DVD of Collector's Choice Double Feature Science Fiction featuring "Things to Come" and "Journey to the Center of Time"
75.		DVD of "Night Train to Munich"
76.		DVD of "The Third Man" (1949)
77.		DVD of Alfred Hitchcock Collector's Edition Vol. 2 featuring "Thirty-Nine Steps," "The Man Who Knew Too Much," "Secret Agent," "Murder" and "Young & Innocent"
78.		Copy of sheet music for <i>Russian Sailor's Dance</i> by Gliere
79.		Copy of sheet music for <i>Peter and the Wolf</i> by Prokofiev
80.		Copy of sheet music for <i>Symphony No. 1</i> by Prokofiev
81.		Copy of sheet music for <i>Romeo and Juliet Suite No. 3</i> by Prokofiev
82.		Copy of sheet music for <i>Symphony No. 5</i> by Prokofiev
83.		Copy of sheet music for <i>Lt. Kije Suite</i> by Prokofiev
84.		Copy of sheet music for <i>Piano Concerto No. 3</i> by Prokofiev
85.		Copy of sheet music for <i>Festive Overture</i> by Shostakovich
86.		Copy of sheet music for <i>Soldier's Tale</i> by Stravinsky
87.		Declaration of John Blackburn (including exhibits thereto)
88.		Score for "Directus" by Blackburn
89.		Declaration of Lawrence Golan in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (including exhibits thereto)
90.		Example of markings from "Pretroushka" by Stravinsky
91.		Memo dated 9/13/01 from L. Golan to R. Fanslow re: Orchestra Budget
92.		Lamont Symphony Orchestra Concert Repertoire: 2001-02
93.		G. Schirmer, Inc. Invoice dated 9/14/04 to Lamont Symphony

No.	BATES RANGE	DESCRIPTION
94.		Lamont Symphony Orchestra 2004-05 Repertoire
95.		Declaration of Ron Hall in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment (including exhibits thereto)
96.		Festival Films 1977 Film Catalog
97.		Festival Films 1988 Film Catalog
98.		Letter dated Sept. 25, 1981 to Corinth Films
99.		Listing of film titles no longer able to distribute (Ron Hall)
100.		Declaration of Plaintiff Richard Kapp in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits thereto)
101.		Peter and the Wolf sheet music
102.		Dmitry Shostakovich "Symphony No. 14"
103.		Kalmus Miniature Scores 1462 Dmitri Shostakovich "Piano Concerto" Op. 35
104.		Prokofieff "Classical Symphony" Opus 25 Score
105.		ASCAP booklet listing works in ASCAP repertory, dated May 1998
106.		<i>Histoire Du Soldat</i> sheet music
107.		Declaration of Randy Luck in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits attached thereto)
108.		Sale Catalogue, Music for Orchestra, 1969-1970, Luck's Music Library
109.		Sale Catalogue, Music for Orchestra, 1975-1976, Luck's Music Library
110.		Luck's Music Library – Orchestra Catalog, 1996
111.		32 letters dated 1/12/96 and 1 letter each dated 5/17/96, 5/23/96, 6/7/96 and 3/10/97 from G. Schirmer, Inc. to Luck's Music Library
112.		Luck's Music Library – 2004 Orchestra Catalog
113.		Declaration of Ray Clark McAlister in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits attached thereto)
114.		1995-96 Kalmus Catalog
115.		2004-05 Kalmus Catalog
116.		Declaration of John McDonough in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits attached thereto)
117.		Timeless Video Alternatives International, Master Catalog

No.	BATES RANGE	DESCRIPTION
118.		List of movies removed from TVAI catalog once subject to URAA, Section 514
119.		Agreement between TVAI Inc. and CPM Network dated 2/25/04
120.		Agreement between TVAI Inc. and The Arizona Channel dated 2/2/00
121.		Invoice from UPN 39 to Timeless Video Alternatives trade dated 12/31/03
122.		Circular R15 Renewal of Copyright
123.		Declaration of Kortney Stirland in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment (including exhibits thereto)
124.		Declaration of Richard Prelinger in support of Plaintiffs' opposition to Defendants' Motion for Summary Judgment (including exhibits attached thereto)
125.		List of 21 British and 4 Canadian films from Prelinger Archives prior to 1994
126.		List of foreign films removed from Prelinger Archives once subject to URAA, Section 514
127.		Subpoena in a Civil Case issued to Custodian of Records of Metro-Goldwyn Mayer on 1/4/05
128.		Letter dated 3/2/05 from Christopher C. Miller to Christopher Sprigman responding to Supboena
129.		Declaration of Custodian of Records
130.		2 page letter (+ fax cover sheet) dated 9/28/99 re: Unauthorized Distribution of MGM Product (redacted)
131.		1 page letter dated 10/1/99 from VCI Home Video
132.		1 page letter (+ fax cover sheet) dated 10/8/99 re: Unauthorized Distribution of MGM Product (redacted)
133.		Subpoena in a Civil Case to Custodian of Records of American Society of Composers, Authors and Publishers issued 12/15/04
134.		Response of American Society of Composers, Authors and Publishers to Subpoena, dated 12/22/04
135.		ASCAP License Agreement for Symphony Orchestras Which Have Annual Total Expenses of \$250,000 or More
136.		2004/2005 Report of Adjusted Box office for Symphony Orchestras Which Have Annual Budgets More Than \$250,000
137.		ASCAP License Agreement Symphony Orchestras Which Have Annual Total Expenses of Less Than \$250,000
138.		2004/2005 Report of Adjusted Box Office for Symphony Orchestras Which Have Annual Budgets Less Than \$250,000

No.	BATES RANGE	DESCRIPTION
139.		Concerts and Recitals – Blanket License Agreement
140.		ASCAP Blanket concert and Recital (BCON) 2004 Rate Schedule
141.		ASCAP Blanket Concert Report
142.		ASCAP Benefit Concert Events and/or Free Concert Events Report
143.		ASCAP booklet listing works in ASCAP repertory, dated May 1998
144.		ASCAP listing of restored works from website
145.		All Notices of Intent to Enforce from Copyright Office (including notices reflected at 61 Fed. Reg. 19371-19388 (May 1, 1996); 61 Fed. Reg. 46133-46159 (Aug. 30, 1996); 61 Fed. Reg. 68453-68461 (Dec. 27, 1996); 62 Fed. Reg. 20211-20220 (April 25, 1997); 62 Fed. Reg. 44841-44854 (Aug. 22, 1997); 62 Fed. Reg. 66765-66811 (Dec. 19, 1997); 63 Fed. Reg. 5142-5216 (Jan. 30, 1998); 63 Fed. Reg. 19288-19366 (April 17, 1998); 63 Fed. Reg. 43830-43832 (Aug. 14, 1998).)
146.		Expert Report of Plaintiffs expert Lionel Bently (including exhibits thereto)
147.		CV of Plaintiffs' expert Lionel Bently
148.		List of publications authored by Plaintiffs' expert Lionel Bently
149.		Declaration of Lionel Bently in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment
150.		Expert Report of Plaintiffs expert Mark Rose (including exhibits thereto)
151.		CV of Plaintiffs' expert Mark Rose
152.		Declaration of Mark Rose in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment
153.		Expert Report of Plaintiffs expert Hal R. Varian (including exhibits thereto)
154.		CV of Plaintiffs' expert Hal R. Varian
155.		List of publications authored by Plaintiffs' expert Hal R. Varian
156.		Declaration of Hal R. Varian in support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment.
157.		Expert Report of Plaintiffs expert Karen D. Snyder (including exhibits thereto)
158.		CV of Plaintiffs' expert Karen Snyder
159.		Exhibits marked at depositions of all expert witnesses
160.		Copy of sheet music for Four Orchestral Works by Prokofiev
161.		Copy of sheet music for Op. 47 by Shostakovica

No.	BATES RANGE	DESCRIPTION
162.		Copy of sheet music for WCTAKOBNY, 1906-1975 (Russian translation of Shostakovich)
163.		Boosey & Hawkes Rental Agreement from C. Ginwala
164.		Carmen Dragon Music Library Rental Music Terms and Conditions From C. Ginwala
165.		European American Music Distributors LLC Rental Agreement from C. Ginwala
166.		Lucks Music Library Rental Agreement from C. Ginwala
167.		G. Schirmer, Inc. Rental Agreement from C. Ginwala
168.		Plaintiff Lawrence Golan's First Set of Interrogatories, dated 7/7/04
169.		Plaintiff Lawrence Golan's First Set of Requests for Production of Documents, dated 7/9/04
170.		Plaintiff Richard Kapp's First Set of Interrogatories on Defendant Marybeth Peters, Register of Copyrights, dated 9/29/04 (including attachments thereto)
171.		Plaintiff Lawrence Golan's First Set of Requests for Production of Documents to Marybeth Peters, dated 1/14/05
172.		Plaintiff Lawrence Golan's Second Set of Requests for Production of Documents to Defendant John Ashcroft, dated 1/14/05
173.		Response of Defendant Register of Copyrights Marybeth Peters to Plaintiffs' Interrogatories, dated 11/4/04
174.		Response of Defendant Attorney General John Ashcroft to Plaintiffs' First set of Requests for Production of Documents, dated 9/17/04
175.		Defendant's Objections and Responses to Plaintiffs' First set of Requests for Production of Documents to Marybeth Peters dated 2/11/05
176.		Defendant's Objections and Responses to Plaintiffs' Second set of Requests for Production of Documents to Defendant Attorney General Alberto R. Gonzales dated 2/16/05
177.		Circular 15A – Duration of Copyright
178.		Circular 15A – Duration of Copyright, Provisions of the Law Dealing with the Length of Copyright Protection
179.		Response of Defendant Attorney General John Ashcroft to Plaintiff's First Set of Interrogatories
180.		Defendant's Disclosures Pursuant to Rule 26(a)(1), dated 6/17/04
181.		Defendant Peters' Disclosures Pursuant to Rule 26(a)(1), dated 2/1/05
182.		Report of Defendant's expert Michelle M. Burtis, Ph.D. (including exhibits thereto)

No.	BATES RANGE	DESCRIPTION
183.		Report of Defendant's expert Douglas Usher, Ph.D. (including exhibits thereto)
184.		Report of Defendant's expert Mihaly Ficsor (including exhibits thereto)
185.		Report of Defendant's expert Howard B. Abrams (including exhibits thereto)
186.		Exhibits marked at depositions of any expert witnesses not contained herein.

Both Parties reserve the right to introduce any exhibit designated by any other party, and any exhibit necessary for impeachment, rebuttal, authentication.

Defendants:

1. Sam Ricketson, THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986 (Centre for Commercial Law Studies 1989)
2. Mihaly Ficsor, GUIDE TO THE COPYRIGHT AND RELATED RIGHTS TREATIES ADMINISTERED BY WIPO (WIPO 2003)
3. Letter from Arpad Bogsch, Director General of the WIPO, to Bruce Lehman (October 10, 1995)
4. Mihaly Ficsor, THE LAW OF COPYRIGHT AND THE INTERNET – THE 1996 WIPO TREATIES, THEIR INTERPRETATION AND IMPLEMENTATION (Oxford University Press 2002)
5. Mihaly Ficsor, COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS (WIPO 2003)

As Defendants have established previously, it is inappropriate to treat history used to interpret a constitutional provision as a triable question of fact. Interpretation of a constitutional provision is a pure question of law. There is no basis for introduction of “evidence” and/or expert testimony on the subject. *See* Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment at 38-40; Reply in Support of Defendants’ Motion for Summary Judgment at 21-25. However, if Plaintiffs are permitted to introduce documentary evidence or expert testimony as to history used to interpret the Copyright Clause, including evidence or testimony related to the 1790 Act, Defendants would introduce the following exhibits:

6. Act of January 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-12-14 (Connecticut)
7. Act of March 17, 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-15 (Massachusetts)
8. Act of April 21, 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-17-

- 18 (Maryland)
9. Act of May 27, 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-19-20 (New Jersey)
 10. Act of November 7, 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-21-22 (New Hampshire)
 11. Act of Dec. Sess. 1783, *reprinted in* 8 Nimmer on Copyright App. at 7-23-24 (Rhode Island)
 12. Act of March 15, 1784, *reprinted in* 8 Nimmer on Copyright App. at 7-25-26 (Pennsylvania)
 13. Act of March 26, 1784, *reprinted in* 8 Nimmer on Copyright App. at 7-27-30 (South Carolina)
 14. Act of October 17, 1785, *reprinted in* 8 Nimmer on Copyright App. at 7-31-32 (Virginia)
 15. Act of November 19, 1785, *reprinted in* 8 Nimmer on Copyright App. at 7-33-34 (North Carolina)
 16. Act of February 3, 1786, *reprinted in* 8 Nimmer on Copyright App. at 7-35-37 (Georgia)
 17. Act of April 29, 1786, *reprinted in* 8 Nimmer on Copyright App. at 7-38-40 (New York)
 18. Resolution of Continental Congress Respecting Copyright (1783), *reprinted in* 8 Nimmer on Copyright App. at 7-11
 19. Act of May 31, 1790, 1 Stat. 124 (first copyright act)
 20. Act of Feb. 21, 1793, 1 Stat. 318 (first patent act)
 21. Act of January 21, 1808, 6 Stat. 70-71 (Evans patent restoration)
 22. Act of May 24, 1828, 6 Stat. 389-90 (Rowlett copyright restoration)
 23. Act of July 3, 1832, 4 Stat. 559 (1832 patent act)
 24. Act of June 30, 1834, Ch. CCXIII, 6 Stat. 589 (Blanchard patent restoration)
 25. Act of March 3, 1839, 5 Stat. 353 (1839 patent act)
 26. Act of Mar. 3, 1843, Ch. CXXXI, 6 Stat. 895 (Gale patent restoration)
 27. Act of May 30, 1862, Ch. LXXXVIII, 12 Stat. 904 (Goulding patent restoration)
 28. Act of March 4, 1909, Pub. L. No. 349, 35 Stat. 1077
 29. Act of December 18, 1919, Pub. L. No. 102, 41 Stat. 368-69
 30. S. Rep. No. 66-326 at 3 (1919), appending and incorporating Memorandum from the Register of Copyrights, August 22, 1919
 31. Proclamation of Pres. Woodrow Wilson (1920), 41 Stat. 1790
 32. Proclamation of Pres. Warren Harding (1922), 42 Stat. 2271-2278
 33. Act of Sept. 25, 1941, Pub. L. 258, 55 Stat. 732
 34. H. Rep. No. 77-619 (July 21, 1941)
 35. Proclamation of Pres. Franklin D. Roosevelt (1944), 58 Stat. 1129-31
 36. Proclamations of Pres. Harry Truman, 61 Stat. 1057-58, 1065-66, 64 Stat. A385, 66 Stat. c5-6
 37. Proclamation of Pres. Dwight D. Eisenhower (Austria) (1960), 74 Stat.

c69-71.

38. Proclamation of Pres. Lyndon Johnson, 32 Fed. Reg. 10341 (1967)

Defendants do not believe that expert reports and curriculum vitae are admissible into evidence. If, however, Plaintiffs are permitted to introduce expert reports and curriculum vitae into evidence, then Defendants would introduce the following exhibits:

39. Expert report of Michelle M. Burtis
40. CV of Michelle M. Burtis
41. Expert report of Douglas Usher
42. CV of Douglas Usher
43. Expert report of Howard B. Abrams
44. CV of Howard B. Abrams
45. Expert Report of Mihaly Fiscor
46. CV of Mihaly Fiscor

8. DISCOVERY

Non-expert discovery has been completed. Expert discovery is expected to be complete by April 8, 2005. On March 1, 2005, with Defendants' consent, Plaintiffs moved for an extension of the deadline to complete expert depositions until April 4, 2005 to accommodate the experts' schedules and allow time for Plaintiffs' new co-counsel to familiarize themselves with the issues of the case. On March 2, 2005, Defendants filed a Supplement to Plaintiffs' Unopposed Motion for Extension of Time in Which to Complete Expert Depositions acknowledging the Court's January 26, 2005 order. The Court granted the unopposed motion on March 4, 2005. On March 25, 2005, Defendants filed an unopposed motion for extension of time in which to conduct the deposition of Professor Lionel Bentley in Cambridge, England.

9. SPECIAL ISSUES

None.

10. SETTLEMENT

Plaintiffs believe that settlement discussions will be unproductive given that Plaintiffs are

challenging the constitutionality of a federal statute, and Defendants lack the ability to release Plaintiffs from obligations imposed by the impugned statute. Nonetheless, the Plaintiffs are willing to discuss settlement if the Court believes such a discussion would be productive and so orders.

Defendants do not believe that settlement discussions will be productive, given that this action involves only issues of law relating to Plaintiffs' facial challenge to the constitutionality of section 514 of the URAA, a federal statute.

11. OFFER OF JUDGMENT

Counsel acknowledge familiarity with the provision of Rule 68 (Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel, however, have not discussed Rule 68 with their clients because they do not believe it is applicable given that the relief sought in this case is declaratory in nature.

12. EFFECT OF FINAL PRETRIAL ORDER

Hereafter, this Final Pretrial Order will control the course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS

1. Trial is to the Court.

2. Trial is estimated to last approximately five to ten court days.
3. The situs of trial is Courtroom 1, Alfred A. Arraj United States District Courthouse, 901 19th Street, Denver, Colorado.
4. There are no other orders pertinent to the trial proceedings.

DATED this 25th day of March 2005.

BY THE COURT:

United States Magistrate Judge

APPROVED:



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3. The situs of trial is Courtroom 1, Alfred A. Arraj United States District Courthouse, 901 19th Street, Denver, Colorado.
4. There are no other orders pertinent to the trial proceedings.

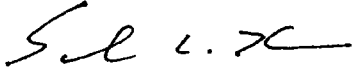
DATED this 25th day of March 2005.

BY THE COURT:

United States Magistrate Judge

APPROVED:

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