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Represented plaintiffs challenging the constitutionality of increasing copyright protection by 20 years and Section 514 of Uruguay Round Agreements Act extending copyright protection to foreign works. The United States Supreme Court ruled the statutes were constitutional.

2012

WTO was one of the law firms that represented the plaintiffs in *Golan v. Holder*, a landmark *pro bono* case filed in federal court in 2002 that challenged the constitutionality of Congress's restoration of copyright protection for artistic works that had previously existed in the public domain.

At issue was the constitutionality of Section 514 of the Uruguay Round Agreements Act of 1994 (17 U.S.C. §§ 104A) by which Congress restored copyright protection for tens of thousands of works that had previously existed in the public domain. Some of these works included symphonies by Prokofiev, Stravinksy and Shostakovich; books by C.S. Lewis, Virginia Woolf and H.G. Wells; films by Federico Fellini, Alfred Hitchcock and Jean Renoir; and artwork by M.C. Escher and Picasso, including Picasso's masterpiece "Guernica."

The question presented was whether the progress clause in the U.S. Constitution, which confers upon Congress the

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Carolyn J. Fairless
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power to "promote the progress of science and useful arts," allowed Congress to grant copyright protection when there was no creative process and the works had previously existed in the public domain. Petitioners also asserted a claim under the First Amendment alleging that Section 514 improperly infringed on their free speech rights.

The case was brought by Lawrence Golan, Director of the University of Denver Music School, and other orchestra conductors, educators, performers, film archivists and motion picture distributors, who relied for years on the free availability of these works in the public domain, which they performed, adapted, restored and distributed without restriction.

The case slowly worked its way through the federal courts over a nine-year period, ultimately ending up in the U.S. Supreme Court. Unfortunately, for WTO's clients and art lovers everywhere, in a 7-2 decision (with Breyer and Alito dissenting), the Supreme Court ruled that Congress had the constitutional power to remove works from the public domain.

Hugh Q. Gottschalk
Partner

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