

WTO Files Constitutional Challenge to Federal Copyright Law

News

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DENVER - Wheeler Trigg O'Donnell, a Denver-based law firm with a national trial practice, is challenging the constitutionality of two amendments to the federal Copyright Act - amendments that affect the status of thousands of books, paintings, drawings, musical scores, films, photographs, and other artistic works that would otherwise fall within the public domain. Works in the public domain can be freely copied and performed, and many small enterprises are based on trade in these works.

"Plaintiffs include three orchestra conductors, two film distributors and the founder of a recording label," said Carolyn Fairless, WTO attorney. Lead plaintiff is Lawrence Golan of the University of Denver's Lamont School of Music. "The establishment of their businesses and the pursuit of their creative endeavors, which were predicated upon the natural progression of works into the public domain, have been dramatically curtailed by these two laws."

The firm, in a *pro bono* representation that also includes attorneys from the prestigious Stanford Law School Center for Internet and Society, filed a complaint Sept. 19 in the U.S. District Court for the District of Colorado. A Colorado venue was selected for *Golan v. Ashcroft* because of its physical

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proximity to the lead plaintiff. Hugh Gottschalk of WTO is also working on the case.

The Sonny Bono Copyright Term Extension Act of 1998 increased the term of copyright for works registered within the United States by 20 years. Under this law, works can now claim copyright protection for 95 years, or the life of the author plus 70 years, depending on when they were published. As a result, no new works at all will enter the public domain until Jan. 1, 2019.

Section 514 of the Uruguay Round Agreements Act of 1994 extended copyright restoration automatically to many foreign works currently in the public domain in the United States, thereby removing those works from the public domain. This change has so far affected - among other works of art - paintings by Picasso, books by J.R.R. Tolkien, and songs and sheet music from Prokofiev's *Romeo and Juliet*.