Disney's Influence on the Enactment of the Copyright Term Extension Act ("CTEA"), as well as the CTEA's Retrospective and Prospective Impact

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Abstract

This Thesis explores The Walt Disney Company's (Disney) specific influence in the 1998 Copyright Term Extension Act (CTEA) enactment as well as the CTEA's retrospective and prospective impacts. The benefits and disadvantages of the CTEA are elaborated in significant detail, and are supported by objective research and in-depth interviews of influential artists and industry experts. Research conducted for this thesis has demonstrated that Disney was the primary lobbying organization for the CTEA Bill, both within the U.S. House of Representative as well as within the U.S. Senate. Through multiple and significant lobbying efforts, Disney directly influenced the CTEA's enactment.

It is also demonstrated that Disney's lobbying influence as well as the United States Congress' argument that economic benefits would not be achieved if U.S. Copyright Law was not harmonized with the European Union, were the primary contributors to the CTEA's enactment. Additional research for this thesis has demonstrated that the enactment of the CTEA in 1998 was necessary in part to rationalize U.S. Copyright Law term length and other protections with those of the European Union and other international countries; however, that this harmonization was not necessarily reciprocal in benefits afforded to the United States.

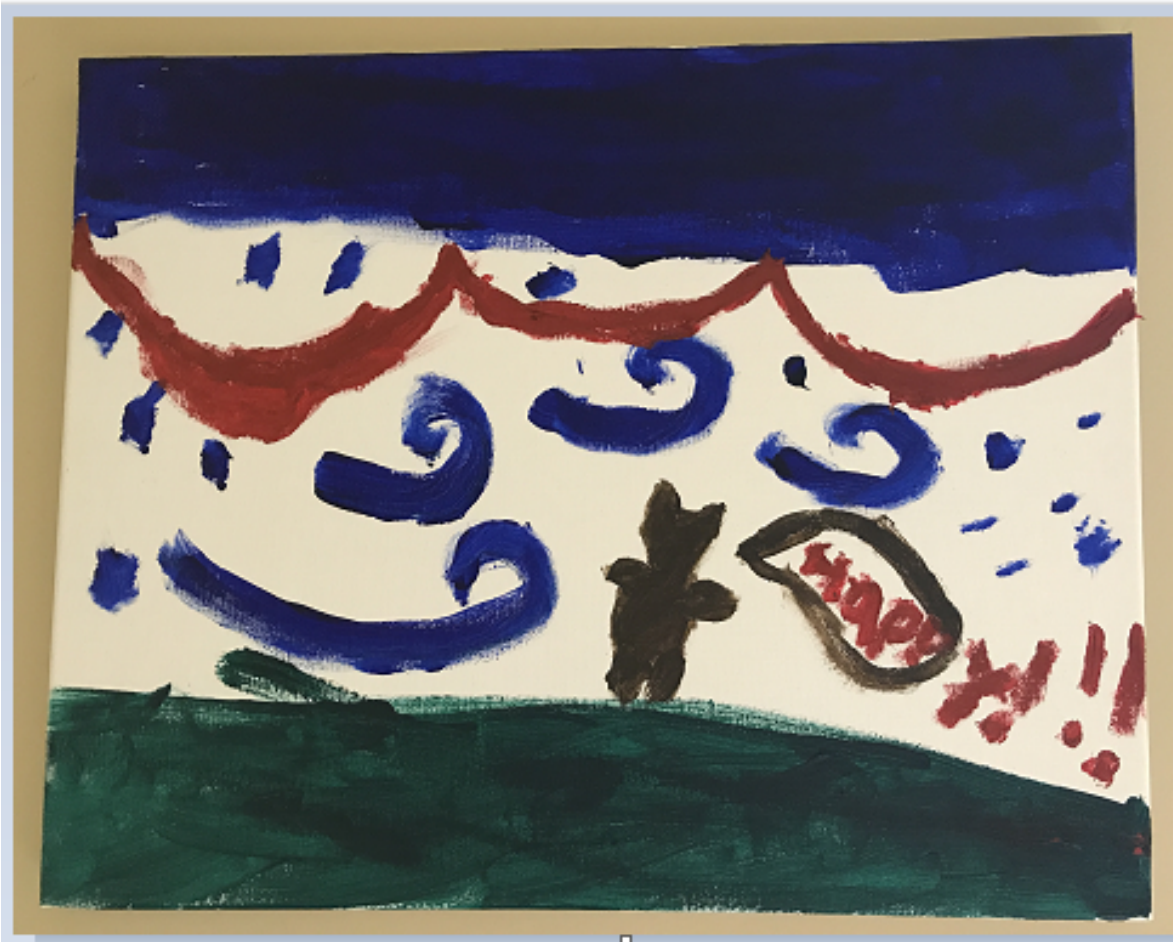
Research has also demonstrated that the $6.3 million used by Disney to lobby for the CTEA's enactment, was a paltry amount relative to the valuation of Disney's intellectual property assets at that time, its risk exposure to loss of copyrights, and also

when compared to Disney's overall total gross annual revenues prior to the CTEA's enactment. In addition, I conducted personal interviews of retired Disney and Disney Corporation affiliate employees to better understand Disney's non-financial brand contributory influence to the CTEA. It is this non-financial brand value influence originating from Disney's iconic characters and themed amusements parks that have become virtually inextricable from any childhood and an irrefutable asset for Disney. Furthermore, research conducted also demonstrates that CTEA proponents' claims regarding the need for the CTEA to prompt creativity or to protect financial interests of content creators are overreaching and are not applicable to all creative endeavors or creative occupations.

Lastly, interview research conducted for this thesis with notable and established Hollywood entertainers, entertainment attorneys, music composers, publicists, and an emerging artist provides evidence that neither awareness of the CTEA nor Copyright Law has had more than minimal to absolutely no direct influence in their respective creative endeavors, careers, their clients' careers, or the bequeathment of real or intellectual property to their heirs. Furthermore, academic and interview research conducted also indicates the motivations to create are varied, and cannot be uniformly categorized as those arising simply from the need for financial gain or being primarily motivated by the transference ease of intellectual property rights to heirs or third parties. This conclusion is supported by the fact that less than 20% of interview respondents for this thesis were concerned with the bequeathment of their intellectual property assets and copyrights. Furthermore, less than 20% also stated that they were inspired to create as a result of additional copyright protections afforded by copyright law.

In conclusion, given that copyright term length and other rationalizations have taken place with European Union copyright laws, and that Disney has already lobbied for prior copyright term-length extension, it is unlikely that an additional copyright term-length lobbying effort will be executed by Disney. Furthermore, should Disney pursue additional lobbying, its efforts will be met with significant opposition from both the current CTEA opponents and Congress.

Frontispiece



Author's Biographical Sketch

Nick is the author of 6 non-fiction books, and has also previously held leadership and executive positions at Microsoft, Xerox, and Accenture respectively. Nick is also a former University of Chicago Booth School of Business (Booth) Strategy Guest Lecturer and taught The Executive Program In Information Technology (EPIT) at Booth to CEO's, CIO's, CFO's, as well as government, military, and other law enforcement leaders from 2004 to 2014. The following is a small sample of the organizations that have sent representatives to attend Nick's lectures: McDonald's, Starbucks, Microsoft, Amazon, Kraft, Sprint, Allstate, Motorola, Walgreens, Bank of America, Wells Fargo Bank, Carnival Cruise Lines, HSBC, Baxter, KPMG, Department of Homeland Security, CME, BCG, Eli Lilly & Co., R.R. Donnelley, GAP, Progressive Insurance, and U.S. Cellular. Nick received an M.B.A. from The University of Chicago Booth School of Business (Honors), an M.S. Computer Information Systems from Northwestern University, and a B.S. in Electrical Engineering from The University of Wisconsin-Madison. Nick also completed a term of Intellectual Property and Human Rights Law studies at The London School of Economics & Political Science. Nick researched and wrote this thesis in connection with his pursuing and obtaining an ALM degree in Legal Studies from Harvard University's Extension School.

Dedication

The following is dedicated to my daughter Anika, immediate family, close friends and influential mentors, for they have bestowed all of the universe's wonders upon me

Acknowledgments

I would like to thank Prof. Lawrence Lessig of Harvard Law School at Harvard University, for his unwavering support in directing this Thesis and educating me on the expanse of human knowledge and how it should be uninhibited in its dissemination. Prof. Lessig's humility, coupled with his intelligence, charisma and influence, provided for a solid foundation for this Thesis' development. Furthermore, I would like to thank my Thesis Research Advisor, Dr. Don Ostrowski of Harvard University, for believing in my competence, capabilities, and lofty ambitions. Without the immeasurable and objective support of Dr. Ostrowski, I know that my initial thesis proposal to Prof. Lessig for his evaluation and eventual acceptance, would not have taken place. In addition, without Dr. Ostrowski's keen attention to grammatical and logical details, this thesis would read with unnecessary complexity and awkwardness.

In addition, I would like to acknowledge and specifically thank the following individuals, presented in alphabetical order, who have made significant contributions to this Thesis through their interviews: Mr. Karl Austen, Mr. Harlan Böll, Ms. Rosemary Carroll, Ms. Erika Maya Eleniak, Mr. Josh Escovedo, Mr. Charles Fox, Mr. Tom Nabbe, Dr. William "Bill" Whitney Pursell and Mr. Rafae "Trent" Zuberi. I would like to thank the aforementioned for their gracious time in sharing their experiences, passions, and motivations with this non-artistic jaded executive and academic. Without their perspectives, this body of work would have simply been an emotionless academic treatise; their contributions to this academic work have been and will always continue to

be much appreciated, for they provided the human voice and vibrant color, to an otherwise technical, economic, legal and monochromatic topic.

In closing, I would also like to thank Mr. Chuck Houston, my Harvard Extension School, ALM academic advisor for his generosity in addressing my questions over the course of the past few years (many times without a formal appointment and probably much to his dismay), and for always providing the most prudent academic career advice. Additionally, I would like to thank Ms. Valentina de Portu, Harvard Law School Executive Assistant to Prof. Lessig, for her countless efforts in ensuring that both Prof. Lessig and myself moved forward in a concerted and efficient manner. Ms. de Portu's patience and collaborative efforts have made the submission and review process of this Thesis a more pleasant and effective experience.

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Disclosures

Over the course of 2011-2012, I was an employee of what is now referred to as the Xerox Corporation. I came to be an employee of the Xerox Corporation because of its acquisition, of the then named Affiliated Computer Services Corporation in 2011-2012, often simply referred to as ACS, prior to its acquisition by Xerox. ACS's primary competencies and capabilities were related to providing technical infrastructure services for large global companies such as McDonald's and Disney. My title during my employment was Strategic Business Unit (SBU) Director. My primarily responsibilities were to direct, manage and lead various strategic, technical and contractual initiatives for ACS. During 2009-2011, I was accountable for leading various programs for one of ACS' key clients, the McDonald's Corporation. For personal reasons and professional growth opportunities, I joined a long-term technical services contract renegotiation and estimating effort for another of ACS' key clients – The Walt Disney Company. During this period, I was requested to join the ACS Disney account team on-site for several weeks over the course of a few months at Disney's Glendale and Burbank locations to assist in the development of a new technical infrastructure services long-term contract. The scope of my involvement was limited to creating and modifying contractual verbiage related to how ACS would provide technical infrastructure services to Disney over a 5 year period after their current technology contract with ACS expired. Although I was on-site at Disney working with the ACS account team, I was not an employee of Disney, nor did I provide any services directly to Disney. The scope of my efforts was limited to

assisting the ACS account team by creating technical documentation content that would eventually be incorporated into the final professional services contract between ACS and Disney.

Chapter I.

Introduction

This Thesis begins with an overview of the major United States Copyright Law enactments, their respective changes and impacts over the centuries. The presentation, albeit an abridged version of the major United States Copyright Law enactments, provides context for the thorough evaluation and comparative analysis against the Copyright Term Extension Act (CTEA) of 1998. A detailed discussion of the CTEA then occurs, complete with its historical developments, as well as CTEA proponents' and opponents' perspectives. Following the introduction of the CTEA, a through retrospective and prospective analysis occurs, regarding the CTEA's influence on content creators and the public domain.

The thesis then moves to an analysis of the influence of The Walt Disney Company's (Disney) lobbying efforts for the CTEA; the degree of Disney's past influence on the enactment of the CTEA, its current and intended efforts to support another copyright term extension act are then elaborated upon. Subsequently, the valuation of Disney's intellectual property assets and an evaluation of its strategic acquisition decisions over the past several decades to protect its intellectual property assets occur. Specifically, a strategic discussion of Disney's acquisition of Marvel and Star Wars franchise ensues.

In addition, the thesis then elaborates with interview research conducted to assess the primary motivations of various individuals who are either Hollywood Actors, Actresses, Publicists, Entertainment Lawyers, Music Composers or any other creative artists. Motivations are primarily investigated with regards to the CTEA, and the CTEA's

influence upon them or their clients. Although there has been research conducted regarding the motivations of entertainers and content creators, there has been no direct prior interview research that has been conducted by researchers regarding the 1998 CTEA's influence on artistic motivations and passions. While majority of this thesis will provide details regarding the CTEA, the parties influencing its enactment, CTEA proponents' and opponents' perspectives, a substantial portion of this thesis will focus directly on the interview research conducted of various entertainers and creative content authors who provide the missing perspective of the very individuals who the CTEA impacts the most.

Furthermore, the thesis concludes with a summary of the various facts that were presented and postulates a bifurcated conclusion of the value of the CTEA as it relates to various artistic endeavors and the general public. The thesis finds that the CTEA was necessary to provide parity with copyright law in the international amphitheater; however, that the CTEA has had minimal to no direct impact on musicians, actresses, and music composers. This thesis also finds that while copyright protection is important, a perpetual or implied perpetual protection subverts the very creative and artistic inspiration that copyright law is intended to ignite. Additionally, the thesis conclusion also provides for a predictive analysis of Disney's and Congress' actions regarding another copyright term-length extension proposal between the 2018 and 2023 period.

Specifically, this thesis addresses the following questions: (1) How did the CTEA originate? (2) Who pushed for the CTEA, what were the primary motivations? (3) How deep was Disney's influence in the CTEA's enactment? (4) Who opposed the CTEA, and what were their reasons? (5) How was the public interest articulated or negated by the

various constituencies involved? (6) What happened to the original idea of the CTEA as it progressed from concept through Congress and eventual implementation? (7) What has the CTEA's impact been over the past 20 years? (8) Which predictions proved to be most accurate, and which will most likely come true after 2018? and (9) What was the impact of the seminal *Eldred v. Ashcroft* U.S. Supreme Court ruling?

The relevance and timeliness of this thesis is important, as per the CTEA's terms and conditions, thousands of works will be potentially made available to the public domain as early as January 1st, 2019. Although this thesis provides insights through the accounts of various individuals interviewed, there remains ample opportunity for additional research by other legal scholars and social scientists to determine the extent of the CTEA's influence on authors' creative efforts and benefits to the public domain. Only through subsequent comparative and multiple longitudinal research studies, will the CTEA's influence upon the public domain truly be ascertained. While there are multiple and differing opinions of the CTEA's value or its damaging affects to the public domain, one thing is certain, that its controversial nature continues to remain.

Chapter II.

Copyright Fundamentals & CTEA Motivation

The following will provide a foundation of U.S. copyright protection fundamentals, the context of the public domain, details of the imbalance of copyright protections, the challenges with global copyright harmonization as well as the economic value and creative motivations of copyright authors. This foundation is necessary prior to engaging in more complex copyright issues.

U.S. Copyright Protection Fundamentals

A basic understanding of copyright law is required in order to thoroughly understand the CTEA, its impact as well as its proponents' and opponents' views. In brief, the requirements for a work to qualify for a copyright are that the work must fixed in a tangible medium, have originality or creativity and be a work of authorship.[1] A work qualifies for copyright protection if these conditions are achieved. After the work has qualified for copyright protection, there are several protections that copyright protection affords to the author. In summary, copyright law protections are granted under the U.S. Constitution's Article 1, Section 8, Clause 8, which is also commonly referred to as the "Copyright Clause."[2]

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[1] Yemi Adeyanju, "The Sonny Bono Copyright Term Extension Act: A Violation of Progress and Promotion of the Arts," *Syracuse Law & Technology Journal* 6 (Fall 2003): 2.

[2] U.S. Const., art. I, §Sec. 8, Cl. 8

The specific five protections that copyright protection affords an author or content creator, according to Bernaski, are "[1] the right to reproduce their work, [2] to create derivative works, [3] to distribute copies by sale, lease, or rental, [4] to perform the work publicly, [5] and to display the work publicly."[3] In addition, copyright protection within the United States is immediate and does not require any formal notice, mark, or registration by any parties formally with the U.S. Copyright Office.

Although registration with the U.S. Copyright Office is not required, it is recommended as a best practice, should there be any future litigation regarding the creation. Having a formal copyright registration provides the additional details regarding authorship and date of creation, which will be instrumental in resolving copyright infringement or registration issues should they arise in the future. In addition, copyright protection affords the content creator immediate protection against infringement by others. Essentially, copyright creates an immediate and monopolistic protection for a limited time, where others are required to request permission by the original content creator for the use of his or her creation. The original content creator or author may provide permission to use their creations without a charge; however, in most circumstances, there is some form of consideration that the original content creator or author requests from those wishing to utilize their creations in some manner.

In addition, copyright protection provides the creative author or copyright owner, the five identified exclusive rights previously identified by Bernaski, and essentially creates

[3] Kaitlyn Rose Bernaski, "Saving Mickey Mouse: The Upcoming Fight for Copyright Term Extension in 2018," Seton Hall University. Law School Student Scholarship. Paper 439 (2014), 6. http://scholarship.shu.edu/student_scholarship/439/.

an authorized monopoly for the author or content creator for a limited time[4] as defined by statute. Given copyright protections, a highly sought after author's work, can be licensed to any party by the author for a premium amount. Hence, while all copyrights afford the same protection to its creators' work of authorship, not all work that is copyright protected is economically valued the same way. For example, a parent values their child's artistic creativity differently than those of other children. Furthermore, Nadel states that, "…a fundamental premise of copyright law…[is] granting the copyright holder a virtual monopoly by prohibiting the unauthorized copying and sales of copyrighted works…"[5] Nadel's referenced monopoly is at the heart of any copyright argument, for copyright law proponents believe that this monopoly provides the impetus that drives the creative engine forward; however, it is this monopoly that copyright law and specifically CTEA opponents' believe thwarts creativity, as it provides more than ample time for content authors to recoup their initial investments and earn healthy compensations. A discussion of the public domain occurs next to provide details of the other key component of the CTEA debate.

Public Domain

Once a work's copyright term ends, anyone can use the work in any manner without paying any royalties or requiring any permission from the author, creator or former

[4] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 1.

[5] Mark S. Nadel, "How Current Copyright Law Discourages Creative Output: The Overlooked Impact of Marketing," *Berkeley Technical Law Journal* 19 (2004): 785, 794, 787.

copyright owner.[6] After a copyright term expires for a work, it enters the next and final stage within its lifecycle, which is referred to as the public domain. The public domain is the classification used for a work that no longer has any copyright protection associated with it. This lack of copyright protection allows anyone to use a work in any manner that they deem appropriate, without requiring the permission of the original author or creator of the work. Hence, the public domain is not necessarily a digital storage area allocated in cyberspace, or a physical location anywhere, such as a warehouse, where there are large physical collections of encoded intellectual property such as Digital Video Disks (DVDs). The public domain is an identification that some consider an ethereal location where intellectual property, that is no longer protected by copyright resides.

Any work within the public domain can also be combined in any way that a content creator or author chooses, without requiring the permission of the original content creator or paying the content creator to use any portion of the original work of authorship. The public domain serves as a repository of intellectual property assets that can also be sampled, disaggregated or modified in any way that a new creator or author wishes. Opponents of excessive copyright law protection are concerned that broadening the scope of copyright law protection as well as increasing the copyright term length of protection will limit the creative content fundamental building blocks available in the public domain for current and future creative content creators.

[6] Linda Christiansen, "Mickey Mouse Still Belongs to Disney: The Supreme Court Upholds Copyright Extension," Marketing and the Law, *Journal of the Academy of Marketing Science* 32, no. 2 (2004): 212-214, 212.

Achieving Copyright Protective Balance

Copyright law proponents rally behind the protections that are provided by copyright law to protect content authors' and creators' interests; however, ardent copyright law opponents believe that copyright protections are subject to Congressional and lobbying abuses by powerful organizations, which wish to modify or enact legislation that provide specific protections for their intellectual property creations. Level and length of protection is at the heart of the debate between the two clearly delineated pro-copyright and anti-copyright parties. There are powerful corporate content creators, authors and copyright holders, who are staunchly protected by copyright law and who fiercely wish to protect their intellectual property portfolios. There is also a large group of individuals who believe that corporate and Congressional powers should be reined in as they violate the intent of copyright law and diminish the public domain.

While there are many legal scholars who value the public domain, there are also several legal scholars who do not value the public domain. Fordham University School of Law's Prof. Hansen is a critic of the public domain, and astutely states that some individuals who are against copyright, or who are critical of copyrights, are actually misguided in their feelings towards capitalism.[7] Prof. Hansen critically states that "those who can create, create, and those who can't, do the public domain."[8] Prof. Hansen's trite comment and attempt at humor is based primarily upon personal opinion rather than objective fact. As this thesis will demonstrate, Walt Disney himself used elements and *scenes a faire* from the public domain to create some of Disney's masterpieces. Prof.

[7] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," *Fordham Intellectual Property, Media & Entertainment Law Journal* 13, no. 3 (2003): 771-830, 803.

[8] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 803.

Hansen also believes that the CTEA increases tax revenues and increases employment within the United States; Prof. Hansen also states that many people will benefit more than not from the additional revenue as opposed to the benefits derived from those works available in the public domain.[9] Although Prof. Hansen makes the claim of additional revenue, Prof. Hansen does not elaborate whether it will be corporations or individual authors who will benefit. Nor does Prof. Hansen provide quantifiable data to support his claims.

Prof. Hansen also makes the argument that if consumers want innovative works, the public domain is not a good place;[10] however, Prof. Hansen makes a logical mistake assuming that consumers are the ones who are creating and are going to the public domain to procure their purchases. The public domain serves primarily as a repository of the core building blocks of content that can be utilized in various different ways and integrated to create innovative works. The public domain is not a marketplace exchange such as Amazon.com where consumers can procure goods. Hence, any deprivation of the core fundamental building blocks within the public domain does in fact reduce the resources available to content creators. The factual information required to either prove or negate Prof. Hansen's assertions, are measurements demonstrating the reductions or increases of content in the public domain.

Ms. Wendy Seltzer, Fellow with the Berkman Klein Center for Internet & Society at Harvard Law School and a formidable legal scholar and opponent to Prof. Hansen, counters Prof. Hansen's arguments. Ms. Seltzer states, that the copyright protection

[9] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 804.

[10] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 805.

balance is not an economic argument, but an experiential argument. Ms. Seltzer specifically uses the example of plays entering into the public domain, and that as a result, there is a wider variety of offerings than what the original play creators had envisioned.[11] Ms. Seltzer is also a proponent of the public domain and states that art and literature are unlike scarce resources; as such, Ms. Seltzer believes that art and literature should be distributed to as many as possible, and that no "artificial scarcity," her reference to a monopoly or the CTEA, should be allowed to limit the public domain's repository of content.[12]

Ms. Seltzer firmly believes that art and literature are based upon artists borrowing from their predecessors; Ms. Seltzer provides additional support for her argument by stating that Walt Disney himself leveraged the public domain to create Snow White, Cinderella and Little Mermaid.[13] Another interesting statement speculating upon Disney's basis for increased copyright protections comes from David Carson with the U.S. Copyright Office. Mr. Carson states that Disney's Mickey Mouse film *Steamboat Willie* was considered at the time, "a parody of Buster Keaton's motion picture *Steamboat Will."*[14] As such, Mr. Carson implies a humorous irony that, Mickey Mouse, one of the greatest creations of childhood entertainment arose from leveraging a work under the Fair Use Doctrine for parodies.[15] Ms. Litman states that Disney's creation of Snow White and Mickey Mouse utilized preexisting elements; hence, implying the value

[11] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 808.

[12] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 809.

[13] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 795.

[14] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 810.

[15] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 810.

and power of public domain elements available to create significant and iconic characters.[16]

Ms. Seltzer's, Mr. Carson's, and Ms. Litman's statements imply, that had copyright legislation been more restrictive in the past, that quite possibly, neither Disney nor the CTEA would presently be a point for discussion. Ms. Seltzer's comments also accentuate a point of much contention between CTEA proponents and opponents, which is that current major copyright holders are successful because of the very copyright freedoms that they have taken advantage of, and that they are now attempting to limit for others.

European Copyright Law Harmonization

Proponents of copyright term-length extension and additional copyright protections, believe that prior to the CTEA being enacted, U.S. Copyright Laws were not in synch with European Copyright Law, which afforded copyright protections for the author's life plus an additional seventy years.[17] As such, the CTEA was positioned by proponents to address the obvious gaps between the U.S. and European Copyright systems' length of protection, and allowed U.S. Copyright Laws to be more consistent with European copyright laws. Rep. Howard Coble (R-N.C.), who was the House Judiciary Committee's Chairman at the time of the CTEA enactment, stated that the copyright term extensions as a result of the 1998 CTEA enactment would, "give American inventors and creators the

[16] Jessica Litman, "Mickey Mouse Emeritus: Character Protection and the Public Domain," *University of Miami Entertainment and Sports Law Review* 11, no. 2 (1994): 2. Available at: http://repository.law.miami.edu/umeslr/vol11/iss2/7.

[17] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 3.

same copyright protection as those in Europe."[18] It is this European Union copyright term-length discord that CTEA proponents provided as the principal argument to Congress to enact the CTEA.

Contrary to Rep. Coble's view that European copyright term-length discord prompted the CTEA, others such as Prof. Moglen believe that the European copyright term-length discord had minimal influence in the CTEA's enactment. Prof. Moglen of Columbia University, in a panel discussion, specifically did not agree with Prof. Hansen's view regarding the primary reasons for the CTEA's enactment; Prof. Moglen disagreed that the CTEA was related to or influenced by the European Union.[19] While CTEA proponents and some CTEA opponents will argue that the European Union copyright term-length disparity motivated the CTEA; the retroactive grant of copyright term protection for works that were about to enter the public domain is what continues to result in a much heated debate between CTEA proponents and opponents, regarding the constitutionality of the CTEA.

Economic Value & Creative Motivation

Nadel states in his paper, that the current economic analysis of copyright without taking into account the associated promotional costs or marketing expenses results in a flawed interpretation of the importance of copyright protections.[20] Nadel argues that in many situations, the cost of the associated marketing and promotions of works under

[18] Associated Press Article, "Disney Lobbying for Copyright Term Extension No Mickey Mouse Effort" appearing in *Chicago Tribune* October 15, 1998: 1. Retrieved 3/18/2018.

[19] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 780.

[20] Nadel, "How Current Copyright Law Discourages Creative Output," 785, 794, 790.

copyright exceeds the cost of their creation.[21] Hence, if one assumes Nadel's statements as fact, then the value of a copyright for a work is far less than what it is perceived to be. This analysis provides copyright law opponents the ammunition to assert that copyrights are inflated and that their value is truly much less than what corporations and authors place on them. The contrarian view to Nadel's statement is, that if copyrights are worth much less than they are perceived to be, and the marketing costs to be high, then copyright law proponents have a strong argument for extending copyright term length so that corporation and content authors can recoup their investments.

From a creative motivation perspective, Nadel is also of the school of thought that creativity arises simply because of the joy of creation and "pleasing audiences,"[22] and not necessarily because of the desire for financial gains. Nadel's comment assumes that majority of content creation may arise from the need to create joy and please audiences; however, similarly to Prof. Hansen, Nadel does not bifurcate whether his opinion applies broadly to individual author creators or specifically to corporations. While authors may create to satisfy some innate human desire to please their audiences, corporations exist primarily for revenue generation and growth.

The clinical research conducted for this thesis aligns with Nadel's findings, that motivation for creativity can result from other primary sources, then a need for financial gain. However, caution should be exercised when viewing interview commentary in this thesis, through Nadel's perspective, as interviewees may have found it difficult to answer or elaborate to an interviewer's questions regarding why they create. Although, one

[21] Nadel, "How Current Copyright Law Discourages Creative Output," 785, 794, 790.

[22] Nadel, "How Current Copyright Law Discourages Creative Output," 785, 794, 811.

assumes that the interviewees for this thesis, provided honest answers, there is a possibility where the interviewees delivered responses that were more self-serving and altruistic, so as not to appear capitalistic or materialistic.

Chapter III.

Overview of Major U.S. Copyright Acts

Copyright Law has a long, rich and complex history. Its development has taken place over the course of many centuries and has been influenced by diverse constituencies. The following elaborates upon Copyright Law's origins with The Statute of Anne and continues with an overview of the major U.S. Copyright Acts that form the basis for the Copyright Term Extension Act.

The Statute of Anne

Formal copyright protections were recognized initially within England over three hundred years ago through The Statute of Anne, which was enacted in 1710.[23] As McKeown identifies, The Statute of Anne provided the ability for the general public to "secure a copyright right for a limited term of fourteen years."[24] The Statute of Anne motivated primarily by public unrest, regarding the monopoly that the Stationer's Guild held during that era, resulted in members of the public being allowed to monetarily benefit from their creative endeavors for a certain period of time. The Statute of Anne was specific with the limited number of years that creative works would be protected. It is without argument amongst copyright and legal scholars that The Statute of Anne serves as the foundation for modern Copyright Law today. Although The Statute of Anne was a

[23] Hon. M. Margaret McKeown, "Happy Birthday Statute of Anne: The Dance between the Courts and Congress 1," *Berkeley Technology Law Journal* 25 (2010): 1146.

[24] McKeown, "Happy Birthday Statute of Anne," 1146.

powerful legal vehicle for the advancement of copyright protections, it had no bearing upon the United States during its time.[25] Hence, direction in the formal development of copyright protections was needed by the nascent colonies that would eventually form the United States of America.

Progress Clause & Interpretive Challenges

This copyright law guidance was provided by the United States Constitution through what is referred to as the "Copyright Clause," "Progress Clause" or otherwise formally known as Article I, Section 8, Clause 8 of the United States Constitution[26]. The Progress Clause, which provides that Congress shall have the power, "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,"[27] has been interpreted differently by both CTEA proponents and opponents.

While the U.S. Constitution attempted to establish clarity regarding copyright protections and term lengths, the words within the Progress Clause, "useful arts" and "limited times" would result in multiple interpretations over centuries. These phrases would come to have even much more bearing on future developments and controversies, as technology advances would take place, which would allow for the proliferation of content with unprecedented quality, speed, distribution potential and reach. Furthermore,

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[25] Oren Bracha, "The Adventures of the Statute of Anne in the Land of Unlimited Possibilities: The Life of a Legal Transplant," *Berkeley Technology Law Journal* 25, no. 3 (2010): 1440.

[26] U.S. Const., art. I, §Sec. 8, Cl. 8

[27] U.S. Const., art. I, §Sec. 8, Cl. 8

the Progress Clause would become even more problematic in its interpretation, as healthcare advances. Proponents for copyright protection would cite additional life expectancy as a primary reason for additional copyright term-length protection, while CTEA opponents would state that life expectancy had not increased proportionately to warrant increased copyright term-length protection.

Brief History of Copyright Enactments

In order to best understand the CTEA controversy, its retrospective and prospective implications, one briefly needs to understand the emergence of copyright protections and term length within the United States, as well as the context in which copyright laws were passed. The four U.S. Copyright Acts of 1790, 1831, 1909, and 1976 form the basis for the CTEA discussion and will be briefly elaborated upon here to provide foundational context for the more complex CTEA issues. In the history of the United States, copyright terms have been defined and extended on five distinct occasions; these extensions have been the resultant of the Copyright Act of 1790, Copyright Act of 1831, Copyright Act of 1909, Copyright Act of 1976 and the Copyright Term Extension Act of 1998.[28]

Copyright Act of 1790

The Copyright Act of 1790 established a copyright term to be 14 years from the date of initial publication, which was renewable for one additional term of 14 years by the original copyright holder.[29] As such, the total copyright term-length protection under the

[28] Bernaski, "Saving Mickey Mouse," 1, 2.

[29] Bernaski, "Saving Mickey Mouse," 4.

Copyright Act of 1790 could be as much as 28 years. The Copyright Act of 1790 was established to unify the disparate and oftentimes conflicting State-based copyright laws that existed within the United States at the time. One of Congress' primary reasons for the Copyright Act of 1790 to be enacted, was to ensure for a consistent national system of copyright protection, as opposed to a highly fractionalized and inconsistent State based system with various degrees and lengths for copyright term protection.[30]

Copyright Act of 1831

While there is certainly much activity within the development of copyrights, the Copyright Act of 1831 represented another major milestone in U.S. copyright law. The Copyright Act of 1831 extended the copyright term length from 14 years to 28 years and provided an option to renew for another 14 years after expiry of the initial copyright term.[31, 32] As such, the copyright term length under the Copyright Act of 1831 could be as much as 42 years in length. This total term was a 14-year increase over the Copyright Act of 1790.

Copyright Act of 1909

Subsequent to the Copyright Act of 1831, and one hundred and nineteen years later from the first Copyright Act in 1790, the Copyright Act of 1909 was enacted. This

[30] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 2.

[31] Bernaski, "Saving Mickey Mouse," 4.

[32] Bernaski, "Saving Mickey Mouse," 4.

Copyright Act of 1909 extended the renewable term to 28 years;[33] hence, an increase of another 14 years. The Copyright Act of 1909 also served an important purpose; authors argued with Congress after the Copyright Act of 1790, that they were outliving their copyright term protections, and that copyright term length needed to be extended to continue to protect the rights of authors.[34] Congress responded to this vocal author criticism by doubling the copyright protection term since the Copyright Act of 1790, to essentially a 56-year max term of total artistic monopolistic protection.[35]

Copyright Act of 1976

Hence the trend for significant increases in copyright term duration continued for quite some time; however, one of the most notable changes to copyright law occurred with the enactment of the Copyright Act of 1976. Subsequent to the Copyright Act of 1909 by 67 years, and prompted by advances in technology and communications, Congress enacted the Copyright Act of 1976, which was by far the most influential Copyright Act in the history of the United States. The Copyright Act of 1976 essentially eliminated a renewable term-structure of its 1909 predecessor and replaced it with a single term affording copyright protection.[36] The Copyright Act of 1976 extended copyright term length, for works created after January 1, 1978, to the length of the

[33] Bernaski, "Saving Mickey Mouse," 5.

[34] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 2.

[35] Bernaski, "Saving Mickey Mouse," 5.

[36] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 2.

author's life plus an additional 50 years; anonymous works were protected for 75 years from the date of publication.[37]

The Copyright Act of 1976 was instrumental in establishing the Doctrine of "Fair Use" and moving away from the fixed and renewable term lengths of its predecessors with a more uniform term protection based upon the date of the author's death.[38] Given this, the Copyright Act of 1976, had several notable exceptions to copyright protection, made specifically for "criticism, news reporting, teaching, scholarship, research purposes."[39]

Corporate and Author Interests

However, regardless of the increased copyright protections and term-length increases, corporations and creative authors continued to remain vocal. Author continued to object to the incongruent nature of the European copyright protection mechanisms, what they considered to be more comprehensive than the United States copyright protections. Furthermore, Congress believed that the disparity in copyright terms between the United States and Europe would create an imbalanced economic condition where authors in the United States would only be allowed to get life plus fifty years of protection in the European Union whereas European Union authors would be allowed to receive life plus seventy years of copyright protection within the United States. Not only

[37] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 2.

[38] Marvin Ammori, "The Uneasy Case for Copyright Extension," *Harvard Journal of Law and Technology* 16, no. 1 (2002): 314. Available at SSRN: https://ssrn.com/abstract=2669729.

[39] Bernaski, "Saving Mickey Mouse," 6.

from an individual author perspective, was this not desirable; this was not an enviable or lucrative position to be in from a national economic interest perspective. This imbalance of copyright term length between the European Union and the United States, prompted U.S. corporations and specifically Congress to re-evaluate Copyright Law and copyright term-length protections. This contemplation according to CTEA proponents resulted in the CTEA's enactment.

Copyright Term Extension Act (CTEA) of 1998

The most significant change in copyright law occurred in 1998 with the enactment of the Copyright Term Extension Act (CTEA), or otherwise commonly known as the "Sonny Bono Act," named after the late venerable entertainer and former U.S. House of Representatives member Sonny Bono. As will be explored in the subsequent section of this thesis, titled, Copyright Term Extension Act (CTEA) Detail & Disney's Influence, one of the CTEA's provisions grants additional protection for any works that were created after 1923 and prior to January 1, 1978 an additional 20 years of copyright protection. It is this retroactive grant that continues to be at the heart of many copyright arguments, because CTEA opponents believe that this retroactive grant is unconstitutional. Furthermore, the CTEA increased the total copyright term-length protection to the duration of author's life plus an additional 70 years, and also resulted in increased copyright term durations for works of corporate authorship to 120 years or 95 years after first publication, whichever period ended earliest.[40] Hence, the implication and relevance for this thesis is that the CTEA provided that for some corporate works created

[40] Bernaski, "Saving Mickey Mouse," 8.

between 1923 and 1978, they were given additional copyright protection that could be high as 95 years for corporate made-for-hire works.[41] As such, the CTEA gave Disney copyright-term protection to the year 2018 for works that, like *Steamboat Willie*, were made-for-hire in 1928.

Although prospective copyright term-length increases typically generate much heated debate, the retroactive nature of the CTEA resulted in a significant uproar. CTEA opponents, as will be elaborated in significant detail in the Copyright Term Extension Act (CTEA) Detail & Disney Influence section, challenged the constitutionality of Congress' ability to retroactively change the copyright term lengths of works of authorship as well as the constitutionality of the increase in copyright term length to promote the progress of science and the useful arts.

Copyright Acts' Comparative Analysis Summary

The following seminal copyright diagram[42] by Prof. Tom Bell provides an excellent visual overview of the major copyright enactments that were presented and their corresponding copyright term length. On the vertical Y-Axis, the Duration of Copyright Term is measured in Years. The X-Axis has the year the copyright term begins and is color coded respectively with the major copyright acts that were discussion in this section.

As one can observe, the Copyright Act of 1790 in the color red (for those who view this thesis in color) began in 1790 and was enforced until 1830; the copyright length

[41] Bernaski, "Saving Mickey Mouse," 8.

[42] Tom Bell, "Trend of Maximum U.S. General Copyright Term," http://www.tomwbell.com/writings/(C)_Term.html.

duration that it provided was for a total 28 years (14 years initial protection and with 14 years of additional renewable term). The area in gold represents the Copyright Act of 1831, which began in 1831 and was enforced until the Copyright Act of 1909. As one can see, this area shows the total number of years of copyright term length is 42 years (28 years of protection for the initial term and 14 additional years of protection for a renewal term). Moving forward, the peach area identifies the area for the Copyright Act of 1909, which started in 1909 and was enforced until the Copyright Act of 1976. The Copyright Act of 1909 demonstrates that copyright term-length protection was a total of 56 years (28 years for the initial copyright term-length protection, plus an additional 28 years for the renewal of a copyright). There were various copyright act changes in between the Copyright Act of 1909 and Copyright Act of 1976; however, the analysis of these minor Copyright Law changes are outside the scope and purpose of this thesis. In addition, the area shown in blue represents the Copyright Act of 1976, which began in 1976 and was enforced until the Copyright Term Extension Act of 1998. This blue block demonstrates that copyright term-length protection was for author's life plus fifty years. The Copyright Term Extension Act of 1998 is the purple color shaded area depicted below and to the far right, which represents that the copyright term length of protection is author's life plus seventy years. Prof. Bell assumed for the Copyright Act of 1976 and the Copyright Term Extension Act of 1998 shaded areas, that authors created a work thirty five years before their death. Prof. Bell's diagram also insightfully shows the retroactive nature of the Copyright Acts and from at what point copyright protection begins. The detail that is missing from Prof. Bell's diagram is the delineation between copyright protection length

for individual content creators, works of corporate authorship and anonymous created works.

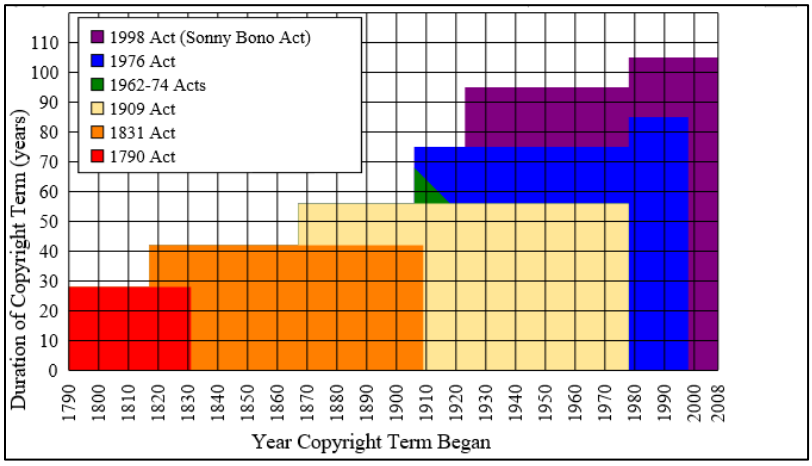

Figure A. Tom Bell's Seminal Copyright Diagram.

Prof. Tom Bell's seminal visual diagram showing duration of copyright term length mapped against the year copyright term began.

Chapter IV.

Constitutionality of Copyright Protection: Progress Clause, Defenses & Broadening of Copyright Protection

There has been considerable debate within legal circles regarding Congress' authority to enact legislation related to intellectual property. Primary debate consists of the interpretations of various statutes. However, the foundational arguments for Congressional jurisdiction arise from the interpretation of the United States Constitution's Article 1, Section 8, Clause 8, also commonly referred to as the "Progress Clause."[43] A brief overview of the Progress Clause is presented subsequently to provide foundation for the Congressional authority discussion.

Progress / Copyright Clause

The U.S. Constitution provides that "The Congress shall have Power To...Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries…."[44] This protection afforded by the U.S. Constitution is referred to as the "Progress Clause," and has resulted in a great deal of interpretation by multiple constituencies regarding what is specifically meant by "useful Arts" and "for limited Times." The interpretation by CTEA proponents has held that the Progress Clause provides Congress the power to secure for

[43] U.S. Const., art. I, §Sec. 8, Cl. 8.

[44] Heritage.org. https://www.heritage.org/constitution/#!/articles/1/essays/46/patent-and-copyright-clause (accessed 8/14/2018).

any length of time as required by it, to promote the progress of science and the useful arts. Hence, CTEA proponents have interpreted the Progress Clause broadly, without any specific term length in mind. CTEA opponents however, have cautioned that the broad interpretation of the Progress Clause could result in perpetual copyright term duration extension and frequent modification.

The challenge of determining the length of which Congress can provide copyright extension for is vague, given the very broad words of the U.S. Constitution's Progress Clause. *Eldred* in *Eldred v. Ashcroft* argued that Congress's CTEA's retrospective grant did not promote progress of science or the useful arts, and was unconstitutional.[45] One of the primary concerns within *Eldred,* is that the CTEA's retrospective grant to further increasing the copyright term length for works that have already been created, "violates the Copyright Clause's requirement that terms be 'limited'."[46] The interpretation of the U.S. Constitution's Copyright Clause's terms "for limited Times" has resulted in a much heated debate regarding the constitutionality of Congress continuing to extend copyright term length.[47] The constitutionality of the CTEA and details of *Eldred* will be explored in great depth in Chapter V.

Although Congress has the ability to modify the specifics of copyright law, the U.S. Constitution provides a doctrine and defense for education and speech, which supersede some copyright law specific attributes. The Doctrine of "Fair Use" as well as the "Transformative Use" defense provide some, albeit limited relief for individuals who

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[45] Ammori, "The Uneasy Case for Copyright Extension," 300.

[46] Ammori, "The Uneasy Case for Copyright Extension," 299.

[47] Patrick H. Haggerty, "The Constitutionality of the Sonny Bono Copyright Term Extension Act of 1998," *University of Cincinnati Review* 70 (2002): 680.

wish to utilize creative content, which may be subject to copyright protections without asking for permission from its respective content creators, or being required to pay for the original creative content.

Fair Use Doctrine Defense

The "Fair Use" Doctrine provides, "protection from infringement claims for certain unauthorized uses of copyrighted material."[48] "Fair Use" affords protections in certain instances, for sampling creative content, exhibiting creative content or creating something greater. "Fair Use" also affords protection for political commentary and satire; the Doctrine also provides protection for education either within a formal university educational context or an on-line media forum. The Fair Use Doctrine in combination with the Transformative Use Defense affords protection for the creative content creator or author against freedom of speech violations by government and other private parties such as celebrities.

Transformative Use Defense

The Right of Publicity is a powerful vehicle against the misappropriation of an individual's likeliness used against their permission and for commercial purposes. However, Freedom of Speech as protected under the Constitution's First Amendment is more powerful than the Right of Publicity and affords some protections for individuals using someone else's name, image or likeness. For instance, there are specific instances where an individual may create a parody or a transformative work that utilizes the name,

[48] Ted Johnson, "'Fair Use' Defense Used a Lot," *Daily Variety* 308, no. 58 (2010): 2.

image or likeness of a celebrity; for these types of instances, there is very little that a celebrity can do to protect themselves from having their likeness from being incorporated, as the First Amendment and a series of Supreme Court precedents provide protections for works that are considered "Transformative" in nature.

However, a simple copy, replication or thinly veiled depiction of a celebrity's name, image or likeness either on or associated with a product, endorsement or service offering would not be considered a "Transformative Use." However, a significant artistic work or parody that utilizes the celebrity's likeness for political commentary or artistic expression contributing to the body of human knowledge in some way, would easily qualify under "Transformative Use." According to Harvard Law School Professor, Peter A. Carfagna, "if a work is sufficiently transformative, that may warrant protection under the First Amendment as well."[49] Also according to Carfagna, "courts attempt-sometimes awkwardly—to weigh the competing interests of publicity and free speech and to determine which seems stronger in a particular case."[50] Lastly, Carfagna states, that "non-commercial speech receives the highest protection…"[51] and clearly indicates that thinly veiled forms of congratulatory commercial speech disguised as "free speech" such as in the case of international celebrity, *Michael Jordan v. Jewel-Osco* will not bode well for the party attempting to benefit from association with a celebrity. By demonstrating that another's infringing products or derivative works are not "Transformative," celebrities

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[49] Peter A. Carfagna, *Sports and the Law: Examining the Legal Evolution of America's Three "Major Leagues"*, 3rd ed., American Casebook Series (St. Paul, MN: West Academic Publishing, 2017), 209.

[50] Carfagna, *Sports and the Law,* 209.

[51] Carfagna, *Sports and the Law,* 209.

can much more readily influence the courts to rule in their favor; however, the "Fair Use" Doctrine and "Transformative" defense provide significant challenges to content authors or celebrities who wish to limit their works, name, image or likeness from being used.

Parody however poses specific challenges for celebrities bringing Right of Publicity violation allegations; specifically, according to Carfagna, "parody does not seem to provide celebrities with any additional income because rarely, if ever, will a celebrity give permission for a parody of himself or herself."[52] The courts weigh parodies heavily, because also according to Carfagna, "the Court expressed concern that celebrities given control over their name and likeness in parodies would 'use that power to suppress criticism, and thus permanently remove a valuable source of information about their identity from the marketplace.'"[53] As such, while celebrities may attempt to use their Right of Publicity against parodies of them, their efforts will most likely fail.

Congressional Amendments & Copyright Scope Broadening

Although there are multiple interests that need to be balanced by Congress regarding copyright protections, it continues to be challenging for Congress to come to a mutually beneficial solution, given the magnitude of Congressional amendments to copyright acts that have occurred. McKeown states in her article that there is a fine dance that both Congress and Courts perform that leads to a series of amendments to previous Copyright Acts. Specifically, McKeown cites the Copyright Act of 1909 to make her point and

[52] Carfagna, *Sports and the Law,* 210.

[53] Carfagna, *Sports and the Law,* 210.

states, "[Copyright Act of 1909] was amended twenty-five times in sixty-eight years."[54] In addition, McKeown also states that the Copyright Act of 1976 "has been amended sixty times – the staggering rate of an amendment every 209 days since the Act took place."[55] With so many amendments, general speculation results as to whether Congress and the Courts were clear with their objectives, or if there were and are other influences that have resulted in numerous amendments. Could the situation of increasing amendments simply be that objectives were not clear? Perhaps the increase in copyright amendments arises from corporate lobbying?

Ms. Wendy Seltzer, Fellow with the Berkman Klein Center for Internet & Society at Harvard Law School, also states that copyright law protection has increased the scope of its protection significantly, since the first copyright law was enacted.[56] Today, Ms. Seltzer states, copyright law has expanded over the years to protect more than just "books, charts, and maps."[57] Ms. Seltzer's statement is a matter of fact and can be seen from the increased protections that copyright legislation has afforded as well as the proliferation of various fixed medium creations that copyright law now protects.

In addition, to Ms. Seltzer's comments regarding copyright protection expansion, Baker and Cunningham performed an analysis of copyright related statutory changes that were passed from 1987 until 1998.[58] Baker and Cunningham also noticed a similar

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[54] McKeown, "Happy Birthday Statute of Anne," 1157.

[55] McKeown, "Happy Birthday Statute of Anne," 1157.

[56] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 794.

[57] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 794.

[58] Matthew J. Baker, and Brendan M. Cunningham, "Court Decisions and Equity Markets: Estimating the Value of Copyright Protection," *Journal of Law and Economics* 49, no. 2 (2006): 576, Table 2.

broadening of scope phenomenon as Ms. Seltzer, and specifically noted that of 22 copyright Acts that were passed for copyright related changes, they came to find that only 3 had the net effect of narrowing the scope of copyright protections.[59] Baker and Cunningham's finding indicate that majority of the copyright changes are primarily related to broadening the scope of copyright protections as opposed to limiting their scope.

Furthermore, Baker and Cunningham concluded that "returns to equity in copyright industries are significantly influenced by changes in the breadth of copyright protection;"[60] hence Baker and Cunningham's findings supported increased copyright protections in copyright heavy industries, but not all industries. The returns for copyright holders are significant and monopolistic according to Baker and Cunningham's study. However, Baker and Cunningham did not firmly conclude as to whether the increase in returns was directly correlated to the broadening of Copyright Law or due to the direct increased investments that these industries or corporations made as a result of copyright protection.[61] Baker and Cunningham's study however prompts additional questions as to whether broadening copyright law protections specifically results in an increase in return on investments or whether increased organizational investments given copyright protection, or due to a combination of both. However, contrary to Baker and Cunningham's findings, is a 2003 *New York Times* editorial, which commented firmly,

[59] Baker and Cunningham, "Court Decisions and Equity Markets," 576, Table 2.

[60] Baker and Cunningham, "Court Decisions and Equity Markets," 593.

[61] Baker and Cunningham, "Court Decisions and Equity Markets," 593.

that the extension of copyright protection is not in the public's best interest.[62] Only through future longitudinal copyright law and economic studies will illuminate the present contention.

[62] Baker and Cunningham, "Court Decisions and Equity Markets," 568.

Chapter V.

Copyright Term Extension Act (CTEA) Detail & Disney's Interest

As previously introduced in Chapter III, one of the most notable and controversial changes within Copyright Law arose in 1998, when the "Sonny Bono" Copyright Term Extension Act (CTEA)[63] was passed;[64] the CTEA bill was initially introduced on March 20, 1997,[65] and continues to fuel a fiery conversation on copyright protections, the public domain and copyright term length. The CTEA's enactment in 1998 was the fourth time in the United States' history, where copyright term length was extended, and the second time where copyright term length had been extended in a period of twenty-two years. However, the CTEA's enactment resulted in much heated debate between media corporations such as Disney and academics over the implications to copyright protection, societal welfare and First Amendment rights. This debate has not subsided and continues with great passion as the December 31, 2018 looms near. Specifically on January 1, 2019, thousands of works, formerly protected by the CTEA, will be released into the public domain.[66]

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[63] Steve Schlackman, *Mickey Mouse Keeps Changing Copyright Law*. February 15, 2014. Retrieved from https://mag.orangenius.com/how-mickey-mouse-keeps-changing-copyright-law/ (accessed 08/16/2018).

[64] Schlackman, *Mickey Mouse Keeps Changing Copyright Law*.

[65] Bernaski, "Saving Mickey Mouse," 2.

[66] Bernaski, "Saving Mickey Mouse," 8.

CTEA Enactment Overview

In 1998, when President Clinton signed the CTEA Bill, it was heralded by many at Disney, Hollywood's film industry, and other entertainment organizations as being a substantial windfall for musicians, artists, film producers, and literary authors. Ammori states, that up against Disney and the sponsors of the CTEA, was a fragile coalition of academics and librarians.[67] However, a point of note is that to support this supposedly weak coalition, The American Libraries Association requested all of its 54,000 members to oppose the 1998 CTEA enactment and contact "their local lawmakers" to challenge the change.[68] Unfortunately, even supported by The American Libraries Association, this coalition of academics and libraries was not enough to stop the CTEA from passing. While there were opponents to the CTEA's passing, The Supreme Court's seminal decision in *Eldred v. Ashcroft*, underscored the validity of the CTEA, as well as Congress' authority to enact copyright term extension laws to promote progress in the sciences and the useful arts.

The CTEA also provided additional copyright protection retroactively for any works that were created after 1923 and prior to January 1, 1978 for an additional 20 years. The Act also resulted for works created after January 1, 1978, to be protected for the duration of an author's life plus an additional 70 years[69] for individuals, and has extended copyright protection terms for corporate works and works made for hire to 95 years from the first year that it was published or 120 years from the creation date, whichever comes

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[67] Ammori, "The Uneasy Case for Copyright Extension," 293.

[68] Associated Press Article, "Disney Lobbying for Copyright Term Extension No Mickey Mouse Effort" appearing in Chicago Tribune 10/15/1998 Page 1. Retrieved 3/18/2018.

[69] Bernaski, "Saving Mickey Mouse," 8.

first.[70] The CTEA resulted in all copyrights that were about to expire in 1998, including Disney's first motion picture involving Mickey Mouse, *Steamboat Willie,* to be extended another 20 years; hence now *Steamboat Willie* will become available in the public domain at the end of 2023.[71]

Copyright & CTEA Controversy

There are many organizations, such as Disney and others who wish for another copyright term extension to ensure that their intellectual property assets will be afforded increased term protections. Since the establishment of the film industry, entertainment companies such as Disney have had consistent friction with U.S. Government agencies when it has come to the interpretation, implementation and enforcement of U.S. intellectual property rights laws. However, some within the creative arts, academia, and libraries, view the passing of the CTEA with animus, for they believe that it has deprived the public domain of important information. The controversy of the CTEA and its impact has not been resolved and is now again at the forefront of many lobbying organizations, Congress and Disney.

Underuse, Overuse & Tarnishment

Profs. Buccafusco and Paul J. Heald believe that as January 1, 2019 and as the public domain looms near for copyright protected work under the CTEA, that "the next few

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[70] Bernaski, "Saving Mickey Mouse," 8.

[71] Douglas A. Hedenkamp, "Free Mickey Mouse: Copyright Notice, Derivative Works, and the Copyright Act of 1909," *Virginia Sports and Entertainment Law Journal* 2 (Spring 2003): 254-279.

years will likely witness another round of aggressive lobbying by the film, music, and publishing industries to extend the terms of already-existing works."[72] Buccafusco and Heald propose three hypothesis of copyright work usage to elaborate pro-copyright term-length expansion positions. These hypotheses illuminate the issues deep within the debate for and against copyright protection. Buccafusco and Heald's hypothesis are: The Underuse Hypothesis, The Overuse Hypothesis and The Tarnishment Hypothesis.[73]

Profs. Buccafusco and Heald, state that copyright holders are concerned that works entering the public domain, "will be underused, overused, or tarnished in ways that will undermine the works' economic and cultural value."[74] Buccafusco and Heald also hold however, that the "incentive-to create" does not necessarily apply to existing creative works. For instance, there are many great works that are currently copyright protected by authors who are no longer; a specific example of Hemingway's *The Sun Also Rises* is used to emphasis their point. According to Buccafusco and Heald, broadening copyright terms will not incentivize the deceased Hemingway to create additional works.[75] Buccafusco and Heald' position is in stark contrast to Bernaski's position, who states that "future works continuously need to be incentivized."[76] As Hemingway is no longer, some other creative artist will leverage *The Sun Also Rises* after its copyright protection expires

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[72] Christopher Buccafusco and Paul J. Heald, "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension," *Berkeley Technology Law Journal* 28 (Spring 2013): 1.

[73] Buccafusco and Heald, "Do Bad Things Happen?,"13-17.

[74] Buccafusco and Heald, "Do Bad Things Happen?,"1.

[75] Buccafusco and Heald, "Do Bad Things Happen?," 3.

[76] Bernaski, "Saving Mickey Mouse," 1.

in 2022;[77] hence, there is neither any compensation or incentive for Hemingway or his estate, nor is there any immediate direct compensation or incentive for the leveraging artist. The primary motivation of the leveraging artist could simply be to satisfy their artistic curiosity or because of the potential to earn future compensation from their derivative work or republishing of the original Hemingway work. However, the promise for incentive or compensation is clearly different from the guaranteed compensation that Hemingway's estate gets today, given that *The Sun Also Rises* is a legendary classic.

Buccafusco and Heald's Underuse, Overuse and Tarnishment arguments continue to convolute the copyright debate, for the Framers never mentioned these terms in the Constitution when defining copyright protections. Bernaski agrees and states that works would be "overused and exploited upon entering the public domain."[78] Bernaski also states that although Disney has benefitted significantly from their initial investment in the Mickey Mouse character, that should Mickey fall into the public domain, Disney would be less inclined to use Mickey in their theme parks and he would "become underused."[79] While this may be the case, Mickey has had nearly a 100-year run. Although it is doubtful that Disney would completely move away from Mickey, it is also a realistic possibility given its investments in other areas.

Hence, although copyright law proponents will advocate that copyright law protects and incentivizes works to be appropriately maintained, they fail to recognize the economic argument that not all copyrights have equal value, nor that all copyrights are

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[77] http://librarycopyright.net/resources/genie/example.pdf retrieved 06/10/2018.

[78] Bernaski, "Saving Mickey Mouse," 14.

[79] Bernaski, "Saving Mickey Mouse," 25.

equally valued at the same point in time. As such, works protected by copyrights that are highly coveted, will be more inclined to be sampled from or used as fundamental building blocks for other creations after entering the public domain, whereas works under copyright protection with little perceived value today, will most likely have little value when entering the public domain at a later time. Given this economic, public valuation and integration complexity, it is not so easy to polarize the copyright argument simply by stating that all works entering the public domain will be underused, overused or tarnished, or that copyright protection will avoid the issues of overuse, underuse and tarnishment. Quite frankly, there have not been sufficient longitudinal studies that have provided the economic details to create a causal or even highly correlated link between copyright, the public domain and intellectual property overuse, underuse and tarnishment.

Litman supports a statement that without the appropriate copyright protection, merchandise produced will be of lower quality.[80] Litman specifically supports her position by describing her inability to find a "good Raggedy Ann doll," because Raggedy Ann is in the public domain.[81] Even after Litman's elaboration, it remains unclear that how underutilization or consumption of an intellectual property asset harms the public. The harm is greater when assets are not even available. The choice for the public to consume literature, movies and music related to Mickey or Raggedy Ann is quite frankly up to the public. The more important argument that Bernaski should make is the benefit derived from new content created or the benefits of works that are developed upon prior

[80] Litman, "Mickey Mouse Emeritus," 2.

[81] Litman, "Mickey Mouse Emeritus," 2.

existing content, and to shift her focus away from the underutilization of pre-existing copyrighted content.

Comparative Analysis

Although Bernaski makes the argument that tarnishment of a work protected under copyright may take place, which would lead the public to consume imitation goods that are not up to the same level of quality as those that have been created by the original author,[82] Bernaski fails to take into account that consumers also have many vehicles of research available to them now to perform comparative analysis, which they did not previously. In addition, Bernaski fails to take into account that nearly every book, song or movie, from popular to more obscure ones are associated with a rating system or ranking system. This ranking system is apparent from Amazon.com and Ebay.com, which both provide for opportunities to evaluate and rank products, manufacturers as well as sellers. So hence, if a consumer is concerned about the quality of a product, the integrity of the manufacturers, and whether it is tangible or intangible good, then it is simply a matter of the consumer reviewing a web-site, the product details, and reviews of what others have stated. The evergreen warning, "Caveat Emptor" has put the buyer on notice since contract law principles were established, and reminds that it is not up to the producer of content to educate the consumer in all aspects of the product, but for the buyer to conduct their due diligence.

[82] Bernaski, "Saving Mickey Mouse," 25.

Copyright Intensive Industries

According to Ammori, the three top industries that were impacted the most by the CTEA are the "book publishing, film and media conglomerates."[83] As cited by Ammori during the time of the CTEA's enactment, in 1998, copyright based industries "accounted for almost six percent of the U.S. gross domestic product."[84]

Additionally, Tyerman states that Harvard Law School Professor Stephen Breyer hypothesized that industries that were heavily reliant upon copyright protection, such as the publishing industry did not need the "artificial protection provided by the copyright laws."[85] Tyerman also states that Prof. Breyer believes that the removal of copyright law would result in "…(1) reduced prices and increased distribution, (2) reduced permission costs, and (3) reduced market power of publishers."[86] However, Tyerman eventually vehemently disagrees with Prof. Breyer's beliefs and expends considerable amount of time refuting them. On a related note, given the rapidity of technical change software's copyright protection is crucial for terms less than ten years, while other industries, such as film and publishing require longer copyright protections to recoup their initial investments. As such, a one-size blanket protection does not necessarily fit for all copyright-based industries.

[83] Ammori, "The Uneasy Case for Copyright Extension," 295.

[84] Ammori, "The Uneasy Case for Copyright Extension," 294.

[85] Barry W. Tyerman, "The Economic Rationale for Copyright Protection of Published Books: A Reply to Professor Breyer," *UCLA Law Review* 18 (1971): 1102.

[86] Tyerman, "The Economic Rationale for Copyright Protection," 1108.

Trademark Defense

Trademark Law may provide some protection for Disney against unauthorized production of Disney character based products, such that consumers are prevented from becoming confused regarding the source of the product.[87] However, Trademark Law will not protect Disney completely from derivative works that will be developed by others after some of its copyrights transition into the public domain. Trademark protection will enable Disney to pursue legal action against those who are producing imitation goods that are likely to cause consumer confusion or detriment. Hence, consumer safety protection under Trademark Law would shield Disney's intellectual property assets. Trademark Law does not simply exist for corporations such as Disney to extend protection of its characters that have entered the public domain. The CTEA has not just prevented Disney's intellectual property assets from entering the public domain, but it has also prevented many other important works that have essentially been restricted from entering the public domain for the past twenty years.

The risk to Disney from a copyright expiry standpoint is significant, as Trademark Law will not be able to protect Disney from its classic characters transitioning into the public domain. Disney may attempt to use Trademark Law to demonstrate that its trademarks are still valid as they are being used in the normal course of their business; however, Disney will not be able to prevent anyone from leveraging its characters, titles and derivative constructs one in future public domain. Furthermore, Disney will be incredibly challenged to prove that its classic characters that will systematically move

[87] Buccafusco and Heald, "Do Bad Things Happen?,"3, citation #2.

into the public domain deserve trademark protection. From a strategic perspective, courts are more likely to hear such trademark protection arguments before copyright expiry than after.

CTEA Proponents' Position

The subsequent discussion below provides a thorough preview into the position that CTEA Proponents' have taken. The CTEA Proponents' position is based in a substantial part upon harmonization of copyright protections internationally as well as prompting content authors to create.

European Directive

CTEA proponents continue to cite increased life expectancy, imbalance of European and U.S. copyright term lengths, as well as incentives for creators to create future works as the primary reasons for increasing copyright term length.[88] CTEA proponents believe that one of the primary motivations of the European Union Term of Protection Directive (Protection Directive) was in of itself, to harmonize copyright terms between European member states. The need for the European Union Term of Protection Directive was to ensure consistent copyright protection amongst European Union member countries. Copyright term consistency and economic imbalance prompted the Protection Directive.[89] CTEA proponents state that the lack of cohesive copyright term-length strategy, as well as copyright term-length protection, provided an impetus for the

[88] Bernaski, "Saving Mickey Mouse," 2.

[89] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 773.

European Union to revisit copyright law protections and term length amongst the European Union members. CTEA proponents also state that the Protection Directive also provided a model framework for the United States copyright law amendments.

Prof. Hugh Hansen of Fordham University School of Law, when moderating a panel on the potential ramifications of *Eldred v. Ashcroft* stated that those countries who are considered to be exporters of intellectual property products are mostly pro intellectual property rights, where as those countries who are primarily importers of intellectual property, have more reservations about intellectual property rights.[90] Prof. Hansen's statements embody the simple economic argument that producers are more inclined for laws that protect their investments and creations, where as consumers are more in favor for least restrictive laws.

Prof. Hansen continued with his argument regarding the need for the Protection Directive and stated that the European Union wished that United States would not adhere to the proposed European Union's life plus seventy years for copyright term protection length plan.[91] The rationale for the European Union's desire is, so that the European Union could continue to have a favorable imbalance of revenue with the United States, because of the more limited U.S. copyright term length.[92] Prof. Hansen went on to state that there is a disparity between the number of intellectual property goods that are generated within the U.S. and Europe, and that the United States would benefit more than

[90] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 774.

[91] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 775.

[92] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 775.

Europe with the life of the author plus an additional seventy-year copyright term-length protection under the CTEA.[93]

Harmonization in Europe had to take place because of the European Council Directive to ensure that each of the European Member states would recognize the copyright term length of a foreign created work for a period as long as it was protected in its own country. However, it was in Europe's best interest to continue to have a copyright term-length disparity with the United States. This rationale is supported by the fact that a significant portion of the United States' intellectual property is exported to the European market. With a copyright protection term length of author plus 50 years, this would allow U.S. intellectual property to appropriated by the European Union market 20 years prior to European Union intellectual property in the U.S. market. If continued this would result overtime in increased intellectual property costs for the U.S. However, this assumes that both have equal value of intellectual property. Mr. David Carson, former General Counsel of the U.S. Copyright Office also has significant comments on the piracy of physical goods and how piracy has allowed the markets in certain regions of the world to be flooded by imitation goods with quality that is comparable to those of legitimate goods.[94] Mr. Carson states that the most important intellectual property market for the U.S. is Europe.[95] Mr. Carson also cites that because Europe had gone to a life-plus-seventy model, that this prompted the U.S. also to enact a life-plus-seventy-model term.[96]

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[93] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 776.

[94] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 799.

[95] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 800.

[96] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 800.

Mr. Carson's statements underscore one of the key contentions between CTEA proponents and opponents, regarding one of, or the most important drivers for the CTEA's enactment. The potential for significant U.S. economic losses due to the disparity in copyright protections and terms of intellectual property further prompted Congress to consider the 1998 CTEA enactment. Mr. Carson also states that he does not believe that there is anything incorrect with "private parties" being allowed to lobby or advocate for legislative change, which economically benefits those "private parties."[97] The economics and benefits realization, of private parties, including content creators and corporations has been a significant point of contention and disagreement between CTEA proponents and opponents. Proponents have argued that copyright legislation is intended to promote science and the useful arts; however, that it cannot do so, unless it provides some economic incentive for the content creators to do so. CTEA opponents do not necessarily agree to the full extent of the proponents' interpretation of the Framers' intent.

Copyright Orphans

Additionally, Buccafusco and Heald cite Jack Valenti, former President of the Motion Picture Association of America, and one of the foremost copyright term-length increase advocates, as stating that public domain works were "orphans."[98] Valenti further

[97] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 800.

[98] Buccafusco and Heald, "Do Bad Things Happen?,"12.

elaborated that without appropriate guidance or substantiated facts "orphans" "would be subject to distressing abuse."[99]

Penalizing Profitable Successes

In addition, Bernaski's pro-CTEA position is that just because a company has significantly benefited from copyright protection, this success alone does not provide a valid reason to release the creation that made the company such profits into the public domain.[100] Although Bernaski is a CTEA proponent, she provides an excellent point for CTEA opponents to consider, which is that economic or business success should not be a precursor for reproach by CTEA opponents or anti-copyright term-length increase lobbying efforts. While Bernaski does provide this fruitful insight, it is only a small part of the overall implications of the CTEA.

Technical Advances

In addition the advances in technology also have to be considered in the copyright debate regarding their ability to prolong the longevity of the creative work, making it far outlive the author who created it.[101] Given the propensity for technological advances to take place with increased rapidity, it is important to forecast their impact and integrate them into future copyright law and copyright term-length protections. However, a counter argument can be made, that works fixed in one medium today, may not have an

[99] Buccafusco and Heald, "Do Bad Things Happen?," 12-13.

[100] Bernaski, "Saving Mickey Mouse," 28.

[101] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 3-4.

increased value if fixed in another medium tomorrow. Another counter argument against considering technological advances with respect to copyright law is that with duplication technical advances, that although the possibility of mass duplication may be possible, it does not necessarily mean that it will take place.

CTEA Opponents' Position

The following provides for a detailed discussion regarding the position that CTEA opponents have taken with regards to copyright protections. Various categorical objections have been made, which relate to economy value, non-reciprocity, policy, life expectancy, inheritance, preservation, innovation, constitutional interpretation, monopolies, and scientific progress.

Economic Perspective

From an economic perspective, CTEA opposition has stated, that the CTEA was unnecessary to extend copyright term length, as majority of profits from a work are recouped within the first few years.[102] Hence, any additional term-length extensions would not necessarily provide the creative author untapped or increased revenues. Adeyanju states that some individuals believe that the extension of the copyright term length or a monopoly would provide additional incentive to create. There is very little clinical evidence that supports a direct causation between the number of years of a monopoly and the increased personal motivation for an individual to create.[103] As such,

[102] Bernaski, "Saving Mickey Mouse," 2.

[103] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

increasing the number of year of copyright protection beyond a certain amount may have negligible to no impact on creative author revenues.

Non-Reciprocity & Pre-CTEA Assets

The reciprocity perspective with other countries is another interesting argument that CTEA opponents cite against the true value of the CTEA. CTEA opponents stated that the CTEA did not do much to change the reciprocity imbalance of copyright term protections between the U.S. and the European Union as well as Japan. CTEA critics cite that specifically for anonymous or pseudonymous works, the European Union only provides seventy years of protection as opposed to the ninety-five years and one hundred and twenty years of protection currently provided by the CTEA respectively for first publication and from first creation.[104] CTEA opponents also argue that the CTEA does not guarantee reciprocity; in non-European Union countries such as Japan, U.S. authors would only be provided fifty years of copyright term protection.[105]

In addition, from a country enrichment perspective, CTEA opponents also argue that the United States is currently rich because of its pre-CTEA assets and not because of the promise for the CTEA to increase its economic assets.[106] Furthermore, Adeyanju clearly states that there is no evidence demonstrating that authors would have been more likely to

[104] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

[105] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

[106] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

create a work because of the additional 20 years that the CTEA provides as opposed to if the CTEA did not exist.[107]

CTEA & Policy Arguments

Even Mr. David Carson, former General Counsel of the U.S. Copyright Office, was disappointed by the CTEA; however, Mr. Carson agreed with the constitutionality of the CTEA.[108] Mr. Carson states that the most compelling arguments are not the constitutional arguments regarding Congress' power to modify copyright term length or the constitutionality of changing copyright law; however, that the most compelling arguments are what he refers to as "policy arguments."[109] Mr. Carson proceeds to state directly in a panel discussion about the CTEA: "What the Copyright Term Extension Act turned into was, in my words, a poster child for everything that is wrong with copyright law."[110] Mr. Carson underscores the key elements of the debate between CTEA proponents and opponents, which is related to the constitutionality of the CTEA, specifically its retroactive increase of copyright term-length protection for prior works and potential impacts to First Amendment rights, as well as Congressional authority to continue to amend copyright legislation. It is these elements that continue to result in much debate between CTEA proponents and opponents.

[107] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

[108] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 797.

[109] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 797.

[110] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 798.

Life Expectancy Argument

Also, CTEA Opponents assert that CTEA proponents' life expectancy argument is weak, given that as health conditions improve and people do live longer, naturally, the copyright term length continues to protect the author while he or she is alive. Hence, as such, if health care and medicine improve to allow an author to live for 200 years, then the current copyright term length of protection will be for 270 years. Given this, the actual health of the author as opposed to the additional length of copyright protection is the dominant factor for a work being available in the public domain.[111]

Furthermore, Ammori calls the U.S. government's argument in *Eldred* regarding the bequeathment of financial support of authors to their family member to support increased copyright term length as "fairly silly," because Ammori argues, that most people wish to provide this financial support for their family and do not need federal intervention to facilitate this.[112]

Heirs & Longevity Argument

Mr. Chuck Sims believes in the complete opposite of what the CTEA opponents believe about Disney's former Chairman Michael Eisner.[113] Mr. Sims believes that it was not Mr. Eisner that thought of extending copyright term length; however, Mr. Sims firmly asserts that the first Congress was responsible for setting precedence, and that

[111] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

[112] Ammori, "The Uneasy Case for Copyright Extension," 320.

[113] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 789.

copyright had been extended multiple times prior to the CTEA.[114] Mr. Sims states that Congress extended copyright term-length changes in 1790, 1831, 1909 and 1976.[115] Mr. Sims also asserts that in the grand scheme of things, the length of the copyright term is appropriate, as people are living longer; Sims also argues that authors such as Nobel Laureate Saul Bellow who had children later in life make for a strong case to have the copyright term length as long as it is.[116]

Mr. Sims however errs in his presupposing that copyright is "aimed to take care of their [content authors] children for the whole balance of their lives"[117] The fact is that the Framers of the Constitution did not focus on the benefits that would be derived by content authors' children. If this were the case, then the First Congress would have addressed this in a greater than the fourteen-year copyright term length that it established in the Copyright Act of 1790. Also, should author heirs have also been the focus of the Framers, then heirs would have been either referenced directly or indirectly in the Constitution or subsequent revisions; however, this is not the case. The focus of copyright law has been to promote the progress of science and the useful arts by prompting creativity by the creative content author. The focus of copyright law and the CTEA has not been to ensure the welfare of an author's heirs.

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[114] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 789.

[115] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 789.

[116] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 790.

[117] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 790.

Preservation Argument

As Ammori states, CTEA proponents believe that the "CTEA would support film preservation;"[118] however, as Ammori demonstrates, this statement is one of the most feeble arguments of CTEA proponents. Ammori uses statements from film archiving societies that emphasize that current copyright holders are doing very little currently to preserve films.[119] Furthermore, the argument is made by film archiving societies that film students would become involved in film preservation activities and thus not allow films to degrade, regardless of copyright status.[120] Although Ammori states that physically "old film deteriorates,"[121] he does not address the advances in technology that has allowed an immense number of amateur movie producers and artists using technology to ensure that old film does not deteriorate, or that poor quality versions of a movie proliferate. Hence, while CTEA proponents may believe that the CTEA or copyright protection enables older works to be better preserved, evidence indicates otherwise.

Patent & Innovation Argument

One of the most pressing arguments against the CTEA arises from Congress' position regarding patent term length. The questions arises, that if the current patent term of twenty years is intended to promote innovation and progress science and the useful arts,

[118] Ammori, "The Uneasy Case for Copyright Extension," 297.

[119] Ammori, "The Uneasy Case for Copyright Extension," 297.

[120] Ammori, "The Uneasy Case for Copyright Extension," 297.

[121] Ammori, "The Uneasy Case for Copyright Extension," 297.

why is that period not sufficient for copyright term length.[122] Ammori states briefly that in the past couple of hundred years, there has been significant disparity between the increase in copyright term length and patent term length; the protective term-length increases are 580% for copyrights and 43% for patents.[123] The difference is stunning as there have been more than tenfold increases in copyright term-length legislation than patent term legislation.

Also, copyright attorneys, legal scholars and content creators will agree that the patent process to get a patent issued from the U.S. Patent & Trademark Office, is far more involved and costly than to get a certification of copyright from the U.S. Copyright Office. A copyright is issued immediately today in the United States, without any formal registration process or submission to the U.S. Copyright Office. The immediacy of copyright protection as soon as an author creates content is supportive of protecting the interests of content creators. A patent issuance requires a formal submission process to the U.S. PTO and is governed by strict protocols and procedures that provide direction on how claims, definitions and designs of a patent should be articulated to facilitate the patent applications review process. Although an inventor may decide to create and submit their patent application, the complex patent submission, review and response process lifecycle usually requires legal counsel and significant financial resources to file appropriately. Hence, the argument not only for increase in the current length of copyright duration, but also for a proposed increase in copyright term length becomes less persuasive.

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[122] Ammori, "The Uneasy Case for Copyright Extension," 323.

[123] Ammori, "The Uneasy Case for Copyright Extension," 323.

With patents being primarily the result of significant sweat of brow, financial investments, technical competency and ingenuity, the message that Congress is communicating is that technologists, innovators, and scientists are far more valued in their brilliant contributions than their literary counterparts, such as book authors, poets, musicians, film makers, choreographers, and composers. And given this brilliance, that their innovations are highly valued, can be capitalized upon significantly and should be released to the public domain in much less time than those creations by their non-technologist counterparts, all the while having their innovations being protected in the appropriate manner to foster innovation and provide the framework for the recouping of their initial investments.

Even prior to the CTEA, with the patent protection term length being twenty years and the copyright protection term being the author's life plus and additional fifty years, Congress subtly indicated, that the non-scientific, artistic content creators, simply require more of an incentive to create. Furthermore, with the CTEA's now additional copyright length protection of an author's life plus an additional seventy years, is Congress continuing to find that our non-scientific, technical creative content creators simply require more incentive and time than their technical peers to create contributions to promote the progress of science and the useful arts? Of course the contrary argument can be made by CTEA proponents is that the value of artistic works and the effort to create them, is so significant that it is appropriate to have such a lengthy term of protection, to incentivize content creators and authors to produce such works of importance and complexity. The additional argument can also be made that works protected under Patent

Law have very limited market value given the fast pace of scientific and technical advances, that twenty years is more than enough time for investments being recouped.

CTEA Constitutional Challenge

The following provides for an overview of the Constitutional Challenge that arose after the CTEA's enactment and how the courts ultimately addressed that challenge.

Eldred v. Ashcroft − Foundation

In January 1999, Eric Eldred, founder of the Eldritch Press, filed a constitutional challenge against the CTEA, alleging that the CTEA violated his First Amendment rights and that Congress far exceeded its powers under the U.S. Constitution's Copyright Clause.[124] The Eldritch Press was not simply a hobby for Eric Eldred but a significant contributor to the dissemination of knowledge. The National Endowment for the Humanities named the Eldritch Press in 1997 as a top twenty humanities website.[125]

The impact of the CTEA was felt far and wide by many individuals such as Eldred, who were not necessarily aware that their lives would directly change as a result of the CTEA.[126] As a result of the CTEA's enactment, Eldred lost his ability to publish on-line books that were suddenly removed from the public domain. Although this may have been an inconvenience for some, for Eldred's entrepreneurial and social venture, it meant that

[124] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 4.

[125] Ammori, "The Uneasy Case for Copyright Extension," 294.

[126] Bernaski, "Saving Mickey Mouse," 9.

the 20,000 people who logged in daily to read books on Eldred's website could no longer access certain books after the CTEA's enactment.[127]

Both the United States District Court and United States Court of Appeals for the District of Columbia rejected *Eldred's* claim against unconstitutionality.[128] Relying upon *United Video,* the United States Court of Appeals argued that copyrights cannot be used to challenge First Amendment rights violations, because the commercial use of others' copyrights does not constitute a fundamental right.[129] The U.S. Supreme Court granted certiorari in 2002 to *Eldred v. Ashcroft*.[130] Furthermore, in *Eldred v. Ashcroft* Harvard Law School Professor Lawrence Lessig challenged the constitutionality of Congress' power to modify copyright terms under the Copyright Clause.[131] Eldred and nine other co-petitioners argued that the Constitution's Copyright Clause emphasis of Congress' ability to set copyright term-length protection for "limited times" duration was being implemented unconstitutionally through the CTEA and that their First Amendment rights were being violated.[132]

Although *Eldred v. Ashcroft*, went through three lower courts and eventually to the U.S. Supreme Court to challenge the CTEA, it ultimately resulted in a 2003 Supreme Court ruling that provided for unequivocal support for the CTEA's enactment and its

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[127] Bernaski, "Saving Mickey Mouse," 9.

[128] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[129] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[130] Ammori, "The Uneasy Case for Copyright Extension," 288.

[131] Pamela Samuelson, "The Constitutional Law of Intellectual Property after Eldred v. Ashcroft," *Journal of the Copyright Society of the U.S.A.* 50 (2002-2003): 555.

[132] Bernaski, "Saving Mickey Mouse," 10.

constitutionality.[133] The United States Supreme Court later affirmed the United States Court of Appeals ruling on *Eldred.*[134] Although the CTEA was enacted into law, the fight for its Constitutional interpretation and implementation continues to wage on, regardless of the U.S. Supreme Court affirming the lower courts' rulings in *Eldred v. Ashcroft.*[135]

Bernaski specifically states that the U.S. Supreme Court "gave great deference" in *Eldred* given that the CTEA's enactment allowed for a limited and non-perpetual increase in copyright term-length protection.[136] In *Eldred v. Ashcroft*, the Supreme Court's decision underscored the power that Congress has in ensuring for actions that it believes will achieve Constitutional aims.[137]

The impact of the *Eldred v. Ashcroft* decision cannot be overstated, for it addressed two important questions: "Does Congress have the power under the Copyright Clause to extend retrospectively the term of existing copyrights?" and "Is a law that extends the term of existing and future copyrights categorically immune from challenge under the First Amendment?"[138] The Supreme Court held "Yes" to both of those questions.

The primary aims of Congress for the enactment of the CTEA was to harmonize or conform U.S. copyright term-length protection with the rest of the world.[139] Although rarely, does the U.S. Supreme Court grant certiorari for cases related to intellectual

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[133] Bernaski, "Saving Mickey Mouse," 11.

[134] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[135] Bernaski, "Saving Mickey Mouse," 11.

[136] Bernaski, "Saving Mickey Mouse," 11.

[137] Bernaski, "Saving Mickey Mouse," 11.

[138] Ammori, "The Uneasy Case for Copyright Extension," 288.

[139] Ammori, "The Uneasy Case for Copyright Extension," 288.

property matters, it chose to do so, given the Constitutional challenges that arose by Eldred and other petitioners.

These two fundamentally important questions sparked a powerful debate that has not yet subsided. The petitioners argued primarily that First Amendment protections, "should require Congress to pass *Turner/O'Brien* scrutiny," which should Congress' failure to do so, would prohibit Congress' abilities to extend current and future copyrights.[140] Ammori specifically argues that, "the Copyright Clause does not grant Congress the power to enact the CTEA's prospective extension."[141]

Mr. Chuck Sims, an opponent of Prof. Lessig stated that *Eldred* "was not an unimportant, little case,"[142] and states that the case was about Constitutional concerns and not about the quality of the law. The concerns for Mr. Sims were primarily focused around Congressional power, and Congress' ability to enact the CTEA in the first place.[143] Mr. Sims provides for an example of the CTEA's impact using the movie industry; Mr. Sims states that the movie industry is based upon forecasted revenues that it anticipates will come, and that at the heart of it, including financing, is based upon the protections afforded to it, by copyright law.[144]

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[140] Ammori, "The Uneasy Case for Copyright Extension," 289.

[141] Ammori, "The Uneasy Case for Copyright Extension," 290.

[142] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 786.

[143] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 787.

[144] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 791.

Eldred v. Ashcroft − Dissent

Regardless of majority ruling, two legendary Supreme Court justices, Justice Stevens and Justice Breyer dissented, as both believed that the CTEA essentially granted a perpetual copyright and was unconstitutional.[145] Former Supreme Court Justice Stevens dissented in *Eldred v. Ashcroft*, and underscored the critical importance for works in the public domain, and Congress' limitations in granting increased copyright term protections. Justice Stevens stated that if Congress was prevented from extending "the life of the patent monopoly, then Congress could not extend the life of a copyright beyond its expiration date." Drawing these parallels, Justice Stevens clearly argued that Congress was overreaching the powers granted to it by the Constitution's Copyright Clause.[146] Justice Stevens' dissent further stated that Congress could not modify "preexisting federal protections," [147] hence, refuting the CTEA's retroactive copyright term-length increase.

Justice Breyer's dissent, according to Bernaski, was founded on his opinion that "the original grant of a monopoly adequately incentivizes authors to create new work."[148] Justice Breyer stated that the additional term-length extension made the copyright term "virtually perpetual" and inhibited "progress of science."[149] One of the most salient aspects of Justice Breyer's dissent, is that the CTEA did not benefit the author but

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[145] Bernaski, "Saving Mickey Mouse," 11-12.

[146] David E. Shipley, "Congressional Authority over Intellectual Property Policy after Eldred v. Ashcroft: Deference, Empty Limitations, and Risks to the Public Domain," *Albany Law Review* 70 (Fall 2007): 1255-1295.

[147] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[148] Bernaski, "Saving Mickey Mouse," 12.

[149] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

primarily "their heirs, estates or corporate successors."[150] This key aspect of Justice Breyer's dissent is highly relevant, as he implies that the author should primarily derive benefits from their creation during their lifetime.[151] After the author's demise, any of their designated beneficiaries, heirs or assignees are the one's that truly benefit from the copyright term-length extension. Multiple legal scholars weighed in.

Samuelson supports Justice Stevens and Justice Breyer's positions by stating that there continues to exist "a substantial consensus…within the community of American intellectual property scholars that the CTEA *is* unconstitutional."[152] Ms. Seltzer supports the Supreme Court's dissenting opinions and cites that Mr. Peter Jaszi, who is widely regarded as an expert on copyright law, testified before Congress and stated that Congress, through the CTEA, provided "a perpetual copyright on the installment plan."[153]

Although Ammori believes that, "CTEA's extension of future copyrights exceeds Congress's affirmative Copyright Clause Power,"[154] the Supreme Court did not agree with this. Haggerty supports Ammori's position and states, that in the past, "Congress has been guilty of setting intellectual property policy according to the private interests who appear before it."[155] Haggerty's prior comment suggests that Congress' motivations are more inclined to address private or corporate commercial interests before the greater public good. While the constitutionality of the CTEA had been challenged and eventually

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[150] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[151] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 5.

[152] Samuelson, "The Constitutional Law of Intellectual Property," 548.

[153] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 793.

[154] Ammori, "The Uneasy Case for Copyright Extension," 289

[155] Haggerty, "Constitutionality of the Sonny Bono Copyright Term Extension Act," 691.

upheld in *Eldred v. Ashcroft*, the question remains, as to what point, will the public domain in the U.S. be open again.

Eldred v. Ashcroft − Academics Opinion

Prof. Hansen bifurcates his interpretation of the Preamble to the Copyright Clause of the United States Constitution, "To Promote the Progress of Science and the Useful Arts" and characterizes "Science" to be associated with learning and "Useful Arts" to imply patent protected inventions. Prof. Hansen elaborates upon his view of *Eldred's* position and states that Congress had an obligation to enact legislation to provide incentives for the creation of new works, not those that are already in existence.[156] It is Prof. Hansen's own opinion that illuminates, that while Prof. Hansen may have been pro-CTEA, his focus is supporting the prospective aspects of the CTEA as opposed to its retroactive copyright term-length increases.

Ammori states that the core argument that *Eldred* makes against the government, is that by preventing works from entering into the public domain, that the CTEA essentially limits free speech.[157] However, the lower courts such as the District of Columbia Circuit Court and U.S. Court of Appeals ruled that no First Amendment rights are violated using works under copyright.[158]

[156] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 777.

[157] Ammori, "The Uneasy Case for Copyright Extension," 303.

[158] Ammori, "The Uneasy Case for Copyright Extension," 303.

CTEA & *Eldred v. Ashcroft* Impact

Additionally, according to Adeyanju who cites U.S. Copyright Law, "a copyright holder has the exclusive rights of reproducing the work, preparing derivative works, distributing copies, performing the work publicly and displaying the work publicly,"[159] and that the Supreme Court's decision upholding the CTEA in *Eldred v. Ashcroft* provides copyright holders for works created post 1923 and prior to 1978, essentially an additional retroactive grant of 20 years of copyright protection.[160]

The CTEA had significant effects on copyright reliant industries. Ammori specifically mentions that the CTEA's enactment had "immediate, more certain and larger" effects on retrospective copyright grants.[161] Ammori's argument is clear that he views that the "Limited Times" phrase within the Copyright Clause should be interpreted within the context, where according to him, "benefits of financial incentive outweigh the societal costs of monopoly."[162] Hence, Ammori is clear that while a monopoly may benefit the creative author, it must be weighed against the potential detriment to society and the public domain. Ammori's assertion is that while Congress may establish an act to increase copyright duration for a limited time, it should be done so within the context of the U.S. Constitution's "To Promote the Progress of Science and Useful Arts."[163] Without the promotion of progress in science and the useful arts, then the CTEA or for that matter, any copyright Act fails to achieve the objectives that it was established for.

[159] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 1-2.

[160] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 6.

[161] Ammori, "The Uneasy Case for Copyright Extension," 291.

[162] Ammori, "The Uneasy Case for Copyright Extension," 291.

[163] Ammori, "The Uneasy Case for Copyright Extension," 291.

At the time of Ammori's article, Ammori identified that because of the CTEA's enactment, the following works would not be available in the public domain until 2019: "The Great Gatsby, The Sun Also Rises and The Sound and the Fury."[164] While this may appear to be a trivial situation at the time of this thesis, given that 2019 is several months away, this was a significant issue in 1998, shortly before the CTEA's enactment, which essentially required everyone to wait for another 20 years prior to being able to access these great works in the public domain. In addition, these works represent a minuscule amount of total works prevented from the public domain over the past 20 years.

Given the financial impact of the CTEA, many artists and organizations involved in copyright intensive efforts gain much from its enactment. As such, musician Bob Dylan supported the Bill, to ensure that the retroactive impact of the CTEA would provide for a continued revenue stream for "an additional twenty years."[165] While the CTEA's retroactive grant has an impact upon established performers, artists and high value works protected under copyright, it did nothing for emerging artists to prompt the creation of additional works; this will be further elaborated upon in Chapter X CTEA Field Research section of this thesis that provides additional insights regarding the creative motivations of both established and emerging content authors.

[164] Ammori, "The Uneasy Case for Copyright Extension," 293.

[165] Ammori, "The Uneasy Case for Copyright Extension," 293.

Conglomerates & Monopolies

While monopolies may generate incredible innovation and revenue in the short term, clinical and longitudinal studies have provided evidence that monopolies do not benefit society in the long term.

Winnie-the-Pooh & Conglomerates

One of the most important financial arguments that Ammori makes of the CTEA's influence to copyright related works is his statement that Disney offered to pay $150 million for Winnie-the-Pooh's copyright prior to the CTEA, but eventually changed that purchase price to $350 million after the CTEA's enactment.[166] This $200 million increase demonstrates the power and value of copyright monopoly. Ammori states that should the CTEA not have passed, then the valuation of Winnie-the-Pooh's copyright would have been much lower after copyright expiry.[167] The value of copyrights comes from the monopoly that it provides; hence, the CTEA provided Disney with a monopoly on Winnie-the-Pooh, which it can exploit accordingly to charge whatever price it wishes to have others license Winnie-the-Pooh from itself until copyright expiry.[168]

One of the most astute points that Ammori makes with on the behalf of CTEA proponents is through his use of the term Conglomerates. Conglomerates are, as Ammori broadly describes in the context of copyrights, entities that compete in different industries

[166] Ammori, "The Uneasy Case for Copyright Extension," 296.

[167] Ammori, "The Uneasy Case for Copyright Extension," 296.

[168] Ammori, "The Uneasy Case for Copyright Extension," 296.

and receive value from their copyright monopolies.[169] Ammori states that Conglomerates such as, "AOL Time Warner, Disney, Viacom, Universal Vivendi, and Bertelsmann" have a vested interest in copyright ownership, given that their reach is through the "music, trade and magazine publishing, film, internet, radio and cable around the world."[170] And given that these industries are copyright intensive, these conglomerates have a deep interest not only in copyright protection, but also an interest in the extension of copyright term.

Value of Monopolies

Although a monopoly for a limited time may facilitate a creative artist to produce, Ammori raises the point about the fact that monopolies are not necessarily a good thing. Ammori states that if a monopoly is allowed to continue, then others who do not have the financial capital or networks of Conglomerates would thus be unable to compete with them; this Ammori states would result in "diminished competition."[171] And from an economics perspective, diminished competition provides limited choices for consumers as well as reduced quality of goods. Putting this into context of copyright law and the CTEA, monopolization means that intellectual property goods may have higher prices and that there may be reduced intellectual property available in the public domain.

[169] Ammori, "The Uneasy Case for Copyright Extension," 297.

[170] Ammori, "The Uneasy Case for Copyright Extension," 298.

[171] Ammori, "The Uneasy Case for Copyright Extension," 298.

Repeated extensions to copyright term length can essentially have the impact of perpetual extensions or of a monopoly.[172] Congress has made limited changes to the length of the copyright term since 1790; Ammori states that Congress has specifically made only four changes since that time.[173] *Eldred* argued that if Congress' intent is to promote progress for science and the useful arts, that, it should focus on the prospective elements of the CTEA as opposed to its retroactive elements; increasing copyright term length for prior works through a retroactive grant would not have the intended benefits of promoting progress.[174] *Eldred's* position is also reliant upon the ruling in *Feist Publications v. Rural Telephone Service Co.*, where the Court held that facts cannot be copyright protected.[175] Hence a level of originality is required for copyright protection. The Government responded to *Eldred's* position by stating that promoting progress was not narrowly limited to simply written or creative works; however, that the harmonization with copyright terms with the European Union as well as other countries sufficed to accomplished the promotion of progress of science and the useful arts.[176] Because of the incongruence in Europe prior to the CTEA with respects to copyright term length, the Court responded in *Eldred*, that authors would pursue copyright registrations within Europe, which would serve as a "disincentive to create in the U.S."[177] This is an important rationale for the CTEA's enactment.

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[172] Ammori, "The Uneasy Case for Copyright Extension," 299.

[173] Ammori, "The Uneasy Case for Copyright Extension," 299.

[174] Ammori, "The Uneasy Case for Copyright Extension," 299-300.

[175] Ammori, "The Uneasy Case for Copyright Extension," 300.

[176] Ammori, "The Uneasy Case for Copyright Extension," 300.

[177] Ammori, "The Uneasy Case for Copyright Extension," 301.

Ammori further cites that Congress has always accompanied a copyright term extension for future created works, with a corresponding extension of the copyright term for existing works as well.[178] Hence, Ammori suggests that Congress' decision to both prospectively and retroactively extend copyright term length is not unprecedented. Although Ammori elaborates upon this position, there is substantial evidence and opinion that a retroactive increase in copyright protection does not benefit society or the public domain. Ammori argues that the U.S. Constitutional's Framers' intent with regards to copyright was to provide an economic incentive so that it could foster creativity.[179] Even in prior times, governments and rulers, such as those during the time of Queen Elizabeth I, approved the creation of monopolies to facilitate innovation.[180] However, during these times as well, people were aware of the benefits of perpetual monopolies and those for a limited duration, with a clear preference for non-perpetual monopolies.[181]

Ammori's position is that there was clearly an economic motivation and foundation behind the establishment of copyright law, as opposed to it being based upon concerns for freedom of expression.[182] Ammori further elaborates that several states countered monopolistic behaviors by mandating that publications were produced at an affordable price and in appropriate quantities, to avoid the classical issues of high prices and scarcity of products typically associated with monopolies.[183] Hence, Ammori clearly suggests that

[178] Ammori, "The Uneasy Case for Copyright Extension," 302.

[179] Ammori, "The Uneasy Case for Copyright Extension," 304.

[180] Ammori, "The Uneasy Case for Copyright Extension," 304.

[181] Ammori, "The Uneasy Case for Copyright Extension," 306.

[182] Ammori, "The Uneasy Case for Copyright Extension," 308.

[183] Ammori, "The Uneasy Case for Copyright Extension," 308.

the States were well aware of the dangers of monopolies and instituted their own State based laws prior to adopting Federal copyright laws, to prevent economic inequalities. Ammori provides evidence that demonstrates that both Thomas Jefferson and James Madison agreed to support limited monopolies only to the extent that they provided value in the form of incentives.[184]

Ammori likens the CTEA to the monopolies of salt or ale that Elizabeth I granted during her reign.[185] Ammori's comparison indicates that he does not view the CTEA any differently than the "long monopolies"[186] under Elizabeth I's reign. Ammori provides a clear statement that like Elizabeth I's monopolistic copyright grants the CTEA produces similar results, which results in higher prices paid by purchasers as well as a guaranteed revenue stream for producers.[187]

Science and the Useful Arts

Ammori also provides for commentary demonstrating Congress' ability to show self-restraint and self-indulgence with copyright term length. Ammori states that Congress changed copyright term length two times between 1790 and the beginning of the 1960s.[188] However, Ammori is also clear that since the 1960s, Congress has enacted Acts that have specifically extended copyright term length eleven times.[189] It is apparent from

[184] Ammori, "The Uneasy Case for Copyright Extension," 310.

[185] Ammori, "The Uneasy Case for Copyright Extension," 311.

[186] Ammori, "The Uneasy Case for Copyright Extension," 311.

[187] Ammori, "The Uneasy Case for Copyright Extension," 311.

[188] Ammori, "The Uneasy Case for Copyright Extension," 312.

[189] Ammori, "The Uneasy Case for Copyright Extension," 312.

Ammori's findings that there have been a substantial number of increases for copyright term-length extension in relatively recent times and within a short period. Whether these copyright term extensions have a causal or correlative relationship to the advances in technologies related to duplication and transmission of intellectual property remains as one of the quintessential research questions to be further explored.

One of the most important contributions that Ammori makes to his argument regarding Congress' understanding about copyright law intent, is a quote that he references from the House Report issued after the enactment of the Copyright Act of 1909:

> "The object of all legislation must be…to promote science and the useful arts…[T]he spirit of any act which Congress is authorized to pass must be one which will *promote the pro*gress *of science* and the useful arts, and unless it is designed to accomplish this result and is believed, in fact, to accomplish this result, *it would be beyond the power of Congress"*[190]

Ammori specifies that in the 1909 House Report, Congress recognized copyright law for being " 'not primarily for the benefit of the author, but primarily for the benefit of the public.'"[191] Ammori believes that the CTEA focuses primarily on benefits to the author as opposed to benefits to the public.[192] Ammori further states that in the House Report of 1909, Congress used a prudent cost-benefit approach in their establishment of copyright protections, analyzing the benefits that the public would receive versus the detriment granted by the time limited monopoly Congress established.[193]

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[190] Ammori, "The Uneasy Case for Copyright Extension," 313.

[191] Ammori, "The Uneasy Case for Copyright Extension," 313.

[192] Ammori, "The Uneasy Case for Copyright Extension," 313.

[193] Ammori, "The Uneasy Case for Copyright Extension," 313.

Ammori also continues his discourse with his disagreement with Congress' rationale behind the 1976 Copyright Act. Ammori emphasizes that the 1976 Copyright Act was primarily for the benefit of the author versus the public.[194] Ammori further elaborates that the House Report of 1988 on the Berne Convention Implementation Act of 1988 again demonstrates Congressional preference for copyright laws to provide public benefit.[195] The Supreme Court in *Sony Corp. of America v. Universal City Studios, Inc.*, also supported the position that copyright law is primarily to foster innovation and not for the sole enrichment of authors.[196]

Ammori cites the Supreme Court's opinion in *Sony Corp. of America v. Universal City Studios, Inc.,* to emphasize the Court's preference for public enrichment.

> "[P]rivate motivation *must* ultimately serve the cause of promoting broad public availability of literature, music, and other arts…[T]he *ultimate aim* is by this incentive, to *stimulate* artistic creativity for the *general public good*." [197]

Ammori astutely states the "limited times" language specified within the Constitution, references a non-perpetual duration, where Congress is to balance "incentive and monopoly costs to society."[198] As such, should a copyright term get too long, society may not necessarily benefit from copyright protection; hence, Ammori

[194] Ammori, "The Uneasy Case for Copyright Extension," 314.

[195] Ammori, "The Uneasy Case for Copyright Extension," 315.

[196] Ammori, "The Uneasy Case for Copyright Extension," 315.

[197] Ammori, "The Uneasy Case for Copyright Extension," 315.

[198] Ammori, "The Uneasy Case for Copyright Extension," 319.

believes that Congress should be sensitive to establish a term length that effectively promotes innovation.[199]

CTEA Beneficiaries

Copyright protection provides for a wide variety of benefits. Some of these benefits are economic in nature, while others are related to promoting scientific and the useful arts. A challenging situation arises, when copyright protection benefits individual organizations at the expense of the greater public good. The following elaborates upon the delicate balance between private welfare and societal benefit.

Disney Benefits from CTEA

Although the CTEA's extended copyright protection was met with acclaim at Disney and within entertainment industries during this time, it was commented and critiqued upon heavily by the public. Various parties felt that Disney and its entertainment studios negatively influenced the U.S. Government agencies into increasing copyright term length. It was speculated that Disney wished to extend copyright term lengths for Disney's intellectual property assets, which included various classic animation characters, so that Disney could continue to financially capitalize on its copyrights beyond the pre-CTEA term length. Disney essentially wished to continue to capitalize on its classic characters as much as possible, prior to any of them entering the public domain.

[199] Ammori, "The Uneasy Case for Copyright Extension," 319.

Copyright protection has far reaching implications for Disney in the realm of databases and emerging technologies as well. For instance, should Disney have made proprietary investments in Database technologies, then the Database Investment and Intellectual Property Anti-Piracy Act of 1996 would protect Disney's computer database interests as well.[200] The CTEA's benefit to Disney is not simply that Disney will have increased copyright term protection for its characters in film only; however, that the CTEA's copyright protections will broaden to a far reaching set of derivative works and artifacts such as databases, technical systems now known or to be later developed. The frequent or repeated increases in copyright term length have the effect of granting monopoly power to respective copyright holders[201] such as Disney.

In addition, Ammori also cites states that Disney quietly pushed for the CTEA to be passed.[202] As such, Ammori firmly asserts that Disney's interest in copyright term-length extension influenced the CTEA's enactment. Haggerty states that the CTEA provided protection of a significant revenue stream for many organizations including Disney.[203]

However, the ramifications of the CTEA were not specifically for Disney; however, but for all authors and content creators. While Disney may have benefited the most from the CTEA's enactment, other authors also received benefits, although perhaps not as financially great. Regardless of any opposition that was expressed by various CTEA opponents, the CTEA Bill passed through the Senate and then the House of

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[200] Baker and Cunningham, "Court Decisions and Equity Markets," 568.

[201] Baker and Cunningham, "Court Decisions and Equity Markets," 568.

[202] Ammori, "The Uneasy Case for Copyright Extension," 292.

[203] Haggerty, "Constitutionality of the Sonny Bono Copyright Term Extension Act," 677.

Representatives easily; it was signed shortly thereafter into Law by President Clinton on October 27, 1998.[204] What is concerning is that the CTEA Bill's advocates were well aware of the Congressional hearings; however, the CTEA opponents were unaware that hearings on the CTEA were taking place at the time.[205]

[204] Bernaski, "Saving Mickey Mouse," 2.

[205] Buccafusco and Heald, "Do Bad Things Happen?," 8.

Chapter VI.

Disney's CTEA Influence

Disney has had significant interest and influence in protecting its intellectual property assets since its establishment. Over the course of many decades, Disney has heavily utilized the law to protect its trademarks, copyrights and patents for its film, music, literary and live-action production assets. One of the primary arguments of CTEA opponents is not that Disney unfairly used its influence to protect its intellectual property assets through copyright law and the CTEA, but, that Disney's influence resulted in an unfair retroactive grant of another 20 years for thousands of works protected under copyright that would have become available in 1998 had it not been for Disney's CTEA sponsorship.

Historically, Congressionally issued copyright enactments do not list or identify specific corporations or individuals who are to receive specific copyright benefits. Copyright enactments are issued to ideally promote the progress of science and the useful arts. As such, although copyright enactments may primarily benefit one organization or a handful of powerful organizations greatly, they are intended to protect broader public interests. Hence, copyright enactments are broadly issued and sometimes, such as in the case of the CTEA, provide an organization with greater benefits than those bestowed upon individual content creators.

Disney's Character Protection

In 1998, the iconic Mickey Mouse, who is undoubtedly, the most associated character with Disney, was going to move into the public domain. Mickey Mouse's public domain availability would have resulted in Mickey Mouse being able to be reproduced by anyone and for any purpose. Some of these purposes would be the garden-variety purposes, such as those associated with commercial enterprises, such as t-shirt production and novelty sales. However, other purposes would be more nefarious in nature and would involve Mickey in either compromising positions or displaying uncharacteristic traits and malicious behaviors. Mickey Mouse's valuation was so significant, that Disney could not easily let Mickey into the public domain without a fight.

Mickey's Valuation

One of the most interesting facts pertaining to this matter, is that the Disney Corporation's valuation of Mickey Mouse was $8 billion in 1997 prior to the enactment of the CTEA.[206] It is further validated that Mickey Mouse's copyright valuation was inclusive of sales through, "its consumer product division and theme parks…."[207] As such, Mickey Mouse was and still is a significant Disney intellectual property asset. Ammori also states that Disney's Winnie-the-Pooh copyright valuation also mirrored Mickey Mouse' valuation and was nearly $8 billion in revenue at the time.[208]

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[206] Bernaski, "Saving Mickey Mouse," 28.

[207] Ammori, "The Uneasy Case for Copyright Extension," 292.

[208] Ammori, "The Uneasy Case for Copyright Extension," 292.

It is my hypothesis that Disney was well aware of all the issues that could potentially arise if Mickey was available in the public domain and, more specifically, the impact that it would have on Disney's revenues. Hence, Disney took the lead in sponsoring the CTEA. Quite simply, Disney could not let Mickey become available in the public domain and still anticipate continuing to generate the magnitude of its revenue stream; hence, Disney lobbied with a force not to be reckoned with, to extend copyright term length.

Intellectual Property Protective Behavior

Disney has been so influential and determined in the protection of its copyright, that others within entertainment, such as the comedic troop at *Saturday Night Live* have created skits of Disney's protectionist behavior.[209] However, one of the most telling tales of Disney's fierce copyright protective behavior, is the fact that it sued a child daycare center in Florida for using Disney's characters as décor, without obtaining the appropriate licenses or permissions from Disney.[210] Although some may consider this heartless behavior by Disney, and the child daycare center in Florida may have considered it "Fair Use," Disney had complete legal authority to protect its copyright. Furthermore, Oneal states that the "Fair Use" defense is simply not enough to protect oneself from copyright infringement. Oneal implies that "Fair Use" is a subjective measure, which is ultimately determined by the courts, when a copyright holder does not agree with how its copyright

[209] Litman, "Mickey Mouse Emeritus," 1.

[210] Litman, "Mickey Mouse Emeritus," 1.

is being utilized under the "Fair Use" doctrine.[211] Hence, Disney has considerable clout in pursuing legal action against those who misappropriate its copyrights, regardless of whether they believe that their appropriation is "Fair Use."

Revenue Generation

Although Disney can be associated with many positive and negative attributes, revenue generation is quite simply a major objective for Disney and allows Disney to provide the entertainment that it does. As such, Disney fiercely protects its intellectual property rights and mitigates activities that would infringe upon those rights in anyway. Given this, Disney has invested in much lobbying power and activities to also ensure that piracy and counterfeit Disney goods are eliminated or severely curtailed. And because of Disney's proclivity to maintain its competitive advantage and to continue generating the significant revenues that it has in the past, it is not surprising that Disney supported the CTEA Bill. The most important considerations elaborated shortly are focused on just how much Disney contributed to the lobbying effort for the CTEA's enactment, whether it also lead the CTEA Bill's enactment and how much influence will Disney have in future copyright term-length discussions.

Copyright Term-Length Extension Lobbying Efforts

Disney's influence into the Copyright Term-Length Extension cannot be overstated. The following elaborates upon Disney's financial, political and brand influence upon the

[211] D. J. Oneal, "The Sonny Bono Copyright Act," *Videography* 24, no. 10 (1999): 54. Retrieved from http://search.proquest.com.ezp-prod1.hul.harvard.edu/docview/199890423?accountid=11311, 2.

CTEA's enactment. In addition, professional and academic perspective are provided for additional support regarding Disney's broad and deep influence in protecting its copyrights.

Disney's Financial Influence

Specifically, Bernaski states, that "The Disney Corporation was heavily involved as a proponent of term extension, as Mickey Mouse and some of Disney's other prominent copyrights would have entered the public domain without passage of the 1998 Act."[212] One example of Disney's influence or commitment to the protection of its intellectual property arose over the period of 1997 and 1998, when Disney reportedly spent $6.3 million in lobbying for the CTEA's enactment.[213] While $6.3 million is considered a formidable sum of money, even without accounting for the inflation that has occurred since the past 20 years, it was then and still is a trivial amount of money for Disney. Interestingly, Disney had revenues prior to the 1998 CTEA, identified by its corporate 10-K filings, as $4.59 billion for 1989, $5.75 billion for 1990, $6.11 billion for 1991, $7.50 billion for 1992, and $8.53 billion for 1993 respectively.[214] Furthermore, Disney's revenues for 2017 were $55.14 billion.[215] These revenue figures are particularly noteworthy, as Disney's revenues rely considerably upon the protection and licensing of

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[212] Bernaski, "Saving Mickey Mouse," 1.

[213] Laurie Richter, "Reproductive Freedom: Striking a Fair Balance between Copyright and Other Intellectual Property Protections in Cartoon Characters," *St. Thomas Law Review* 21 (2009): 451-452.

[214] http://www.secinfo.com/dsvRs.bq.htm (accessed 8/14/2018).

[215] https://ditm-twdc-us.storage.googleapis.com/q4-fy17-earnings.pdf (accessed 8/14/2018).

its intellectual property; hence, while $6.3 million expended in lobbying efforts prior to the CTEA's enactment is a significant corporate investment, it represented less than 0.07% of Disney's overall revenues in 1993. This small percentage amount is usually considered a rounding or estimating error in accounting; however, it represents the exact amount of how much Disney purportedly expended to protect its intellectual property assets.

It is frankly quite surprising, that Disney expended such a low amount for its lobbying efforts given that Disney's valuation of copyright specifically for Mickey Mouse alone was $8 billion.[216] Hence, this finding prompts the questions of whether Disney's non-financial influence was greater than the $6.3 million that it provided for lobbying efforts, or if Disney's concern was more limited as it had planned or was already planning for the acquisition of a diverse portfolio of characters and other intellectual property assets in the future, or if Disney had confidence that external arguments made for the CTEA's enactment would prevail on their own merits.

Disney's Political Influence

Research conducted for this thesis has provided many facts regarding the activities that Disney put forth in its CTEA lobbying efforts; however, research is highly limited and virtually non-existent when it comes to describing the foundational business strategy that was followed by Michael Eisner, the Disney Chairman at that time.

Furthermore, it is a common known fact, substantiated by significant literature, that Disney was a strong advocate and force behind the CTEA. However, what is not known,

[216] Bernaski, "Saving Mickey Mouse," 7.

and is many times suppressed, is the evidence indicating that Disney most likely and singlehandedly influenced the CTEA being enacted, through significant funding of political figures and their campaigns to facilitate the CTEA moving swiftly through the legislative process.[217]

Buccafusco and Heald clearly state that the Disney Corporation as well as other copyright holders greatly influenced the passing of the CTEA.[218] Disney financially backed the political campaigns of key political figures who were influential in developing and enacting the CTEA. According to Buccafusco and Heald, eighteen of the CTEA Bill's twenty-five sponsors were funded by Disney, including Senate Majority Leader Trent Lott.[219] One of these influential figures, Mr. Trent Lott, was the former U.S. Senator who was financially supported by Disney during his campaign.[220] The then Disney CEO, Michael Eisner met with Mr. Trent Lott, the Senate Majority Leader at the time, to personally discuss the CTEA.[221]

The primary purpose for Disney's interest and strong CTEA advocacy was to ensure the protection of its high revenue generating intellectual property assets. At the time, Disney established a specific committee, known as the Disney Political Action Committee, to donate to the senators who would eventually sponsor the CTEA.[222] Ammori states, that a week after Disney CEO Michael Eisner's meeting with Mr. Lott,

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[217] Bernaski, "Saving Mickey Mouse," 7-8.

[218] Buccafusco and Heald, "Do Bad Things Happen?," 7.

[219] Buccafusco and Heald, "Do Bad Things Happen?,", 8.

[220] Bernaski, "Saving Mickey Mouse," 8.

[221] Ammori, "The Uneasy Case for Copyright Extension," 292.

[222] Bernaski, "Saving Mickey Mouse," 8.

that Mr. Lott "signed on as a co-sponsor of the bill…."[223] Ammori further states, that Disney donated to Senator Lott's campaign as well as eighteen of the CTEA Bill's sponsors in both the U.S. Senate and the House of Representatives in the amount of $800,000 (not adjusted for inflation).[224] Although, it has not been confirmed in Ammori's article, it is heavily suggested, that Trent Lott demonstrated significant advocacy for Disney's position and as such, personally committed to facilitate the CTEA's enactment. This theory is also supported by Trent Lott's resignation into the 2nd year of his 6-year term as Senator, so that he could move into the private realm so that he could earn more money as a lobbyist then he could have as a Senator.[225] This behavior demonstrates Mr. Lott's proclivity to financial gains and casts a shadow on the intent of Mr. Lott's altruistic reasons for supporting the CTEA's enactment.

Disney's Major CTEA Sponsorship

In their highly relevant article, the Associated Press detailed that Disney significantly lobbied for the copyright term extension to protect its Mickey Mouse, Pluto, Goofy, Donald Duck as well as other characters prior to the CTEA enactment in 1998.[226] The Associated Press specifically states that Mickey Mouse's copyright was going "to expire in 2003" and Pluto's copyright protection was going to expire in 2005, followed very

[223] Ammori, "The Uneasy Case for Copyright Extension," 292.

[224] Bernaski, "Saving Mickey Mouse," 8.

[225] "Senate's No. 2 Republican to Resign by End of Year," Cnn.com. http://www.cnn.com/2007/POLITICS/11/26/lott.resign/index.html (accessed 08/15/2018).

[226] Associated Press, "Disney Lobbying for Copyright Term Extension No Mickey Mouse Effort," appearing in *Chicago Tribune*, October 15, 1998: 1. Retrieved 3/18/2018.

closely by Goofy's expiry in 2007 and Donald Duck's copyright expiration in 2009.[227] According to the Associated Press article, Ken Green who was a Disney spokesman stated, "We strongly indicated our support for the measure."[228] Given at that time, the fast approaching upcoming copyright expiration of several Disney characters, Disney Chairman, Michael Eisner approached and discussed his concerns directly with Senate Majority Leader, Mr. Trent Lott.[229]

All totaled, Disney specifically contributed financially to ten of the thirteen House of Representatives sponsors for the proposed 1998 CTEA.[230] This amount culminates to Disney having supported 76.9% of the 1998 CTEA sponsors.[231] From a senate perspective, eight out of twelve sponsors received financial contributions from Disney; this amounted to almost 67% of the Senate sponsors receiving direct financial contributions from Disney. Additionally, The Motion Picture Association of America (MPAA) was also deeply involved in supporting Disney's lobbying for copyright term extension, and as stated by Richard Taylor, an MPAA spokesperson, used MPAA President Jack Valenti to reach out to his legislative contacts to support the copyright term extension.[232]

Disney's Greatest Asset & Influencer

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[227] Associated Press, "Disney Lobbying," 1.

[228] Associated Press, "Disney Lobbying," 1.

[229] Associated Press, "Disney Lobbying," 1.

[230] Associated Press, "Disney Lobbying," 2.

[231] Associated Press, "Disney Lobbying," 2.

[232] Associated Press, "Disney Lobbying," 1.

For quite some-time, since the formal emergence of corporate advertising and marketing, corporate strategists have realized that creating an emotional connection with the consumer is paramount for purchasing loyalty as well as long-term revenue streams. As Mendenhall states, "**THE GREATEST BRANDS** [emphasis added] are those with the strongest emotional connection to their consumers."[233] What makes Mendenhall's statements most relevant is the fact that Mendenhall was at the time of the Advertising Age article, the Executive Vice President of Global Marketing for Walt Disney Parks and Resorts. Mendenhall, further states that "most successful brands connect emotionally with their target segment…"[234] and that "the emotional connection it [Disney] enjoys with its audience is its greatest asset...."[235] Given Mendenhall's statements, it is quite clear that Disney attempts to create a strong emotional connection between itself and its customers.

While I have presented the actual financial influence of Disney's lobbying efforts to the enactment of the 1998 CTEA, it is reasonable to assume that Disney's influence on the enactment of the CTEA was not merely limited to the financial support provided for its lobbyists and supporters; however, that Disney's influence predated these efforts given the emotional connection that Disney established with its supporters long before the actual lobbying activity began. Had Disney's iconic influence not have been so prevalent prior to the enactment of the 1998 CTEA, it is questionable as to whether the 1998 CTEA would have occurred. There are only several global iconic brands having the immediate

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[233] Michael Mendenhall, "Emotional Equity Is Still Disney's Key Asset," *Advertising Age* 76, no. 7 (2005): 24.

[234] Mendenhall, "Emotional Equity," 24.

[235] Mendenhall, "Emotional Equity," 24.

recognition that Disney has; hence, it is fair to say that Congress as well as President Clinton were well aware of Disney and had somewhat of an emotional connection with Disney as well during the time that the CTEA was being proposed and enacted.

Entertainment Attorney Opinion on Disney's Influence

As Mr. Josh H. Escovedo, a graduate of the University of California – Los Angeles School of Law and Associate at Weintraub Tobin law firm headquartered in Los Angeles, states in his on-line article post, that Disney "actually changed United States copyright law before its rights were going to expire."[236] While the focus of this thesis has been on Disney's influence in lobbying for the CTEA in 1998; Mr. Escovedo states that Disney's lobbying efforts in modifying U.S. copyright law occurred well in advance of the CTEA's enactment. Mr. Escovedo states specifically, that Mickey Mouse, Disney's iconic character who was created in 1928 was going to expire in 1984 and cites that during the time of Mickey Mouse's creation, copyright protection was for "28 years for the initial term" and an additional "28 year extension."[237] As such, Disney began its lobbying efforts well in advance of 1984 and in 1976, Congress enacted changes that resulted in corporate owned copyrights to be retroactively extended; the 1976 copyright law changes resulted in Mickey Mouse's copyright expiration date to be extended to 2003.[238]

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[236] Josh H. Escovedo, "Disney's Influence on United States Copyright Law," www.theiplawblog.com.https://www.theiplawblog.com/2016/02/articles/copyright-law/disneys-influence-on-united-states-copyright-law/ (accessed 8/14/2018).

[237] Escovedo, "Disney's Influence on United States Copyright Law."

[238] Escovedo, "Disney's Influence on United States Copyright Law."

However, Mr. Escovedo astutely points out again in his article, that Congress enacted the CTEA in 1998, five years prior to Mickey Mouse's copyright expiry. According to Mr. Escovedo, Mickey's copyright does not now expire until 2023;[239] hence, this fact and prior Disney lobbying efforts, implies probabilistically that Disney will most likely lobby again for additional copyright term-length extensions.

Mr. Escovedo's on-line article is so relevant to this thesis, that it prompted me to reach out to Mr. Escovedo for an interview to learn of his opinions on Disney's influence as well as Mr. Escovedo's thoughts on creative motivation.[240] I asked Mr. Escovedo, "What influence do you think Disney has on legislation?" Mr. Escovedo's response was telling, "Given its size, the **influence** [emphasis added] that Disney has had on legislation has been substantial. I am sure that its [Disney] influence applies to a multitude of other areas as well. It strikes me, that they [Disney] are using their full resources so that legislation is created to serve their interests."

I further explored the topic of Disney's forecasted efforts regarding the 1998 CTEA and any other copyright term-length extension efforts that Disney might pursue. I asked Mr. Escovedo, "What do you think Disney will do with regards to the CTEA and copyright term extension?" Mr. Escovedo responded with, "I think that we [public] will see another lobbying effort by Disney. I am unsure if they [Disney] will attempt to prolong copyright term length again, or if they would sponsor copyright term-length legislation for perpetuity. From a Disney corporation's perspective, they have probably

[239] Escovedo, "Disney's Influence on United States Copyright Law."

[240] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30th, 2018.

asked themselves how many times do they wish to lobby for another copyright term extension. And how many times do they wish to come to the well before it runs dry."

Mr. Escovedo's statements are logical from both a business and legal perspective. From a legal perspective, Disney, as inferred by Mr. Escovedo's statement has most likely used all of their persuasive arguments and has given significant financial support to lobbyists with regards to enacting the CTEA. As such, Mr. Escovedo's statement implies that Disney would potentially have some challenges ahead of it, should it attempt to sponsor additional legislation targeted at increasing copyright term length, and that any subsequent requests may potentially be met with additional scrutiny.

Academics Response on Disney's CTEA Influence

Prof. Hansen of Fordham University School of Law views the CTEA's enactment by Congress, not necessarily the result of a Disney influence, but more as a "trade bill" that he believes would be beneficial for the U.S. economy and create additional job positions as well as revenues.[241] Prof. Moglen, however, believes that the CTEA had clearly to do with Mickey Mouse whose copyright term was expiring and that Disney was incredibly influential in the CTEA's enactment.[242] Prof. Moglen makes charged comments that the CTEA was enacted by, "a hired Congress to extend indefinitely the corporate control of American culture."[243] Prof. Moglen also refers to Disney and other corporations as

[241] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 776.

[242] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 780.

[243] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 781.

"thugs" and accuses them of taking over culture in the United States.[244] Prof. Moglen further states, "we have…a purchased Congress, a piece of corrupt hireling legislation, a bought bar, and a co-opted academic circle of commentators."[245] Prof. Moglen's sharp comments underscore various beliefs by CTEA opponents, that the primary motivation behind the CTEA's enactment was Disney's interests, corporate interests and corporate control.

In addition, Wendy Seltzer, Fellow with the Berkman Klein Center for Internet & Society at Harvard Law School, also commented upon the power of the Disney Corporation with regards to lobbying for copyright extension. Ms. Seltzer believes that Disney had influence on the enactment of the 1998 CTEA. Ms. Seltzer states specifically, "Disney had the stronger lobbyists in Congress and wanted that extra revenue from exploiting Mickey Mouse and similar properties."[246]

Litman supports the belief that copyright law is there to encourage authors to create, but that copyright law is not there to support complete appropriations from the authors for their creation.[247] Litman goes on to further state that the copyright system has limitations to ensure public benefit and not simply those for the author's.[248] Litman further states that while Disney has enriched society through the creation of the Mickey Mouse character, that Disney should not have a monopoly on all mouse related merchandise.[249] Litman

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[244] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 780.

[245] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 784.

[246] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 793.

[247] Litman, "Mickey Mouse Emeritus," 2.

[248] Litman, "Mickey Mouse Emeritus," 3.

[249] Litman, "Mickey Mouse Emeritus," 3.

further asserts her position that copyright law should not enable Disney to "block − or even delay − the creation of new works and the exploitation of new media by tying up the raw material everyone needs to use."[250] It is Litman's last comment that evokes critical response from CTEA opponents.

Retired Disney and Disney Affiliate Employee Perspective

Although academic literature review would have been sufficient as the primary source of research for this thesis, I wished to provide for additional perspectives by individuals who were directly aware of Disney's influence. I first conducted significant research on the current Executive and Senior Leadership of nearly all the major Disney companies and affiliates. I then reached out through LinkedIn to all of these individuals to make initial contact and to request their time for an interview. After nearly thirty invitations and communications unanswered to current Disney Executives, Senior Leadership members, I realized that another strategy needed to be employed. As such, I contacted a former business school classmate and current Disney Institute employee for guidance. My former business school classmate stated that Disney employees are very sensitive to providing company information and that I would most likely be met with much resistance or no response. He was correct – no current Disney employees responded to my requests for interview. We discussed further, and he recommended that I reach out to former as well as retired Disney and Disney Affiliate employees, as they were not bound by the same non-disclosure agreements of current Disney employees. Given this conversation and the lack of response I received from current Disney

[250] Litman, "Mickey Mouse Emeritus," 3.

employees, I researched and connected with former Disney and Disney affiliate employees. Through many communications, I was able to interview a former employee of the Disney company as well as a former employee of Disney's subsidiary company American Broadcasting Company (ABC).

Tom Nabbe's Background

The first interview I conducted was of Tom Nabbe, a seventy-five-year-old Disney retiree. Tom started his life-long involvement and love for Disney in 1955, when he began selling newspapers outside of Disneyland as it was being constructed. When asked how long Tom worked for the Disney Corporations, Tom replied, "A little shy of 48 years, 47 years to be exact."[251] During the time when Tom began selling newspapers, Anaheim, the initial location of Disneyland, was rural with a population of what Tom believes to be about 60,000 people. It was also during this time, that people would rely primarily upon newspapers for their primary source of news. According to Tom, "People actually read the newspaper at that time."[252] After a fortuitous and chance encounter with various newspaper operators with Disney contracts, Tom began selling newspapers inside of Disneyland shortly after its opening. Tom attributes his life-long employment and involvement with Disney in part, to his mother wishing to become an entertainer and her desire to move to Anaheim to become involved with productions at Disneyland. As such, Tom's mother prompted the family to move to Anaheim to pursue her entertainment aspirations. However, while Tom's mother wished to pursue entertainment opportunities

[251] Tom Nabbe interviews April 17 and April 27, 2018.

[252] Tom Nabbe interviews April 17 and April 27, 2018.

at Disney World, it was Tom who became involved in entertainment at Disney. Given Tom's All-American squeaky-clean looks and reddish hair, he was requested by various Disney marketing team members to be involved in various photo shoots. As Tom recalls, many a time, some photographer or organizer of a photo shoot would say, "Go get that red-headed kid [Tom] so he can be in the shoot!"[253]

Tom Nabbe & Walt Disney

A forthright and emboldened child, Tom recalls going right up to Walt Disney, founder of Disney, and making the following statement, "Mr. Disney, I look like Tom Sawyer, you should hire me [to work in the new Frontier Land]!"[254] According to Tom, Mr. Disney responded, "Let me think about it." Well a year transpired since this dialogue, and Tom did not forget about his request to Mr. Disney, nor did his interest wane in being cast as the lead character, Tom Sawyer, for Frontier Land. Hence, after a year, Tom went over to Frontier Land and encountered Mr. Disney again. During this time, it was Mr. Disney who began the conversation; Mr. Disney asked Tom, "Do you still want to be Tom Sawyer?"[255] To this question, Tom responded, "Absolutely Mr. Disney, I do!" With this conversation concluded, Tom applied for a work permit and got a Social Security card and began working as the lead character, Tom Sawyer on Tom Sawyer's Island in Frontier Land. The attraction was so popular during this time that Tom states, "I think I

[253] Tom Nabbe interviews April 17 and April 27, 2018.

[254] Tom Nabbe interviews April 17 and April 27, 2018.

[255] Tom Nabbe interviews April 17 and April 27, 2018.

was in everyone's photo albums from 1956-1959!"[256] Interviewing Tom was as if I was speaking to a father of my closest friends. Tom's pleasant voice and child-like jubilation when recalling all of his experiences were just as delightful as to hear, as I am sure that it was for Tom to experience as a child.

Tom Nabbe Foundation

Tom further elaborated that at the age of eighteen, he became a ride operator at Disney; Tom states, "At 18, I became a ride operator and started working the rafts. I operated every ride and attraction in Disneyland in the 1960's."[257] Over the course of Tom's employment for Disneyland in the 1960s to Tom's involvement following his family's move to Orlando, Tom continued in various capacities with Disney. Tom's last position was with the Disney Project Installation Coordination Office (PICO) group; PICO was responsible for managing and overseeing the development of various new initiatives at Walt Disney World.

Tom Nabbe on Disney's Current Influence

Although Tom's stories and anecdotes were enjoyable to hear, they laid the foundation for the credibility in Tom's response to the most pertinent questions regarding Disney's influence. I asked Tom frankly, "Do you think that Walt knew how influential he and his work would become?" Tom candidly responded with a quick and assertive, "He [Walt] hawked his life to build Disneyland. Everyone called it Disney's folly but

[256] Tom Nabbe interviews April 17 and April 27, 2018.

[257] Tom Nabbe interviews April 17 and April 27, 2018.

Walt had the vision."[258] I then asked Tom, "How much influence do you think Disney has in the world?" Tom responded again with the same vivacity and assertiveness as he did with my prior question regarding Disney's influence, "From a politics side – no influence. From an entertainment side – it is top of the heap." Tom continued with, "People enjoy [Disney] from all over the world. And Disney merchandise has always been popular across the board." Although many may disagree with Tom's assertion that Disney has had no political influence, nearly all of them will agree that Disney merchandise is incredibly popular with a wide variety of individuals and age groups.

I proceeded to ask Tom his opinions of those who make derisive comments about Disney and the brand. "Tom, what do you say to people when they say Disney is bad?" Tom responds with an emphatic, "I tell them, I totally disagree with that statement. Sure, Disney has gone through a bunch of ups and downs. But with Bob Iger, the dedication to the quality of the show has returned."[259] By the "show," Tom means the thematic landscapes as well as the experiences that Disney park visitors have.

Tom Nabbe on Disney's Future Influence

I then proceeded to ask Tom questions regarding Disney's recent acquisitions of the Star Wars franchise as well as the Marvel acquisition. Tom's response was very interesting for it illuminated his position on the acquisitions as well as the divergence from Disney's core themes. I asked, "Tom, what do you think of the Star Wars and Marvel acquisitions?" Tom responded, "They [Star Wars and Marvel acquisitions] are

[258] Tom Nabbe interviews April 17 and April 27, 2018.

[259] Tom Nabbe interviews April 17 and April 27, 2018.

great. Bob brought a whole lot to the bottom line. Disney fans are phenomenal, but Marvel and Star Wars are phenomenal too. I look at developments that are going on and they are great. I am not sure that we held our line on theming – Main Street, Adventure Land, Tomorrow Land…it's now expanded to potential opportunities for Marvel and Star Wars."[260]

Tom's responses elaborated upon the position that Disney has diversified its portfolio to create additional entertainment opportunities; however, Tom's responses also imply that Disney has reduced its emphasis on classic Disney entertainment venues. This inference supports the position that, as a financial risk mitigation strategy, Disney has acquired various intellectual property assets such as the Star Wars franchise as well as Marvel and invested accordingly to develop these enterprises, while minimizing investment in Disney classic infrastructure. Perhaps, this financial risk mitigation strategy is based primarily on financial revenue growth, or perhaps this financial risk mitigation strategy is because Disney leadership is keenly aware of the CTEA and the dates for which Disney copyrights are about to expire.

Tom Nabbe on Copyright, The CTEA & Trade Secrets

Following my initial interview of Tom, I realized that I had several more questions for Tom that would further inform this thesis. Hence, I scheduled another interview with Tom for Friday, April 27, 2018 at 5:00 pm (EST) to discuss. During my second interview with Tom, I asked, "Have you ever heard of the Copyright Term Extension Act of 1998? It is also referred to as the CTEA." Tom stated, "No, but I do know that there are

[260] Tom Nabbe interviews April 17 and April 27, 2018.

copyrighted items [characters and merchandise protected by copyright law] out there."[261] Hence, although Tom was not aware of the CTEA or the specifics of copyright law, Tom was completely apprised that copyright law protected Disney characters and merchandise. I then asked Tom, "Have you ever received any training when you were at Disney on copyrights or copyrights law?" Tom's response illuminates the seriousness in which Disney views copyright protection and copyright infringement. Tom stated, "The only thing I remember, is that if we saw something out of the ordinary, we were told to take a photo and notify the legal department at Disney."[262]

Given Tom's response, it is clear, that regardless of the department that a Disney employee was working within, employees were told to be observant of any unusual or perceived unauthorized uses or derivative works of Disney characters; they were also specifically instructed to contact the Disney legal department so that further investigations, cease and desist letters, as well as copyright infringement prosecution could take place. I then asked Tom, "Do you know how you received this [copyright protection] training or how it was communicated to you that you should keep an eye out for anything unusual when it came to how Disney characters or merchandise were being displayed?" Tom responded with, "I think that it [communication or guidance] came in a staff meeting following some heavy counterfeiting of our [Disney] merchandising which took place."[263] Tom's response also validates that although various researchers such as Bernaski have been concerned with how Disney characters will be used in derivative

[261] Tom Nabbe interviews April 17 and April 27, 2018.

[262] Tom Nabbe interviews April 17 and April 27, 2018.

[263] Tom Nabbe interviews April 17 and April 27, 2018.

works, that there is also a significant risk for Disney to protect its characters from unauthorized use, such as in counterfeit merchandise and apparel. Tom's statement also illuminates that regardless of the CTEA and international copyright law protections, that Disney characters are currently already being leveraged illegally.

I further discussed with Tom, regarding his understanding of licensing and trade secrets. I asked Tom the following, "Have you ever received any information regarding licensing and or trade secrets from Disney?" To this Tom responded, "Periodically there were things that came out. Had something to do with some folks soliciting a company called 'Silver Screen 7.' The company [Disney] said, 'We don't recognize this company [Silver Screen 7] and we [Disney] don't suggest that you [Disney employees] invest in this company." Tom further elaborated that, "The company [Disney] said that they [Disney] did not support it [Silver Screen 7] and would highly recommend that you [Disney employees] not respond."[264] Tom's response regarding the guidance received from Disney corporate on how Disney employees should make investments indicates that Disney's influence on its employees was significant. Disney not only provided instruction to employees regarding any unusual situations to watch out for regarding how Disney characters were being used, but Disney also provided financial investing recommendation guidance as well.

Tom Nabbe Retirement & Disney Advocacy

Tom retired from Disney on June 27, 2003. According to Tom, June is an important month for him; he fondly states, "I was born in June. I was hired by Disney in June. I was

[264] Tom Nabbe interviews April 17 and April 27, 2018.

married in June."[265] Tom's love for Disney and everything it stands for can be clearly understood from his post retirement activities. According to Tom, once a month, he goes out and does a "heritage program" for Disney World. "Tomorrow I go out and do a tour for Disney World management folks!" We closed Tom's interview with the usual pleasantries and discussion about how much Tom continues to love Disney. What I found particularly endearing about the interview with Tom, outside of the phenomenal information he provided regarding Disney's influences, was insight into the mindset of an individual who believed in Disney so much, that he dedicated nearly all of his life to Disney's mission. Tom's lifelong dedication to Disney is not unique and ties many current and former Disney employees together; their passion and stewardship ensures that Disney and everything that it stands for endures.

ABC Corporate Controller Perspective

I also reached out to former employees who were also part of the Disney ecosystem in its periphery to determine the level of influence, which Disney corporate headquarters had on its affiliates and the level of influence that Disney affiliate companies had on the public. Unbeknownst to many, Disney has many subsidiaries, each with extensive audience reach. American Broadcasting Company (ABC) television is one such wholly owned subsidiary of Disney. To further investigate Disney's influence, I connected with a former financial controller of ABC television, who wished to remain anonymous for his interview and his contributions to this research. I will refer to this individual as "Corporate Controller."

[265] Tom Nabbe interviews April 17 and April 27, 2018.

The Corporate Controller I interviewed, is a highly educated individual with both an undergraduate and graduate degree in finance. The Corporate Controller started his broadcasting career in the East Coast and was with the Columbia Broadcasting System (CBS) for a significant period of twenty-two years before transferring to a Chicago based broadcasting station. In the late 1990s, the Corporate Controller began his career at ABC Television post the acquisition of ABC Television by Disney in 1995. Although according to the Corporate Controller, "ABC Television had a fair amount of autonomy, it wasn't too long after that [Disney acquisition], that Disney wanted to incorporate common payroll processes etcetera into the affiliates."[266] Hence, even though Disney did not force its marketing and advertising efforts overtly with ABC Television, it is very clear that the acquisition of ABC Television was a strategic investment that involved harmonization of business processes such as financial accounting practices. When I asked the Corporate Controller regarding the influence the Corporate Controller believed that the Disney Corporation had on the world, the following was the Corporate Controller's response, "Disney is a powerhouse organization. [Disney] had a profound effect on consumer habits and people' behaviors. The arms of the company [Disney] reach pretty far. The organization is very dynamic. One of the ways they [Disney] grew the company was through mergers and acquisitions such as Pixar, Marvel Comics, Lucas Films, which gave them the Star Wars franchise. What they [Disney] have done over the last 10 years is what other media companies are trying to do."

The Corporate Controller's comments illuminate the Corporate Controller's understanding of the influence of Disney's direct and indirect influence on society

[266] Interview with former ABC Television Corporate Controller – Disney Affiliate. Interview taken on April 17, 2018.

through the breadth of the companies that form its portfolio. I then asked the Corporate Controller, “Did you see the Walt Disney logo or other Disney branding in the ABC offices, when you were there? The Corporate Controller’s response was, “Short answer – not so much branding, but different entities of the company [Disney] did share real-estate space because it was economic to do so.” The Corporate Controller also stated, “Our [Disney and ABC] paths never really crossed except for the one exception, when health enrollment would be conducted. During health enrollment, Burbank [Disney’s Headquarters California location] would send out a roadshow. They would offer blood tests, benefit options and give flu shot.” Hence, the Corporate Controller’s comments suggest that there was a commonality that ABC and Disney had when it came to employee health services, which resulted in Disney corporate’s focus on providing health care services at affiliate locations such as ABC in Chicago. The Corporate Controller also stated that, “The way that I could get Burbank to come out was to get people from the other Disney entities out here.” Hence, it appears that although affiliates are important in the Disney ecosystem of its companies, Disney also exercises prudent economic and evaluation practices to determine whether or not they will execute any initiatives at the affiliates. In addition, during a free form part of the interview discussion, the Corporate Controller stated, “When they [Disney] announced the acquisition of Lucas Film, I asked ‘Is there a new audience, or is this old wine in new bottles?’ It appears that they [Disney] guessed right.” The Corporate Controller’s comments regarding the Lucas Film acquisition speaks to the current influence that Disney has and will continue to have on the younger generation by his reference of “new audience.” As such, given that Disney will continue to be part of the landscape for a new audience of moviegoers gives weight

to the fact that Disney's influence will continue beyond the appeal of its classic characters. Furthermore, Disney's additional Star Wars and Marvel intellectual property acquisitions will most definitely prompt Disney's subsequent litigation and lobbying activities to protect its copyrights as well as to seek additional copyright term-length protection.

Disney's Future Influence

From a business strategy perspective, Disney's decision to lobby for the enactment of the CTEA was a brilliant move to protect its assets under both U.S. Copyright and Trademark Law. Although the business strategy behind Disney's decision to lobby for, and eventually influence, the enactment of the CTEA is sound, the CTEA proponents' reasons of the CTEA preventing dilution of intellectual property assets and its prompting innovations is disingenuous. Although there were benefits for content authors within the U.S. through the enactment of the CTEA, the primary motivation for Disney to lobby for the CTEA was to protect its own intellectual property assets. Although some individuals may have derisive comments regarding Disney's actions to sponsor lobbying efforts for the CTEA, the objective fact is that U.S. law provides the framework and protections for organizations to lobby. Hence, regardless of the opinion or ethics of lobbying, it is nonetheless a part of the United States' legislative ecosystem.

In addition, as a result of Disney's acquisition of the Star Wars franchise as well as Marvel, Disney now has substantially grown its intellectual property assets. This asset portfolio diversification as well as Disney's continued financial successes will result in Disney having greater ability to further sponsor and influence subsequent copyright

term-length increases. Chapter IX CTEA Prospective Forecast, of this thesis as well as Chapter XI Conclusion, provide additional insights regarding the probability of Disney's additional copyright term-length extension lobbying as well as the probability of Disney's success.

Chapter VII.

Disney's Acquisition Strategy

Disney's significant investments in Marvel and Star Wars franchises demonstrate, that although Mickey may have launched and sustained Disney for quite some time, that the public or Disney for that matter, may have other thoughts regarding the value they place on established Disney characters. Disney's relatively recent acquisitions of Marvel has an impressive superhero character base, which includes *Spider Man, Black Panther, Captain America, Hulk, Thor, Iron Man, Daredevil, Black Widow, Captain Marvel, Captain America* and *Wolverine*.[267] Disney's Marvel acquisition provides Disney a significant intellectual property asset base as well as increased domestic and international reach of a new fan base.

Marvel Entertainment Acquisition

Disney acquired the Pixar movie studio in 2006 and also Marvel Entertainment (Marvel), the rights holder to the Marvel Universe of characters in 2009.[268] According to McLauchlin, only several short years after the Marvel acquisition by Disney, Disney

[267] Marvel.com website (accessed 5/31/2018).

[268] Pamela McClintock, "'Star Wars' Franchise Crosses $4 Billion, Eclipsing Disney's Lucasfilm Price," billboard.com. https://www.billboard.com/articles/news/8085568/star-wars-last-jedi-franchise-crosses-4-billion-eclipsing-disney-lucasfilm-price?utm_source=twitter (accessed 8/14/2018), 2.

grossed over $8.5 billion at the box office.[269] Hence, although $4 billion may have been a hefty price tag for Disney to pay for Marvel, the returns have been clearly evident. Also according to McLauchlin, Disney's $4 billion purchase of Marvel represented only "6% of their enterprise value;"[270] hence, while billions may have been expended, the overall financial risk to Disney was comparatively low. The purpose of Marvel's purchase by Disney has been postulated to have occurred because of Disney's lack of a "footprint in boy's merchandising."[271] Financial expert, John Holbeck, Senior Vice President of Finance at Merrill Corporation, states that Disney's now Avengers franchise has become so popular, he equates it to an annuity, which will continue to gross significant revenues for time to come.[272] In McLauchlin's article, it is stated that Marvel's value is assessed at $9 billion and implies that Disney has already received considerable benefits from the purchase of Marvel.[273]

Star Wars Acquisition

In addition to Marvel, Disney has purchased the Star Wars franchise. Since the purchase in 2012, Disney has earned at least $4.06 billion simply from the gross movie ticket sales from *Star Wars: The Last Jedi*, *Rogue Once: A Star Wars Story* as well as

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[269] Jim McLauchlin, "Disney's $4 Billion Marvel Buy: Was it Worth It?" newsarama.com. https://www.newsarama.com/24999-disney-s-4-billion-marvel-buy-was-it-worth-it.html (accessed 8/14/2018), 2.

[270] McLauchlin, "Disney's $4 Billion Marvel Buy," 4.

[271] McLauchlin, "Disney's $4 Billion Marvel Buy," 4.

[272] McLauchlin, "Disney's $4 Billion Marvel Buy," 5.

[273] McLauchlin, "Disney's $4 Billion Marvel Buy," 7.

Star Wars: The Force Awakens.[274] Pamela McClintock describes that Wall Street's response to Disney's purchase of Lucas' *Star Wars* franchise at $4.06 billion to be a worthwhile investment.[275] In addition, Disney's box office earnings do not account for the significant revenues that Disney has earned from the mass licensing and product sales it has executed.[276]

Furthermore, Justin Harp states that according to Disney's CEO Bob Iger, there are considerable plans for future investments with the Star Wars franchise.[277] Hence, this along with other statements made within McLauchlin's article indicates that the investment Disney has made and will continue to make in the Star Wars franchise, will well surpass the January 1, 2019 date, when thousands of works will begin to be released back into the public domain. Specifically, in Harp's article, he references that Disney CEO Bob Iger stated that they were developing the 'next ten years of Star Wars stories.'[278] Harp's citation, indicates that Disney's strategy to increase its portfolio has allowed for it to earn in excess of $8 billion since the acquisition of both the Star Wars and Marvel, based upon the calculations provided in McLaughlin's and Harp's articles. As such, the revenues or market valuation of the Star Wars franchise and Marvel have put both of them jointly on parity with the valuation of Mickey Mouse's $8 billion valuation.

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[274] McClintock, "'Star Wars' Franchise," 2.

[275] McClintock, "'Star Wars' Franchise," 2.

[276] McClintock, "'Star Wars' Franchise," 2.

[277] Justin Harp, "Disney's Star Wars Movies Have Already Made More Than the $4 billion it cost to buy Lucasfilm," digitalspy.com. http://www.digitalspy.com/movies/star-wars/news/ a846335/disney-star-wars-movies-make-back-4-billion-lucasfilm-cost/ (accessed 8/14/2018), 2.

[278] Harp, "Disney's Star Wars Movies," 2.

Courting George Lucas & Valuation

The courting of George Lucas, who was the sole owner of Lucasfilm occurred over the course of 1.5 years by Disney's CEO Bob Iger.[279] Given the duration and level of effort that Disney's CEO Bob Iger expended in pursuing George Lucas, indicates the significant level of interest that Disney viewed the purchase of Lucasfilm and the promise of future revenue. Iger's own comments indicate the value that the Star Wars franchise intended to yield for Disney; Iger is quoted to have said in the USA Today's article, " 'This is one of the great entertainment properties of all time, one of the best branded and one of the most valuable, and it's just fantastic for us to have the opportunity to both buy it, run it and grow it'" [280] These key words and specifically "grow it" from Disney's CEO indicates the value that Disney places upon the Star Wars acquisition. According to the article, the purchase of Lucasfilm is the fourth largest valued business deal that Disney has made.[281] Disney's purchase of Lucasfilm also grants Disney exclusive ownership of Industrial Light & Magic, Skywalker Sound as well as LucasArts.[282] These acquisitions are significant for Disney, as they will allow Disney to brand any products or creative works from Industrial Light & Magic, Skywalker Sound and LucasArts under the Disney label and to further increase its iconic presence and cultural influence.

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[279] Matt Krantz, Mike Snider, Marco Della Cava, and Bryan Alexander, "Disney Buys Lucasfilm for $4 billion," Usatoday.com, https://www.usatoday.com/story/money/business/2012/10/30/disney-star-wars-lucasfilm/1669739/ (accessed 8/14/2018), 1.

[280] Krantz, et al., "Disney Buys Lucasfilm for $4 Billion," 1.

[281] Krantz, et al., "Disney Buys Lucasfilm for $4 Billion," 2.

[282] Krantz, et al., "Disney Buys Lucasfilm for $4 Billion," 2.

Entertainment & Intellectual Property Lawyer Mr. Escovedo's Opinion

During my interview with Mr. Escovedo, I asked regarding his thoughts about Disney's Marvel and Star Wars acquisition. Specifically, I asked, "What do you think of Disney's Marvel and Star Wars acquisition?" Mr. Escovedo responded with, "Getting them all [Marvel and Star Wars Intellectual Property Assets] under one umbrella is great. I have been pleased with everything that they [Disney] have done. The acquisition is quite a savvy move by Disney. While people still appreciate the classic Disney characters, those characters will carry on, but it was important for Disney to stay relevant and to acquire a larger portfolio of IP assets and through the acquisition [Marvel and Star Wars] they [Disney] are doing just that. Even within the Park [Disney Parks], they [Disney] are expanding their footprint and broadening their horizons to accommodate the Marvel and Star Wars acquisition."

Mr. Escovedo's significantly astute statements regarding Disney's recent and very large acquisitions require some additional commentary. First and foremost, Mr. Escovedo's opinion is that Disney's acquisition of Marvel and Star Wars Intellectual Property assets was a deliberate and important move for Disney to continue to diversify its intellectual property asset portfolio. An organization typically diversifies its portfolio, whether in stocks, capital acquisitions or intellectual property assets, to prevent the risk from deriving significant benefits heavily from one or a set of tightly coupled assets. Although Disney has established its worldwide presence through success with its classic Disney characters, it must have realized, as implied by Mr. Escovedo, that its classic

characters, which are coming close to expiry of their copyright protections within the next few years, would potentially reduce their worldwide revenues and shareholder value.

As such, it was prudent for Disney to make recent acquisitions to ensure that its business model and revenue would continue with the same momentum as they have been since Disney's establishment. Mr. Escovedo's statements also underscore another important aspect of Disney' acquisition of Marvel and the Star Wars franchise, which is that Disney wishes to stay current with its fan base. Disney's business strategy to stay current with its fan base, also mitigates risk associated with loss of copyright protection for several of its classic characters. Staying current with Disney's fan base is also important as it provides a long-term revenue stream and contributes to Disney's financial performance. This market penetration strategy has been employed by other organizations to identify its key target consumer base as soon as possible and to connect with it immediately so that a longer-term relationship could be achieved. This long-term relationship results in increased recognition of the brand as target consumer base matures and results in increased financial gains.

Chapter VIII.

CTEA's Retrospective & Retroactive Analysis

The severity of the retrospective and retroactive elements of the CTEA was far sweeping and "affected tens of thousands of copyrighted works…" from entering the public domain.[283] The most pronounced beneficiaries of the CTEA's enactment are artists and performers, who as a result of the CTEA's Bill's passing, immediately increased their royalty stream for an additional twenty year period.[284] Bernaski states that CTEA proponents believe that copyright protection should benefit an author and "two future generations of the author's heirs;"[285] however, clinical evidence, which suggests that content authors or creative artists have heirs, or who wish to bequeath their royalties posthumously to their heirs is scarce.

Heirs & Bequeathment

Furthermore, the interview research conducted for this thesis through in person interviews of entertainment attorneys, authors, artists, music composers, an actress and other content creators negates the primary motivations of creative authors, which CTEA proponents referenced in Bernaski claim. The field research conducted for this thesis in Chapter X CTEA Field Research concludes that the actual numbers of authors or content creators who do bequeath copyrights to their heirs or think of doing so, is minimal.[286]

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[283] Ammori, "The Uneasy Case for Copyright Extension," 293.

[284] Ammori, "The Uneasy Case for Copyright Extension," 293.

[285] Bernaski, "Saving Mickey Mouse," 14.

[286] Chapter VIII of this thesis.

Furthermore, notable academics and legal scholars, William Landes and Richard Posner assert, that it is very difficult "to keep track of heirs over generations."[287] Hence, it is unclear as to how Bernaski and other CTEA proponents indicate that content authors are so focused on their immediate and future heirs. CTEA proponents need to provide direct evidence through longitudinal studies to provide support for their heir enrichment claim. This is a significant challenge; first, a social scientist has to identify content authors who have heirs. This would need to be succeeded by the social scientist to follow the creative authors over the course of their career and to frequently poll them to ascertain their creative motivations, and whether they are prompted by the CTEA or other copyright law protections. And should this longitudinal study be successful, there are further challenges that Landes and Posner's statement alludes too, which is, that the pro-CTEA social scientist would need to interview the content authors' heirs to determine if they have truly benefitted from the CTEA. The challenges are significant to prove Bernaski's CTEA proponents claim prospectively, let alone retroactively, given the paucity of data available.

Judicial Retrospective Perspective

Furthermore, Landes and Posner also state that the longer the copyright term length, "the fewer the number of works that are in the public domain…."[288] What is very interesting about Landes' and Posner's analysis and statements are, that they were made in 1989, almost ten years prior to the CTEA being enacted in 1998. Landes and Posner

[287] William M. Landes and Richard A. Posner, "An Economic Analysis of Copyright Law," *Journal of Legal Studies* 18, no. 2 (1989): 361.

[288] Landes and Posner, "An Economic Analysis of Copyright Law," 362.

have also demonstrated that there is a direct correlation with the decrease in cost of copying and the number of times that the copyright term length has been extended. As such, using Landes and Posner's clinical evidence, an increase in copyright term length is predicted as over the course of time, duplication of content has been made easier by advancing technologies.

In addition, research conducted by Landes and Posner demonstrates that less than 11% of copyrights were renewed for those works that were registered for copyrights between 1883 and 1964.[289] Landes and Posner's findings are profound, for they indicate, that although copyright laws were being enacted over the past century and that copyright protections and terms were expanding, that a paltry amount of copyright holders renewed their copyrights. Hence, this retrospective analysis by Landes and Posner should prompt CTEA proponents, such as Bernaski, to revisit their claims regarding the personal importance of copyrights to authors, who they believe are motivated to protect their copyrights so that they may bequeath their copyrights to their heirs.

Minimal Copyright Registrations

Opponents of copyright term extension have cited that after a copyright term protection act has passed, minimal increases of copyright registrations have taken place. Bernaski herself cites, that the 1988 Berne Convention, increased copyright filings by a trivial 10%; the more significant Copyright Act of 1976 only increased registrations by 16%.[290] Hence, Bernaski, a vocal CTEA proponent herself provides evidence indicating

[289] Landes and Posner, "An Economic Analysis of Copyright Law," 473-474.

290 Bernaski, "Saving Mickey Mouse," 21.

that although copyrights are valued, the rate of their registrations has been insignificant. To be objective, after the Copyright Act of 1976, formal copyright registrations were not required for a work to be considered protected under copyright; however, from an international perspective, copyright registrations by foreign nationals and domestic based content creators is almost a necessity to ensure protection from infringing parties. With a formal copyright registrations, there is much less of an opportunity to dispute the identity of the content author as well as the date of copyright.

Hence, even if one were to support Bernaski's views, and state that individual authors may have created millions of works that were not registered, but are under copyright protection, it would still behoove CTEA proponents to consider, that if this were the trend with individual authors, surely, some or most of them would have caught the eye of an impressive entertainment company. Although there are authors who wish to create for the sole purpose of creating, according to Bernaski and other CTEA proponents, one of the primary motivations for authors is the ability to profit from their works and to bequeath their revenues to their heirs. As such, this logic, would most definitely prompt creative authors to partner or contract with entertainment companies for the rights of their works, so that they could all be more successful together. Given this, a formal number of registrations should have been observed where entertainment companies filed copyrights; however, this phenomenon was not observed. Opponents for copyright term extensions may utilize Bernaski's numbers to support that they hardly warrant a justification for an increase in copyright term-length protection and the basis to incentivize authors for creativity.

Disney Copyright Registration Irony

Hedenkamp makes an interesting and ironic statement that Disney's early Mickey Mouse films, which were published in 1928, did not contain the correct copyright notices and, as such, he states that "Mickey Mouse is already in the public domain."[291] While the protection of Mickey Mouse may have been the initial primary motivation for Disney to protect its intellectual property assets from falling into the public domain, Disney holds many other intellectual property assets.

While the benefits and disadvantages of the length of copyright has and will continue to be debated significantly, there is one certainty that remains, which is, in 2019, organizations such as Disney will be systematically losing their copyrights and may choose over the upcoming years to fight for another copyright term extension Act. The reasoning that Disney and other corporations have provided in the past, such as the increasing average life expectancy and the normalization of U.S. copyright term lengths with international copyright term lengths are no longer valid, as these arguments were addressed through the passing of the CTEA in 1998. For instance, the average life expectancy has not changed considerably since 1998, when it was 73.8 years[292] for males, as compared to the 78.7 years[293] in 2018, to support extending the current copyright length terms again. Nor for that matter, has international copyright legislature, such as the Berne Convention been modified to increase copyright term length. Hence, Disney's arguments would be poorly received.

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[291] Douglas A. Hedenkamp, "Free Mickey Mouse: Copyright Notice, Derivative Works, and the Copyright Act of 1909," *Virginia Sports and Entertainment Law Journal* 2 (Spring 2003): 255.

[292] http://www.demog.berkeley.edu/~andrew/1918/figure2.html

[293] Donnelly, Grace. "Here's Why Life Expectancy in the U.S. Dropped Again This Year" Fortune.com. http://fortune.com/2018/02/09/us-life-expectancy-dropped-again/ (accessed 08152018).

Bernaski argues that copyright term length should be extended as people are living longer, corporations are existing longer and that there exists technology now that can replicate works more quickly than in prior times.[294] While Bernaski makes an argument for longevity, it is not based upon a truly retrospective analysis, but conjecture. The average length of human expectancy has not changed that much in the last 20 years to warrant a copyright term extension. The problem is further compounded by the general language within the U.S. Constitution, which states that a term limit needs to be in place for copyright term length; however, it does not state an amount of time that it needs to be established at.

Furthermore, since the enactment of the CTEA since 1998, there has been essentially a stay on creative content entering the public domain for the past twenty years. While this stay has afforded protection for creative work authors and has provided for a financial incentive for creation, it has also minimized the publically available content for other creative authors to utilize. Hence, while the financial incentives have been served well by the CTEA for authors, it is unclear as to what benefits the public has received. However, the certainty is, that Disney's 10-K filings demonstrate increasing yearly revenues.

Retroactive Unconstitutionality of the CTEA

Adeyanju makes an argument that the retrospective component of the CTEA itself is unconstitutional, because it keeps many works out of the public domain for another twenty years, and itself does not support the Copyright Clause in promoting the progress of science; the decrease in the number of works that the CTEA makes available to the

294 Bernaski, "Saving Mickey Mouse," 3.

public domain is the primary reason for Adeyanju's premise that the CTEA does not contribute to fostering progress.[295]

It is also the retroactive grant of the CTEA that Adeyanju struggles with, as he believes, the retroactive grant of an additional twenty years does not incentivize anyone to create, because quite simply, the works that the CTEA's retroactive component protects have already been created by their respective content creators.[296] From a logical perspective, Adeyanju is correct – how can legislation incentivize someone to create something that already has been created? Perhaps CTEA proponents are considering that the CTEA's retroactive grant would further incentivizes authors who have already created works, to perhaps create additional derivative works or improvements upon their works? While this is a plausible argument, CTEA proponents need to address the situation for when the creative author has passed away, such as in the case of Hemingway or Fitzgerald; hence, what motivations could these deceased authors possibly have?

Adeyanju continues to argue that there is no promotion of progress for the sciences and useful arts through the CTEA's retroactive term extension grant. Adeyanju argues that the prospective CTEA public benefits are "speculative" and also states that they do not provide for a valid justification for the CTEA's enactment; Adeyanju states the majority of U.S. Supreme Court justices erred when they presumed that Congress enacted the CTEA for the public's benefit.[297] Having the CTEA restrict access to creative building blocks eventually reduces freedom of expression, creativity and innovative works; by extending a copyright term length, it does not become a limited term.[298]

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[295] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 6.

[296] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 6.

[297] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 7.

[298] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 7.

Adeyanju also elaborates upon various views like Christiansen's that would allow copyrights to become public domain unless they were renewed.[299] The inference that can be made by Adeyanju's statement is that if the very creative content authors do not feel that their work is worthy of copyright renewal, then their work should be made available in the public domain. Adeyanju states that the CTEA has failed to achieve the goals retrospectively, which it intended to achieve and should be repealed.[300] If the CTEA cannot be repealed Adeyanju argues, then the very least Congress can do, is remove the retroactive protection component of the CTEA.[301]

[299] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 7.

[300] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 8.

[301] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 8.

Chapter IX.

CTEA Prospective Forecast

The following provides a prospective look into copyright protections in a post CTEA world. While the CTEA's enactment continues to remain controversial, another copyright term extension remains a possibility.

Another Copyright Term Extension?

With the CTEA's retroactive influence minimizing on January 1, 2019, Disney as well as other organizations are assessing their strategies to fight for additional copyright term-length protection. Bernaski predicts in her article, that Disney and other copyright owners will lobby again in 2018 for a copyright term-length extension.[302] However, Disney has not done so, or if it has, it has done so with the utmost secrecy, for research conducted for this thesis could not find evidence that Disney had begun to argue its position for subsequent increased copyright term protection enactments. In addition, Mr. Escovedo implies that it is not Disney's trend to argue so early prior to its copyright protections expiring, but to begin its lobbying efforts closer in time to when its intellectual property assets are about to expire.

[302] Bernaski, "Saving Mickey Mouse," 1.

Disney's Lobbying Forecast

Hedenkamp also comments upon Disney's significant lobbying power, by referencing that "Disney's deep-pocketed lobbyists could succeed in an appeal to Congress, and regain full copyright protection for the Mickey Mouse character and his early films."[303] However, this time, the arguments for an increase in copyright term protection wane quickly. I forecast that Disney and other corporations with significant copyright assets will continue to lobby for copyright term extensions closer to the time of expiry of their copyrights; however, I predict that these corporations will also diversify their investment portfolios several years prior to this time, to provide some contingency against copyright protection loss should Congress decide against an increase in copyright term length. Disney's significant multi-billion dollar purchase of George Lucas' copyrights and the Star Wars franchise as well as Disney's $4.24 billion purchase of Marvel has definitively and proactively established revenue streams prior to several of Disney's intellectual property assets entering into the public domain.

Even though critics of the Disney Corporation shared their concern openly about Disney's private influence on U.S. Copyright Laws, others heralded Disney's efforts as herculean in providing artists, filmmakers, musicians, and other creative visionaries the necessary protections that allow these content producers to monetize their efforts and fuel additional innovations. Given the increase in copyright protections, others in entertainment can bequeath their copyrights to their family members after their demise, so that their relatives and subsequent generations can continue to profit from their creativity. Although Disney and others have provided the increase in life expectancy, as

[303] Hedenkamp, "Free Mickey Mouse," 278-279.

one of the primary reasons for advocating for copyright term extension, the actuality is, that life expectancy has increased approximately 25 years since the 1800s, whereas copyright term protections have increased almost three fold. Hence, neither the logic, nor the math adds up to provide justification for an increase in a copyright term extension being based on the argument of increased human life expectancy.

Perpetual Copyrights?

Although Disney has had and deserves copyright protections for the vast amount of capital it invests in its creations, it does not represent a unified voice of all parties, when it comes to everyone's sentiments regarding copyright term extension. Repeated extensions and copyright term extensions in essence, increase the copyright term to perpetuity. The Courts however, responded to CTEA opponents' concerns of perpetual copyrights, and Congress' changing copyright term lengths, by articulating that there have been only 4 periods prior to the CTEA when this occurred. Copyright term length was extended specifically in 1790, 1831, 1909 and 1976 respectively and that concerns for perpetual term extensions were unfounded.[304]

Ammori states, as originally elaborated in *Eldred*, that Congress actually changed copyright term length two times between 1790 and the 1960s, however, that over the past 40 years, Congress has made copyright term extensions eleven times since.[305] Ammori's findings clearly indicate that Congress has taken a very keen interest in recent decades to protect the interest of authors and copyright holders. Ammori further states that there

[304] Ammori, "The Uneasy Case for Copyright Extension," 299, 312.

[305] Ammori, "The Uneasy Case for Copyright Extension," 312.

were seven rationales that Congress used to support for the passing of the 1976 Act; however, they were all primarily for the author's benefit as opposed to societal benefit. Although some can argue that the Copyright Act of 1976 enabled more authors to create; hence, benefiting the public domain, the facts are, as Bernaski has clearly pointed out, that there were not nearly that many copyrights filed following the Copyright Act of 1976.[306] Although formal registration is not required post 1976, registration does demonstrate the seriousness of the content creator.

CTEA's Economic Defense

From an economic perspective, Ammori argues that the CTEA is "indefensible economically."[307] The concept of expression costs is introduced by Ammori, which is defined by Ammori as the inability to modify pre-existing work given copyright restrictions.[308] Expression costs are not simply related to an author modifying a pre-existing text, but more so, a book being modified for an audio book or for a film.[309] Given this, Ammori implies that there are high expression costs associated with copyright protections that prevent works such as books currently protected under copyright from began adapted to other derivative works, by anyone except the initial content creator. Hence, Ammori's position is that these restrictions do not further the CTEA's economic argument, for the CTEA potentially limits additional revenues that can be achieved.

[306] Bernaski, "Saving Mickey Mouse," 21.

[307] Ammori, "The Uneasy Case for Copyright Extension," 320.

[308] Ammori, "The Uneasy Case for Copyright Extension," 321.

[309] Ammori, "The Uneasy Case for Copyright Extension," 321.

An absolutely fabulous argument made by Ammori is that the CTEA would facilitate innovation for authors only who will be encouraged to create because of the life plus seventy year term, as opposed to a life plus fifty year term.[310] Ammori's argument is key in refuting CTEA proponents' argument that the CTEA incentivizes innovation and additional creative works; in order to make this claim, CTEA proponents need to somehow identify as to whether authors who were not going to create a work when the copyright term-length protection was author's life plus fifty years, but now wish to do so because of copyright term-length protection of author's life plus seventy years. Furthermore, the sample size to conduct this research by CTEA proponents may be inherently small, for they need to find content authors who were creating prior to the Copyright Act of 1976 and who are continuing to create today, post the CTEA, to provide a credible argument to their position.

CTEA's $0 Value Proposition

While some authors may be enticed to create because of the longer copyright term length, when the CTEA is taken in the context of present value, it does not provide substantial additional financial benefit to them.[311] Hal Varian, Dean of the School of Information Management and System at University of California, Berkeley, supported this analysis.[312] The most effective argument that Ammori uses to support his claims

[310] Ammori, "The Uneasy Case for Copyright Extension," 21.

[311] Ammori, "The Uneasy Case for Copyright Extension," 321.

[312] Ammori, "The Uneasy Case for Copyright Extension," 322.

quantitatively, is by referencing the mathematics of Hal Varian.[313] Varian, according to Ammori states that there was no societal benefit that was accrued within, "the last twenty of the ninety-five years…."[314] As such, the question should be asked, does the CTEA truly provide for the cost benefit that CTEA proponents states that it provides over the entire course of its protection?

As such, there are fundamentally two issues here, the first being whether or not the additional twenty years of added copyright protection provide an increased incentive to content creators, and the second issue being, that authors may not be aware of the nearly insignificant amount of return that the additional twenty years that the CTEA results in. Ammori further supports his claim by referencing the work of two key economists, William Landes and Richard Posner, who independently demonstrated that the CTEA provided very little societal benefits.[315] Ammori also states: "The cost to society are higher prices and fewer choices, as well as expression costs…."[316]

Ammori's Copyright Term-Length Solution

Ammori proposes a sound solution to the arguments for and against copyright term extension; Ammori's solution is to differentiate copyright term lengths based upon the medium used to fix the expression.[317] Ammori cites the fast paced world of computer technology to emphasize, that some mediums such as computer programs have

[313] Ammori, "The Uneasy Case for Copyright Extension," 321.

[314] Ammori, "The Uneasy Case for Copyright Extension," 322.

315 Ammori, "The Uneasy Case for Copyright Extension," 320.

316 Ammori, "The Uneasy Case for Copyright Extension," 321.

317 Ammori, "The Uneasy Case for Copyright Extension," 324.

immediate value; however, that the value can fade as quickly as within ten years.[318] Ammori also proposes a shorter copyright for film, with a longer copyright term for book publishing. Ammori believes that a tiered copyright term-length system can achieve substantial fairness.

Is the Public Domain Bad?

However, there are others such as Martin, who support Disney's position and also cite that the primary reason supporting Congress's decision to extend copyright term length was to harmonize with the European Union's copyright term length.[319] Martin also elaborates that Eric Eldred challenged the constitutionality of Congress' ability to enact the CTEA.[320] Martin cites that the 1976 Copyright Act grants "that all unpublished works created prior to January 1, 1978 will enter the public domain on January 1, 2003…" and refutes CTEA opponents in their position that nothing will enter the public domain for 20 years.[321] Martin also firmly states, "it is copyright protection that encourages innovation and creativity, while the public domain discourages both innovation and creativity."[322] There are many who would disagree with Martin's public domain comments, given that it has been stated that Walt Disney himself used public domain elements to create Mickey Mouse. Martin does, however, raise excellent points against CTEA opponents.

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318 Ammori, "The Uneasy Case for Copyright Extension," 324.

319 Scott M. Martin, "The Mythology of the Public Domain: Exploring the Myths behind Attacks on the Duration of Copyright Protection," *Loyola of Los Angeles Law Review* 36 (2002): 257.

320 Martin, "The Mythology of the Public Domain," 258.

321 Martin, "The Mythology of the Public Domain," 266.

322 Martin, "The Mythology of the Public Domain," 272.

Specifically, Martin utilizes the sentiments of Mark Twain to emphasize the point, that "when a work enters the public domain, publishers continue to profit from exploitation of the work; the only people who cease to benefit are the creators of the work..."[323] Hence, Martin citing Twain makes the position that works should be continued to be copyright protected so that the creators also benefit.

Copyright Protection & Increased Film Production

In addition, there are two researchers, Png and Wang who provide support for Martin's position, that copyright protection increases production. Although Png and Wang were focused on analyzing movie production, their research is quite telling. Png and Wang's research suggests that the global extension of copyright term protection has resulted in an increase in movie production. However, Png and Wang themselves state that one of the limitations of their research could have been the fact that some countries provide additional government funding and tax incentives for movie production to take place; given this, government funding and potentially tax favorability could have accounted for the increase that Png and Wang observed.

Furthermore, Png and Wang's research indicates that the level of increases in movie productions was because of the "entry of new studios, rather than expansion of production by existing studios."[324] This statement by Png and Wang poses a challenge for CTEA proponents in that it states that, copyright term length as studied in 19 of the

[323] Martin, "The Mythology of the Public Domain," 279.

[324] Ivan P. L. Png and Qiu-Hong Wang, "Copyright Duration and the Supply of Creative Work," September 2006: 18. Available at SSRN: https://ssrn.com/abstract=932161 or http://dx.doi.org/ 10.2139/ssrn.932161.

Organisation for Economic Co-operation and Development (OECD) countries, did not necessarily increase production by venerable content creators, authors, and producers such as established existing studios; however, that the increased production was noticed by new entrants.[325]

Png and Wang specifically state, "Clearly, the passage of the CTEA in 1998 did not induce the majors [Walt Disney, University Studios, 20th Century Fox, Warner Brothers, Paramount Pictures, Sony Picture Studios, and New Line Cinema] to increase movie production relative to other studios."[326] If one is to assume Png and Wang's study is correct, and that established movie studios can be equated with established content authors, then their findings significantly challenge the retroactive argument of CTEA proponents. Given that Png and Wang have shown that established movie studios have not invested in producing more movies than emerging studios, this implies that the retroactive CTEA component of additional protection for 20 years, did not motivate additional creativity or further investments by established studios. Perhaps the CTEA demonstrated positive returns for the major film studios, by providing an additional time frame of 20 years for some of their productions; however, it is very clear from Png and Wang, that innovation was not increased as a result.

Quantitative & Objective Basis

However, in order to fight for another copyright term extension, Disney and other corporations must show a quantitative and objective basis for where the benefits gained

[325] Png, and Wang, "Copyright Duration," 18.

[326] Png, and Wang, "Copyright Duration," 16-17.

from additional copyright protection outweigh the benefits gained by society for works released in the public domain within the same period. An analysis of the number of copyright filings between 1976 and 1998, and between 1998 and 2018 normalized for population increases will provide some additional basis for copyright term curtailment. Furthermore, it will be challenging for Disney to lobby for a position based upon incentive, human life expectancy and incongruity with European copyright term, as all of these arguments have either been resolved, or are no longer valid. Although life expectancies have increased, they have not done so significantly since 1976, nor since 1998; hence, that argument has no more foundation for Disney to use in its sponsorship for an increase in copyright term length.

Lastly, Bernaski predicted, albeit four years prior to this thesis, that there would be considerable lobbying efforts in 2018 to extend the copyright term-length duration;[327] however, that prediction has not come true. There has been no considerable push either by Disney or other major organizations for another copyright term extension. Although Bernaski advocates that Disney "should undoubtedly push"[328] to increase copyright term length, it appears to be more of an emotional plea than a recommendation predicated upon fact.

The prospective effects of the CTEA are long lasting. As Adeyanju states, the 1998 CTEA effectively and prospectively gives all created works after 1998 copyright protection for a period of life of the author plus seventy years; and for works made for

[327] Bernaski, "Saving Mickey Mouse," 1.

[328] Bernaski, "Saving Mickey Mouse," 1.

hire, the CTEA extends protection to 95 years from the first date of publication or "120 years from the year of its creation," whichever date expires first.[329]

Ms. Wendy Seltzer states the 1998 CTEA act passed "without a single vote of opposition;" however, that as a result of *Eldred*, such unanimity within Congress for another copyright term-length extension will most likely not take place as the public is now more aware of the *Eldred* and its potential implications.[330] Ms. Seltzer views *Eldred* in a broader light about a case that is not only about Mickey Mouse or Disney, but about finding an appropriate balance between copyright term protection length and promoting the progress of science and the useful arts that the Constitution's Copyright Clause was focused on advancing.[331] Unlike CTEA proponents, Ms. Seltzer believes that copyright restricts free speech.[332]

Furthermore, according to Bernaski, the Supreme Court's decision in *Eldred* implies that Congress may yet again be successful in copyright term expansion;[333] however, research conducted for this thesis indicates the probability of this taking place is low. Based upon my research, there are few issues remaining that warrant copyright term-length extension or modification; as such, I predict that Disney will not lobby for another modification to copyright law, given that most of the inadequacies that Disney identified prior to the CTEA's enactment have been addressed.

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[329] Adeyanju, "The Sonny Bono Copyright Term Extension Act," 1.

[330] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 792.

[331] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 792.

[332] "Mickey Mice − Potential Ramifications of Eldred v. Ashcroft," 792.

[333] Bernaski, "Saving Mickey Mouse," 14.

Entrepreneurial Harm

Furthermore, I hypothesize, that as a result of Disney and other entertainment companies' consistent focus on the financial bottom line and lobbying influence, that society will be negatively impacted should another copyright term extension Act be passed in 2019. My hypothesis is based upon the significant research already conducted, which demonstrates that the public was harmed by the CTEA's enactment and will be harmed prospectively by increased copyright term-length extensions, especially within such a short period of 20 years. Linda Christiansen of Indiana University also makes an excellent case for the disadvantages to the public as a result of the 1998 CTEA; Christiansen states that if unlicensed copyright works "that have little commercial value" [334] were unavailable in the public domain as a result of the 1998 CTEA, then various individuals such as entrepreneurs could not market these still protected items to niche markets.

Christiansen's statements allude to an interesting aspect regarding the specific population segment that would be impacted by various works not entering the public domain. It can be inferred by Christiansen's statement that the most affected segment would be individuals such as entrepreneurs, such as in *Eldred*, who rely upon public domain works to support their specific entrepreneurial efforts and niche markets. Entrepreneurs are particularly enticed by works entering the public domain as there are

[334] Christiansen, "Mickey Mouse Still Belongs to Disney," 212-214, 213.

difficulties and cost implications associated with licensing copyrighted works.[335] A proposal that Christiansen makes to balance the needs of the public domain and the needs for those entrepreneurs whose livelihood depends upon access to public domain works, is to have copyright holders register their copyrights periodically, and those who do not register their works "within a certain amount of time" [336] are subject to having their works released immediately into the public domain.

[335] Christiansen, "Mickey Mouse Still Belongs to Disney," 212-214, 213.

[336] Christiansen, "Mickey Mouse Still Belongs to Disney," 212-214, 213.

Chapter X.

CTEA Field Research

The following provides a rich discussion on the field research initiative conducted specifically for this thesis. The forthcoming sections will elaborate upon the primary motivations behind the CTEA focused field research as well as its findings.

CTEA & Creative Motivation Research

There has been, to the best of my knowledge and thorough literature review, no research conducted into the influence or awareness of the CTEA, and its impact on the primary motivations of authors and other creative artists. While there is substantial literature and research on the motivations behind artists, musicians, musical composers, book authors, actors and actresses, there has not been any research conducted with the various parties on their awareness about the CTEA. Nor, to the best of my investigative research, have there been any experiments, in-person interviews or surveys conducted, with artists, musicians, musical composers, book authors, actors and actresses as well as their representatives, on the CTEA and its creative influence on them or their clients.

CTEA Field Research Overview

Given the absence or paucity of CTEA motivational research, I created a CTEA field research initiative, which upon its completion would either validate or invalidate various perspectives surrounding copyrights, the CTEA and motivations behind creative endeavors. The purpose of the CTEA field research conducted for this thesis, was to

primarily solicit information from various authors and content creators regarding their motivations to create, their awareness of the CTEA, the CTEA's influence on their motivations, as well as their thoughts regarding the CTEA's influence on the bequeathment of their copyrights. The CTEA field research endeavor included interviewing individuals from various backgrounds and occupations, who either were directly involved in artistic creation or who represented the creative content authors in some manner. The CTEA field research was conducted with the utmost objectivity and impartiality, to either validate or invalidate the assertions of both CTEA proponents and opponents.

To test my hypothesis of whether the CTEA is productive or destructive, I conducted research focused on the very content creators that the CTEA impacts. Although the subsequently provided research is valuable, a detailed longitudinal personal account also from the very individuals and organizations that were responsible for the CTEA being enacted, and from CTEA opponents is also beneficial to thoroughly understand the short-term and long-term impacts of the CTEA. This longitudinal research is beyond the scope of this thesis; however, should it be conducted, it will eventually provide substantial insights regarding the CTEA's influence over time.

Field Research Initiative Relevance

There have been several assumptions that have been made throughout copyright literature with regards to the primary motivations of creative artists, and how the CTEA has either benefitted or disadvantaged them. Furthermore, both CTEA proponents and opponents have provided ample reasons for how the CTEA either promotes the sciences

and the useful arts or impedes them. However, neither CTEA proponents nor opponents have directly interviewed the individuals whom the CTEA directly impacts. Hence, the importance of the CTEA field research conducted for this thesis cannot be overemphasized, for it affirms and dispels various assumptions that Congress, Courts academics, and media have made regarding the CTEA and its influences.

In order to better understand the impact of the CTEA, it was necessary to interview a cross section of various creative content authors, publicists and legal representatives. By utilizing this broad approach, one is able to best determine directly, how the CTEA motivates authors and creative artists, as well as how other members of the creative ecosystem, such as publicists and legal representatives view the CTEA's influence. The intent of the CTEA Field Research is to provide candid first hand perspectives of a usually legally, constitutionally, monochromatic, technical and sometimes very abstract topic.

CTEA Field Research-Initial Activities

Initially, I selectively searched the Internet for various celebrities whom I felt would be able to contribute to this thesis, by participating in either an in-person or telephonic interview. However, after various searches and initial productive email communications with Ms. Erika Eleniak, Hollywood Actress, Writer, Producer, former Baywatch Star and Playboy Playmate, I realized that while actors and actresses could contribute significantly to the CTEA field research, various other supporting individuals such as their agents, publicists, managers and attorneys could also provide significant context regarding the CTEA. As the subsequent findings will show, agents, publicists, managers and attorneys

have been also quite candid about the CTEA, creative motivations, copyright protections and other copyright debate issues.

Following this initial research period of Internet celebrity searching, I formalized my celebrity and outreach efforts by December 8, 2017 and subscribed to Internet Movie Database Professional (IMDbPro), an Amazon Company, which specializes in providing much contact, agency, publicist, manager and legal representation information for majority of Hollywood. On December 8, 2017, I purchased a subscription to IMDbPro, which has a moderate annual cost of approximately $149.00.[337] This monetary expenditure to gain accurate celebrity contact information, is the only monetary investment which I have made to the development of this thesis. The IMDbPro subscription provided much contact and work history information about Hollywood, as well as the film and entertainment industry.

Subsequently, I created an initial contact list of celebrities, along with their associated managers, agents, publicists and legal representatives in a Microsoft Excel Document that is locally stored on a laptop as well as on Dropbox, a web-enabled Internet hosting service. The initial contact list of celebrities was derived from a combination of my favorite movies and television shows, as well as my most memorable past and current day actors and actresses.

Additionally, I chose a combination of established and emerging celebrities, authors, musicians, publicists, agents, legal representatives, managers and other associated supporting personnel to provide for a more objective and balanced study about creative motivation and the CTEA. Given this, there will be some names that the reader will be

[337] Email sent by IMDbPro (do-not-reply@imdb.com) sent on December 31, 2017 to nhkamboj@gmail.com email account

readily familiar with and others that the reader may not recognize. I have provided subsequent detail Appendix V, as well as through the corresponding sections of this thesis to provide the additional background for each individual interviewed.

CTEA Field Research Contact Methods

After I created an initial contact list of at least forty names, I immediately began making phone calls and sending emails to everyone identified on that contact list. All counted, as of this writing, I contacted 98[338] unique individuals to participate in this thesis; a complete list of all contacted participants can be found in Appendix V. The method of approach was quite straightforward and consistent. I first began with a phone call to either the actor, actress, publicist, agent, manager or their legal representative, and briefly introduced who I was, the intent of my phone call, the details of this thesis as well as information regarding how they could validate my enrollment at Harvard University. The verbal information regarding validation of my enrollment at Harvard University was particularly important, as the Hollywood Elite are frequently the subject of much exploitation by unscrupulous parties. Hence, I believe that this additional detail was required to provide a certain foundation of trust.

I subsequently then inquired if the actor, actress, publicist, agent, manager or legal representative would be interested in participating in this thesis' research and an interview. Following the initial telephone calls that I made, I then proceeded to follow-up to those calls with an email providing additional details about myself as well as the thesis. To provide additional credibility regarding my request, I added detailed information

[338] Appendix V.

regarding my interview request and how interested parties could validate my enrollment at Harvard University.

There were two versions of the email that I sent to my interviewee list. The first email was a highly detailed email, which clearly went into depth regarding the thesis and its focus. Based upon the very little response I received from this email, I modified the initial email and reduced its technical details. Exact copies of both emails that I sent to solicit interview participation in the CTEA field research initiative are attached in Appendix IV.

CTEA Field Research Survey

Following my initial contact phase, I tried not to be intrusive of the interviewees' time and scheduled 30 minute interviews with each of the individuals who agreed to participate in the CTEA thesis study. Subsequently, I submitted a 10-question survey that I created using the popular cloud-enabled *Survey Monkey* software application, so that I could distribute the questions consistently and objectively to all those who were willing to participate in the thesis, and so that the interviewees could easily respond to the survey through the Internet. Furthermore, I chose *Survey Monkey*, a market leader in electronic survey distribution and information collection to perform data analytics and comparative analysis when all surveys had been responded too. To eliminate bias and ensure that the survey worked as expected, I sent myself the same survey through *Survey Monkey*; my taking the survey blocked me from participating in the survey again and I removed my response from the data set. The people interviewed as well as the survey questions that were sent are provided in Appendix II. Survey results are presented in Appendix III.

In addition, the survey was targeted to be emailed to the preferred identified email that the participant had specified, within a 24-hour period prior to the date and time on which the scheduled interview was to take place. The reason that the questionnaire was submitted so close to the date and time of the scheduled interview discussion, was to prevent any prior research from being conducted by the interviewee on the topic of Copyrights, the CTEA and other related topics. However, although ideal in theory, this became increasingly challenging, as interview times were requested to be changed by participants frequently and also because some participants did not complete the survey after receiving it. Furthermore, the survey in *Survey Monkey*, was designed to have all the survey questions be answered; I enabled such functionality through *Survey Monkey's* settings. This proactive measure ensured that all surveys would be completed in totality and that analytics could be performed consistently across all the interviewees.

Following the submission of the *Survey Monkey* survey to the prospective interviewee, a 30-minute telephone or physical in-person interview occurred. The 30-minute interview was a free format discussion to capture any additional thoughts that the participants had regarding the survey, its questions, Copyrights, the CTEA, the thesis and anything else that was sparked by our conversation. No two interviews were the same, although an attempt was made to standardize the questions that I asked. The live interview conducted was used to provide additional context regarding the participants' *Survey Monkey* survey responses, should they have completed the on-line survey and to answer questions that I had. What I came to find was that each individual had much to say regarding their experiences and motivations for being in the profession that they were in, as well as their thoughts regarding the CTEA, copyrights and creative motivations.

CTEA Field Research Initial Reaction

In my current Executive corporate role and other high profile roles that I have occupied in the past, I have advised, lectured to, interacted with, or engaged with other high power, highly successful, and high-profile individuals. As such, I was well prepared that I would be met with some resistance from the "gate keepers," of these celebrities or the various people who represented them. Given this, I continued to move forward and contacted everyone on my list in a highly methodical, almost automaton manner. The initial reaction for when I was greeted with a live conversation, on the whole, was quite positive. The administrative assistants, interns and externs were for the most part very cordial and provided the email addresses where my interview requests were to be submitted. Apparently, in Hollywood, the *modus operandi*, is that regardless of who you are or what the interest is, the majority require that all requests for interviews be submitted formally through a written request.

CTEA Field Research Limitations

Some would say that my sample size n of interviewees, which is 8, is far too small to make generalizations from, at a global level regarding the CTEA and its influence on content creators. I would agree with these critics to some extent and recommend that a continued longitudinal research effort building upon this thesis be executed to interview as many content creators and creative artists regarding their opinions of the CTEA. My disagreement with potential critics is that a CTEA field research effort such as this thesis has never been conducted prior; hence, while the sample size of 8 individuals may not be

considered numerically very high, the insights provided by the broad selection of the interviewees nonetheless provides highly illuminating insights into the CTEA and its influences upon their creative motivations.

Furthermore, perhaps some critics would say that the interview pool was inappropriately weighted with more Hollywood related individuals then with other creative types, with limited to no ties to the Hollywood television and film industry. To these critics, I would state that by all research accounts, Hollywood and the United States generates the most consumed intellectual property content in the world; as such, it is appropriate to interview Hollywood involved individuals who are either based in Hollywood or in the United States as well as U.S. based creative artists and their representatives. Given that this thesis is focused on U.S. Copyright Law and the U.S. based CTEA, it made logical sense to only solicit U.S. individuals who would either be impacted or influenced by U.S. Copyright Law changes. The CTEA field research initiative did not solicit feedback from other international film, music and creative content markets, such as those in Asia, Europe or South America. As such, the results presented should not and could not be used to generalize global sentiments about copyright perspectives and creative motivation theories.

Lastly, although the intent was to submit the survey 24 hours in advance of my interview taking place; unfortunately, in reality, either participants felt uncomfortable filling out a survey from an individual they did not know prior to being interviewed, or because an interview was secured with minimal lead time given the participants' willingness and availability to do the interview. Hence, with full transparency, I can state that, while I trust that my interviewees did not research the CTEA topic that I was to

interview them on, the interview discussion itself could have influenced the respondent's survey response after the fact, should they not have completed the survey prior to the interview being conducted.

In addition, for those individuals who completed the survey within 24 hours of the actual interview, they could have researched the CTEA as well as related topics prior to my interviewing them, so that they could be more aware of the topic that they would be discussing. However, with all of that being stated and the options for prior or post research on the CTEA and related topics, the interviews speak for themselves regarding the insights they provide into the primary motivations and awareness of the CTEA. Although the participants could have masked their familiarity with the topic in the survey, it is during the interview where I validated and tested the authenticity and genuine nature of their survey responses.

CTEA Field Research Interview Response Data Confidence

The following are detailed write-ups or "sections" of the individuals who I interviewed for this thesis. These sections were written completely by me and where appropriate, I quoted directly from the interviewees' responses. Furthermore, I afforded every interviewee an opportunity to review their respective section for inaccuracies and gave each of them an opportunity to provide me any corrections they wished to make. Hence, the respective text of this section has been provided to each of the interviewees for accuracy; some of the interviewees as of the date of this thesis have not responded back. I interpret this lack of response to either indicate that they are too busy to provide a response or that they agree with what has been written and that no further changes are

requested to be made to their section. As such, the reader should have the utmost confidence that the representations, quotes, statements and assertions in the subsequent interviewee "sections" have been evaluated for accuracy by the very individuals who have participated in the CTEA field research initiative.

In addition, the reader should be provided additional confidence that the interviewees' responses were not influenced by their awareness of the names of other individuals who were also being interviewed for the thesis, except for in one instance. In full disclosure, in one instance, I did share in a conversation with Mr. Trent Zuberi that Ms. Erika Eleniak may be potentially involved in the thesis; this was shared inadvertently with Mr. Zuberi, as I had no initial intention of interviewing Mr. Zuberi for this thesis. However, I did later ask Mr. Zuberi to participate in the interview given his musical background and awareness of copyright issues; at that time, I remembered that I did share Ms. Eleniak's possible participation. Although Mr. Zuberi is a Chicago based Rock Musician and Ms. Eleniak is a Hollywood based Actress with vastly different experiences, there is a possibility, albeit very low, that Mr. Zuberi's responses may have been motivated in some way by knowing that Ms. Eleniak was involved in the thesis study. This was the only instance where one interviewee was aware of the name of another participating interviewee.

In addition, no other direct or indirect categorical participant information was shared with the interviewees who were participating or who were asked to participate. My adherence to this diligent and objective practice, resulted in my losing the interview of a celebrity A-List Publicist, because he wished to know everyone who was participating in the CTEA field research interviews and the thesis prior to agreeing to an interview. To

maintain the integrity of this thesis, I refused to provide any individual or categorical information regarding the thesis' participants, for concern that it may taint or influence this Hollywood A-List Publicist's response and the data presented in this thesis. Needless to say, although I was not able to secure this publicist's participation, the integrity of the interviewee responses remain.

Ms. Erika Maya Eleniak – Hollywood Actress/Writer/Producer

Most everyone who came of age during the late 1980s and early 1990s will undoubtedly remember Ms. Erika Eleniak. One would remember Ms. Eleniak for her seminal and ground-breaking work in *Baywatch* or for her work with *Playboy Magazine* over the years. However, Ms. Eleniak's career for the past thirty years has been much more diverse and expansive than that of a film actress or model. Ms. Eleniak has been an actress in over 39 Hollywood movies and television shows[339] and has been involved in various ventures since her *Baywatch* and *Playboy* period years. I recently interviewed Ms. Eleniak to better understand the context of her career and her motivations to continue in her career. My primary motivation to interview Ms. Eleniak for this thesis, is because that although she happens to be one of the most widely recognized international celebrities, that Ms. Eleniak has complemented her vast acting pedigree with new and innovative business ventures; for example, Ms. Eleniak is currently co-producing/co-hosting a television show called "Ride It Out," which helps those suffering with mental illness through equine assisted learning. My curiosity, much of which is captured in this thesis, is in truly determining the reasons for why individuals create and whether there is

[339] Wikipedia page for Ms. Erika Eleniak retrieved 12/24/2017.

a direct causation between this creative drive and the CTEA, copyright term length, or other copyright protections. The following summarizes my detailed interview with Ms. Eleniak.

I interviewed Ms. Eleniak early afternoon, from 2:00 pm – 2:45 pm (CST) on December 19th, 2017. And although Ms. Eleniak requested for me to call her "Erika," during the interview, out of respect for her contributions to the arts and education, I find it challenging to call her "Erika" in print. In addition, while Ms. Eleniak was in her home in sunny southern California, I was in an iconic sky rise building in Chicago, with below freezing temperatures outside. I tried to keep our conversation to thirty minutes, first and foremost for consistency of the research; however, also to ensure that I did not encroach on Ms. Eleniak's gracious offer to be interviewed for this research. The following is a summary of our discussion, my findings and conclusions.

Although Ms. Eleniak would be considered a child star, having starting her career being cast for a role in Steven Spielberg's *Extra Terrestrial (E.T.)*, majority of Ms. Eleniak's contributions to film and the arts occurred in her adolescent and adult years. According to Ms. Eleniak, Ms. Eleniak's initial commercial break in Hollywood occurred because her father was dating someone in the film industry, and as a result of the associations and Ms. Eleniak's striking childhood features, Ms. Eleniak was requested to participate in commercials, theater, modeling, as well as singing and dancing activities.

What is made abundantly clear from my interview with Ms. Eleniak, is that Ms. Eleniak's desire to make artistic contributions initially began simply, because she felt it was so exciting to appear older than she was, and that she really enjoyed "getting dressed

up."[340] Ms. Eleniak's primary motivation as a child was to be seen in a different perspective, and as a more mature individual. As a child actress who was about to make some of the most artistic and creative contributions in her career, Ms. Eleniak states that she was guided by the nurturing and protection of her loving mother, who accompanied Ms. Eleniak to all of her commercial activity. At one point, Ms. Eleniak reminisces about her mother who, serving as her manager at the time, worked with *Vogue Mexico* to do a photo shoot; however, after Ms. Eleniak's mother viewed the details and fine writing of what *Vogue Mexico* wanted to do in the photo shoot and how they wished to portray Ms. Eleniak, Ms. Eleniak's mother "cancelled the photo-shoot."[341] Ms. Eleniak states that her mother's protective behavior served Ms. Eleniak well as she navigated her career through Hollywood over the years, and as Ms. Eleniak matured into the jungle that is Hollywood.

As I further interviewed Ms. Eleniak, I asked about her understanding of copyrights and whether someone explained to her at any point during her career, what rights she had regarding her creative contributions. Ms. Eleniak stated that no one explained the concept of copyrights at any point during her career; however, that she "initially trusted her Agents and her managers"[342] to manage what was appropriate; however, that over the years and through many experiences, Ms. Eleniak considers herself to be an expert on Copyrights as well as acting contracts, and readily challenges her managers and agents regarding the interpretation of various clauses. Continuing along the discussion topic of copyrights, Ms. Eleniak cites new media to be particularly challenging and complex to

[340] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

[341] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

[342] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

interpret, given the various methods that her "likeness, [and] voice"[343] maybe used worldwide. During this juncture of the interview, Ms. Eleniak shared that as a result of her past work on *Baywatch* and ownership rights, that she cannot in anyway, without permission of the rights holders, "portray herself in a red bikini,"[344] nor can she in anyway insinuate an association with *Baywatch* without initially clearing the apparently long chain of approvals required by multiple parties to allow for this. Ms. Eleniak also states that the power and authority of a "big [A-List] star"[345] would have more power to negotiate their publicity, name, image, and likeness rights. I find Ms. Eleniak's "big [A-List] star" comment humorous and telling of the humility that Ms. Eleniak views herself, as I and many others consider Ms. Eleniak to be a member of the Hollywood Elite and to have significant clout within Hollywood.

When asked if anyone explained the bequeathing of Ms. Eleniak's rights to her children or other beneficiaries, Ms. Eleniak stated that the union she belongs to, which is the Screen Actors Guild (SAG) ensures for that type of information or protection to take place. Hence, while CTEA proponents have stated that the CTEA incentives individuals' protections of their creative contributions, Ms. Eleniak's statements indicate that as actors and actresses, their ownership rights to their contributions to the arts and society, cannot be simply exercised, as they are frequently assigned to other parties and corporations. This is a highly telling fact, that while the contributions of Hollywood actors and actresses are much appreciated by world consumers, the rights that they have to associate

[343] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

[344] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

[345] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

or to further profit from their creative contributions from their television shows or their movies, is many times limited by a litany of contracts.

Additionally I then asked Ms. Eleniak, what is the most important thing to her in her career, she states, "My dreams and my intentions, I would love to create something. Speaking, teaching, acting, which would allow me to help other people."[346] When I asked, what Ms. Eleniak would like to be remembered for, her comments were, "even if people remember you for your work, [or are] inspired by it, that maybe you contributed something to their life, that it helped them, to know that I contributed. I do believe that we are here to learn lessons and leave a contribution."[347] Ms. Eleniak's altruistic comments demonstrate that her creative contributions, and not revenues are the most important factors to her in her career as well as the legacy that she hopes to leave behind. There was no reference to the CTEA or copyright law serving as motivating forces behind Ms. Eleniak's decisions to contribute to the arts, or the legacy for which Ms. Eleniak wishes to be remembered for.

Upon the close of the interview, I thanked Ms. Eleniak for her time; however, I realized that I had failed to ask her one of the most important questions that I intended to ask Ms. Eleniak. Hence, shortly afterwards, I emailed Ms. Eleniak the question, which was "Would you continue to do what you do regardless of copyright duration?" Ms. Eleniak's reply was "Absolutely." There are two interesting and very important aspects of Ms. Eleniak's response to this question and the contribution to this thesis; the first being that Ms. Eleniak does not know what the current length of copyright is, as was self-

[346] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

[347] Erika Eleniak Interview 2:00 pm – 2:45 pm (CST) on December 19th, 2017.

disclosed by Ms. Eleniak's response to the *Survey Monkey* survey questionnaire that she completed. The second interesting aspect about Ms. Eleniak's statement is, that the duration of copyright protections has no weight on her decision to either continue in her current creative career or her motivations to make artistic contributions. Hence, although CTEA proponents cite that creative artists would be better motivated or incentivized through increased copyright term-length protections, Ms. Eleniak's response counters that position.

Mr. Harlan Böll – Exclusive Publicist to Hollywood's Elite

Although all my interviews for this book have been enlightening, one of the most memorable interviews that I conducted, was that of Mr. Harlan Böll,[348] founder of B. Harlan Böll Public Relations, and Publicist to some of the most influential and powerful celebrities in Hollywood. Mr. Böll's past celebrity client list and current client list is one that will resonate with nearly everyone who has ever watched television, seen a movie or has been to a Broadway show. The following is only a small sample of Mr. Böll's impressive client list, which is given here to provide for foundation regarding Mr. Böll's credibility to provide opinion on this thesis topic.

Mr. Böll has been or is currently the publicist for Carol Channing (Tony Award Winner, Golden Globe Award Winner, Oscar Nominee), Valerie Harper (Emmy Winner, Tony Nominee), Tippi Hedren (Lead Actress in Hitchcock's *The Birds* and Golden Globe Winner), Rich Little (The most prolific master of voice mimicry), Julie Newmar (The original Catwoman and Tony Award Winner), Loretta Swit (2 Time Emmy Award

[348] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

Winner for her role as Major Margaret "Hot Lips" Houlihan on *M*A*S*H*, Animal Rights Activist, Watercolor Artist), Marion Ross ("Mrs. C" on *Happy Days* and Emmy Nominee), Dawn Wells (Mary Ann from *Gilligan's Island* & Animal Rights Activist) and Anson Williams ("Potsie Weber" of *Happy Days* and Inventor/Entrepreneur). Mr. Böll has also been the exclusive publicist for Bob Hope (The Most Honored Entertainer with 1,500 awards and "citations for humanitarian and professional efforts",[349] Florence Henderson ("Mrs. Brady" on *The Brady Bunch*), Debbie Reynolds (of *Singin' in the Rain* and Mother of Carrie Fisher), Jack Klugman (*The Odd Couple*, Three Time Emmy Winner and Golden Globe Winner), John Forsythe (*Dynasty*), Phyllis Diller, Dick Van Patten and Doris Roberts.

According to Mr. Böll, he did not choose his profession; however, he states that his profession chose him. According to Mr. Böll, "Cloris Leachman brought me to Hollywood and I got a job at Paramount."[350] During those days, Mr. Böll states, studios would assign an assistant to the "acting talent," and that the talent that he was working with, thought that Mr. Böll was working directly for them, whereas in actuality Mr. Böll was accountable to the studio that hired him. This employment relationship along with Mr. Böll's congenial social skills allowed for Mr. Böll to quickly become a confidante of notable Hollywood celebrities.

Mr. Böll states that as a publicist, his primary responsibilities are related to raising awareness of his clients; however from our conversation, it seems that Mr. Böll goes above and beyond for his clients and serves many different capacities, which allow him

[349] Harlan Böll website - http://www.bhbpr.com/.

[350] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

to become an integral part of his clients' lives. When a client is actively working on a charitable endeavor or employed in an entertainment opportunity, Mr. Böll provides additional effort to ensure that his clients' activities are being advertised and promoted accordingly, such that future projects and opportunities avail themselves more readily.

However, challenges arise when Mr. Böll's clients are in between opportunities. It is during these periods where Mr. Böll puts forth his utmost efforts to ensure that his clients are well taken care of. Some of the most telling stories that Mr. Böll shared with me about his celebrity client list, was how close his relationships are with his clients. From Mr. Böll's accounts, it seems that he is at times, less publicist and more family member to Hollywood's Elite, especially those who are aging or whose physical and mental health are deteriorating. During Mr. Böll's interview, I asked how he managed the downturns with his clients' careers, such as when they were diagnosed with a medical condition? Mr. Böll's response was the following, "You are very close with them [Hollywood Stars]. Sometimes I travel to see them on the weekend and see how they are doing. With regards to them [Hollywood Stars], they handle themselves with dignity. Sometimes we kept things secret from the public. When you want to work, if any director or producer finds out that you are sick, they may not want to hire you. Sometimes personal livelihood is at stake for a client who has been out of work for some time. Also, in Hollywood, an opportunity could be based on your religious preference, whether you are Jewish or Muslim; your religion could change everything for you."[351] Hence, for Mr. Böll and his clients, Hollywood can unfortunately be a fickle place, with career opportunities

[351] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

precariously hanging upon the health of Mr. Böll's clients as well as the personal preferences of Hollywood's producers or directors.

Continuing to respond to my question regarding Mr. Böll's closeness with Hollywood celebrities, Mr. Böll states, "I know them [Hollywood Stars] very well. I become like a part of the family. At one point Julie Newmar, Esther Williams and some of my other clients were all on stage and a reporter asked, 'What do all of you have in common?' Esther Williams stated that 'Our publicist [Harlan Böll] has seen us all naked.'"[352] Given this level of intimacy with Hollywood's Elite, Mr. Böll is able to answer the most salient questions for this thesis regarding what he believes are the motivations for his clients and their contributions to the arts.

When I asked about inspiration and what motivates Mr. Böll's clients to create, Mr. Böll responded, "It [inspiration] is different for every actor. They do it for the love of the craft. Jack Klugman fell into it [acting] out of the Army. All of them had a love for the craft. John Forsythe hated the attention…if he could have done it without all the attention, he would have loved it. You would also be surprised on how many of them are nervous before going on stage; however, they did it for the love of the craft."[353] It is interesting, that Mr. Böll's response is devoid of the CTEA or copyright law references and is more focused on the internal compass of his clients.

Additionally, when I asked about whether any of Mr. Böll's clients were familiar with copyrights or copyright protections, Mr. Böll responded, "A lot of them don't pay attention to that. However, some have been screwed over many times and pay attention to

[352] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

[353] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

that. For example, Charles Fox who wrote *'Killing Me Softly'* as well as many other lyrics for popular shows such as *The Love Boat* as well as *Laverne & Shirley* knew much about copyright." However, Mr. Böll emphasized that majority of his clients do not worry about copyrights, nor are they aware of the various copyright protections and financial remedies that copyright law affords them. Mr. Böll also elaborated during his interview on the creative motivations and passions that his clients innately have to perform. Mr. Böll stated, that when Bob Hope aged, as the spotlight hit him, he came to life, as if nothing was wrong with him. Mr. Böll also explained that Carol Channing stated to him, that "the safest place on earth is center stage."[354] These interesting anecdotes are highly telling, for they describe that the mere act of creation or artistic performance is in of itself the incentive that some creative authors desire. Mr. Böll's anecdotes are again contrary to CTEA proponents' viewpoints that copyright term-length duration further incentivizes authors and creative artists to create.

Given Mr. Böll and his clients' statements, one is challenged to find validity in the claims made by CTEA proponents who state, that the CTEA was necessary to inspire artists to create and to provide them the confidence that their creative works would be theirs. In actuality and according to Mr. Böll, his clients created and continue to create simply because they are enamored with the arts and performing for others. Whether Mr. Böll's clients' desires are based upon psychological needs that require fulfillment or based upon social motivations that Mr. Böll's clients enjoy, the primary motivation it appears to Mr. Böll is derived from non-monetary origins as opposed to the capitalist underpinnings that CTEA proponents have argued.

[354] Harlan Böll interview 5:30 pm-6:00 pm (CST) on January 2, 2018.

Furthermore, one of the most salient aspects of my interview with Mr. Böll arose when I asked Mr. Böll what he would like to be remembered for. Mr. Böll's response is quite telling as well, from both a personal and CTEA perspective. Mr. Böll responded, that although he would like to be remembered for the work that he has done for his clients, he would also like to be remembered for his writing, which he believes that he does not nearly do as much of. From a CTEA perspective, this response is also quite telling, for Mr. Böll's primary source of revenue comes from his professional career of being a Hollywood publicist; however, Mr. Böll's statement indicates that he wishes to create, for quite simply, the pure passion of literary creation, without any promise of compensation. Admiration and respect are Mr. Böll's innate and highly personal desires, not financial compensation protected by copyright term length. Furthermore, Mr. Böll's desire to create is not in any way caused by or correlated with, copyright protections or the CTEA. Hence, the economic arguments of CTEA proponents do not hold significantly in the case of Mr. Böll.

Mr. Karl Austen– Renowned Hollywood Entertainment Lawyer

In writing this thesis, I also had the privilege of interviewing Mr. Karl Austen of Jackoway Austen Tyerman Wertheimer Mandelbaum Morris Bernstein Trattner & Klein.[355] Mr. Austen's current and past client list is impressive. The following are some of Mr. Austen's current clients: Natalie Dormer of *Game of Thrones*, Kristen Wiig, Oscar Nominee and Actress of *Bridesmaids*, Peter Dinklage of *Game of Thrones*, Joseph

[355] Anita Busch, "Jackoway Law Firm Changes Name, Adds More Attorneys to Moniker." Deadline.com. https://deadline.com/2018/05/jackoway-law-firm-adds-attorneys-to-moniker-1202388866/.

Gordon-Levitt of *Inception* and *Snowden*, Jude Law, Oscar Nominee and Actor of *GATTACA* and *The Talented Mr. Ripley*, Jonah Hill, Oscar Nominee and Actor of *War Dogs*, *The Wolf of Wall Street* and *21 Jump Street*, Seth MacFarlane, Oscar Nominee, Creator of *Family Guy*, Dame Judi Dench, Oscar Award Winner and Actress of James Bond's *Skyfall*, Robert Forster, Oscar Nominee and Actor of *Jackie Brown*, Kit Harrington of *Game of Thrones* as well as many others.

Hence, it is undeniable that Mr. Austen represents a significant portion of Hollywood's top talent, which has contributed to a substantial portion of Hollywood's gross entertainment revenues as well as to the United States Gross Domestic Product (GDP). Mr. Austen, a Harvard Law School graduate, as well as a former actor at Amherst College and Harvard University, is an ideal research contributor, whose prior acting experience and current legal expertise, provides in-depth and salient perspectives on both the creative and monetary arguments of both CTEA proponents and opponents.

I began my interview of Mr. Austen by asking him how he chose his line of work; Mr. Austen's response was, "I just love the arts and was very interested in theater. I did a bunch of plays at Harvard Law School and directed those as well. When I got out of law school, I wanted to do something that married both my passion for the arts and the law."[356] Mr. Austen also elaborated that representing "Talent" as he refers to the Hollywood A-List, utilizes a very specific skill set, which he stated "appealed to my strengths and interests." As such, it was a natural progression for Mr. Austen to choose his current profession as a Film and Entertainment Lawyer for Hollywood's most elite talent.

[356] Karl Austen interview 5:00 pm-5:30 pm (CST) on January 5, 2018.

In addition, I asked Mr. Austen about the motivations for his clients and the origins of their inspiration. Mr. Austen responded that the inspiration for his clients originated both from monetary and creative desires; however, Mr. Austen states that he believes that while monetary incentives may be important, he believes that his clients are mostly motivated by the creative aspect of their professions. Mr. Austen specifically says, "I think that it [client inspiration] stems from both a desire to make money and to create. But that inspiration and ambition is mostly creative and not about the money. If you love what you are doing and you can make a living doing it, then great." Mr. Austen's sentiments indicate that his clients' activities, although lucrative, arise from a desire to contribute to the arts and serve as a creative outlet for their passions. Mr. Austen does not reference copyright law or the CTEA when speaking of his clients' motivations to create.

When I asked Mr. Austen, what is the most important thing to him in his career, Mr. Austen's response was altruistic in nature and he responded with, "To do a good job and try to exceed my clients' expectations."[357] While it is evident from the research conducted for this thesis, that Mr. Austen is significantly wealthy and has accomplished what many would envy both from a financial and personal family standpoint, Mr. Austen's primary motivation does not originate from a desire for either increased monetary wealth or to be awarded posthumously for efforts. Mr. Austen is quite simply focused on the present and his ability to represent his clients as effectively as possible.

One of the most fascinating aspects of my interview with Mr. Austen, was during our conversation and a series of questions that I asked, regarding Mr. Austen's experience with the CTEA as well as that of his clients. When I asked Mr. Austen if he was aware of

[357] Karl Austen interview 5:00 pm-5:30 pm (CST) on January 5, 2018.

the CTEA, Mr. Austen stated that he had heard of it but was not familiar with its particulars. There are several inferences that can be made from Mr. Austen's statements. First and foremost, that Mr. Austen, one of the most successful entertainment attorneys within the industry, specifically within Hollywood, has developed his illustrious career and impressive client base without directly relying upon or citing the CTEA. The implication of this is that the CTEA, which is apparently touted as one of the most important Acts within the sphere of copyright legislation, is minimally influential in either guiding or specifically directing the careers within Hollywood.

Furthermore, although Mr. Austen does not represent the entire ecosystem of entertainment or Hollywood attorneys, he is one of the most sought after and elite entertainment attorneys, who was educated at one of the best law schools in the world. The suspicion arises, that if Mr. Austen, a highly competent and educated lawyer who does not rely on the CTEA or its specific protections to represent Hollywood's A-List, it may be an overgeneralization, however accurate, that most or many of Hollywood's entertainment lawyers also do not rely upon the CTEA to conduct their business activities. Hence, while it is fair to say that the CTEA has not directly influenced Mr. Austen's career or those of his clients, it does cast a shadow of doubt regarding the CTEA's awareness and influence within the film and television entertainment industry.

In addition, when I asked questions about Mr. Austen's clients' motivations, Mr. Austen stated that, "Actors don't really care about copyright—doesn't really pertain to them, it is more relevant to the careers of novelists and authors."[358] Mr. Austen's statements indicate something very powerful, supporting CTEA proponents' position,

[358] Karl Austen interview 5:00 pm-5:30 pm (CST) on January 5, 2018.

that the CTEA was necessary to afford copyright protections for literary authors to prompt creative contributions; however, what is also very clear from Mr. Austen's statement is the implication that the law is more focused upon the needs of "novelists and authors" as opposed to other creative content authors.

Mr. Trent Zuberi –Hard-Rock Musician

In addition to the interviews of Hollywood Elite, I interviewed an established musician to provide a different perspective regarding creative contributions and his primary motivations. One of the individuals who was interviewed for this thesis, is Mr. Trent Zuberi.[359] I was introduced to Mr. Zuberi professionally in July of 2017 while working as a consultant for an international food and beverage conglomerate.

Mr. Zuberi is the founder and lead vocalist of the international heavy metal rock band *Hemi*, which was established in 2003. Mr. Zuberi, with his thick black beard and long black opal shoulder length hair is the epitome of the heavy metal rock genre that he and his band represent. The interview with Mr. Zuberi was conducted in person at the iconic Aon Center in downtown Chicago. When I asked Mr. Zuberi why he chose to found his heavy metal rock band, he commented, "I wanted a creative outlet. I knew that I couldn't create. I was attracted to music. I just knew that there was an artistic outlet in me. Music was always something big that I was attracted to."[360] It was apparent from Mr. Zuberi's interview, that Mr. Zuberi was motivated to create using music as the appropriate vehicle to do so. I was interested in Mr. Zuberi's motivations for choosing music as his endeavor

[359] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

[360] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

and asked if money inspired Mr. Zuberi; Mr. Zuberi responded with "When you first start, you want to get rich, you want to make that big single and be that one hit wonder and make money. I wanted to become a big star and make it rich."[361] Mr. Zuberi's statement indicates that he was motivated initially by monetary gains and material wealth.

Additionally, I asked Mr. Zuberi if anyone ever explained the concept of copyrights or licensing to him over the course of his almost two decade career. Mr. Zuberi commented in the negative and stated that, "No. It wasn't until when I had band members quit, that's where copyright and ownership came up."[362] Hence, the importance of Mr. Zuberi's comment should be underscored here; Mr. Zuberi began his band and created music without regards to understanding the copyright landscape or licensing that is prevalent throughout the music industry. Only when confronted with band member changes and creative differences, did Mr. Zuberi find himself forced to become familiar with copyright and ownership rights landscape.

When asked what is the most important thing now to Mr. Zuberi in his musical career, Mr. Zuberi comments, "Artistic fulfillment. We made a lot of money doing this. Nothing substantial to retire [on], but enough where the band has funded itself. At this point as I sit here at the age of 36, artistic fulfillment is my goal. Once I release something, no one can take it away from me. I can be 75 tomorrow and no one can take it away from me. At least it is a legacy which I leave into the world, long after I die."[363] Mr.

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[361] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

[362] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

[363] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

Zuberi's poignant comments, which may not be reflective of all musicians world-wide does demonstrate that at least one musician is motivated to leave behind a legacy of his musical creations, and is not necessarily focused on monetary returns from his musical ventures.

Furthermore, I asked Mr. Zuberi one of the most important questions in the interview, which provides insight into Mr. Zuberi's motivations for continued creativity. I asked Mr. Zuberi if he would continue to create musical content regardless of copyright length. Mr. Zuberi's response was the following, "I have never thought about it. As an artist, you want to create anyway. When expiration is coming close, then I might say 'What's going on?' but I would not stop creating because of it. It is my nature to create. I almost negate my own words. Artist by nature. Can't stop creating. But I still want to maintain my work. If someone told me that I no longer owned my work, it would be a hard pill for me to swallow."[364]

Hence, Mr. Zuberi's comments are quite telling from multiple standpoints. The first is that although Mr. Zuberi identified himself in his *Survey Monkey* response as knowing quite a bit about copyrights, Mr. Zuberi did not know the specific duration of copyright protection. While Mr. Zuberi values copyright protections as demonstrated by his response, the duration of copyright protection is unknown to Mr. Zuberi. Secondly, Mr. Zuberi disclosed to me that he has no offspring and that his legacy is his musical contribution to the world; however, Mr. Zuberi's firm statements about copyright protections and his work being protected provide significant insight into Mr. Zuberi's motivation to have ownership rights over the course of Mr. Zuberi's life span. Unless Mr.

[364] Trent Zuberi interview circa 3:00 pm-3:30 pm (CST) on December 21, 2017.

Zuberi reproduces or adopts offspring in the future, Mr. Zuberi's legacy will be his musical contributions to the world, and his primary concern will be maintaining ownership of his copyrights.

While additional research into musician motivations needs to be conducted, Mr. Zuberi's comments provide contrarian perspectives to those of CTEA proponents, who have stated that musicians and other content creators, are primarily motivated by their ability to bequeath their earnings or royalties to their offspring or beneficiaries. While I am certain that Mr. Zuberi has loved ones and those who he cares deeply about, his motivation to enter the music industry and remain in the industry as a content creator are more motivated by personal gratification received from creative contribution as opposed to the potential bequeathing of his musical royalties.

There are multiple questions that arise as a result of Mr. Zuberi's interview for academics, constitutional lawyers as well as lawmakers. One of those questions is that, if a content creator such as Mr. Zuberi, who is neither aware of the duration of copyright, nor who is solely motivated by royalties, chooses to create regardless, does this invalidate CTEA proponents' argument regarding copyright duration as a primary motivator for content creators to create? Furthermore, do Mr. Zuberi's comments regarding his legacy also provide support against CTEA proponents, who utilize the argument that creative content authors would be more inclined to support copyright duration extension given their desire for their offspring to receive compensation benefits from copyright ownership protections? These questions and others prompted by Mr. Zuberi's comments indicate that CTEA proponents' and opponents' need to conduct additional longitudinal research to fortify their respective positions.

Ms. Rosemary Carroll – Founding Partner of Carroll, Guido & Groffman LLP

For this thesis, I interviewed the legendary Ms. Rosemary Carroll[365], one of the Founding Partners of the powerhouse entertainment law firm of Carroll, Guido & Groffman LLP. Carroll, Guido & Groffman LLP represents some of the most recognizable and popular musicians in the industry, from its primary office locations in New York City and Los Angeles. The interview began with foundation questions regarding Ms. Carroll's motivation to pursue the study of law as well as her motivations in her present line of work. Ms. Carroll, a Duke University undergraduate and Stanford Law School graduate began her career primarily representing musicians and turned her passion for the arts into a life-long career protecting the rights of creative artists. When I asked Ms. Carroll about her Stanford Law School experience, she stated that she was not motivated by making a lot of money; according to Ms. Carroll, "it just wasn't an area [making money] that I wanted to focus on the rest of my life."[366] Ms. Carroll then proceeded to state in the interview, "I know, it sounds so corny and hippy dippy, but I appreciated art and found that I could help artists. I grew up on Rock and Roll - I knew at that moment at Stanford that I could facilitate people's careers and help them. That's why I chose entertainment law."[367]

"Corny" and "hippy dippy" are hardly the words that the media uses to describe Ms. Carroll or her firm. *Variety Magazine* had the following to say about Ms. Carroll and her

[365] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

[366] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

[367] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

firm, “she’s a powerhouse attorney…whose eponymous firm…represents a slew of music industry luminaries….”[368] Furthermore, Billboard Magazine honored Ms. Carroll’s law partner, Mr. Elliot Groffman who was listed as one of “Music’s Most Powerful Attorneys” in *Billboard Magazine*’s on-line article titled, “Music's Most Powerful Attorneys: From Litigation to Performing Rights, Radio to General Counsel.”[369] When asked of the types of clients that Carroll, Guido & Groffman LLP represents, Ms. Carroll responded with, “Bands. Singers. Songwriters. Lots of Rock singers. Established bands and new young bands. Some of the greatest musicians and bands of all time.” Ms. Carroll’s statements did not emanate from a need to impress me, nor did they originate from a thinly veiled public relations campaign for her law firm; Ms. Carroll’s statements are based upon objective fact and the numerous sources that have confirmed Ms. Carroll’s long list of impressive musical clients. While financial income and property holdings should not be viewed as primary indicators of professional or personal success, they do provide some irrefutable data points regarding the fruits of one’s labor; Ms. Carroll’s Greenwich Village, Manhattan, 5,000 square-foot estate was recently listed with an asking price of $16,800,000.[370] Hence, it can be inferred from Ms. Carroll’s recent real estate listing that Ms. Carroll has been very successful in her professional endeavors. Given Ms. Caroll’s significant music industry representation experience, I believe that

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[368] http://variety.com/2016/dirt/real-estalker/danny-goldberg-manhattan-townhouse-1201931398/.

[369] Billboard staff. “Music’s Most Powerful Attorneys: From Litigation to Performing Rights, Radio to General Counsel,” Billboard.com. https://www.billboard.com/articles/business/6640977/musics-most-powerful-attorneys (accessed 8/14/2018).

[370] Mark David, “Record Industry Honcho Danny Goldberg Lists Manhattan Townhouse (Exclusive),” Variety.com. http://variety.com/2016/dirt/real-estalker/danny-goldberg-manhattan-townhouse-1201931398/ (accessed 8/14/2018).

Ms. Carroll is arguably a highly competent and qualified attorney, who can provide opinion on the entertainment industry and artistic representation with great confidence.

Per Ms. Carroll's request, I will not name Carroll, Guido & Groffman LLP's client list; however, an Internet search by the reader quickly and clearly provides an awe-inspiring client list who entrusts their confidence on Carroll, Guido & Groffman LLP to represent their best interests. In addition, I found that Ms. Carroll's genuinely humble demeanor immediately provides confidence that Ms. Carroll's statements are not to impress, but simply to elaborate her perspectives on the questions I was asking of her regarding copyright law and the CTEA.

After my initial foundational questions regarding Ms. Carroll and her law practice, I continued with the interview inquiring about Ms. Carroll's awareness as well as familiarity with the CTEA. When asked if Ms. Carroll knew of the CTEA, Ms. Carroll responded, "Yes of course! It [CTEA] can impact my clients and to a degree very seriously, especially for my clients who were creating before 1978."[371] Ms. Carroll's awareness of the seminal CTEA and its complexities implied both the importance of the CTEA to Ms. Carroll's clientele who have composed or performed musical works prior to 1978, as well as Ms. Carroll's awareness of the impact of contemporary copyright statutory law.

The interview then proceeded to a series of questions pertaining to Ms. Carroll's high profile creative clients and their creative motivations. I asked Ms. Carroll, "What do you believe inspires your clients to create?" Ms. Carroll's response was, "People who are artists, do what they do, because they have to do it. It [creation] comes from within them.

[371] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

And they are very lucky if they can figure out a way to make money. Artists that I work with, do it not because of the money, but because they have a need to do it."[372] Ms. Carroll's statement is intriguing on two fronts. The first being that Ms. Carroll's clients are some of the most sought after musicians in the world; hence, if these incredibly powerful and internationally renowned musicians create for the art as opposed to compensation, then what does this say about all other less accomplished musicians? Could it be that perhaps musicians are more inclined to create for their love the art as opposed to wealth accumulation? Ms. Carroll's statement also illuminates that some, perhaps not all, have the innate desire to create; hence, the implications of this are profound, as while CTEA proponents believe that the CTEA will further motivate individuals to create, the reality of the situation is that even if the framework and support exists for individuals to create, this does not guarantee that creation will necessarily take place.

Ms. Carroll's sentiments also reflect the emerging theme throughout majority of the interviews that I have conducted for this thesis, which is that of the artist primarily creating for the sole purpose of creation itself, and not primarily because of monetary wealth generation or because of the additional benefits that copyright laws provide for bequeathing copyrights to heirs. I further asked Ms. Carroll, if her clients were aware of copyrights and the CTEA? Ms. Carroll stated, "No. They [clients] don't need to know about copyright or the CTEA. That is what they [clients] pay their attorneys for, and to make sure that they [attorneys] are taking care of them [clients]."[373] Ms. Carroll's

[372] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

[373] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

response is highly telling from multiple perspectives. First and foremost, Ms. Carroll's response indicates that her predominantly musical clients and the other artists who her firm represents, are not primarily focused on the day to day litany of copyright law changes, Acts, copyright term length or other copyright associated protections. Secondly, Ms. Carroll's response underscores that her artistic clients trust their legal counsel to watch out for their economic interests and do not exclusively rely upon their own capabilities and competencies to protect their intellectual property interests.

Ms. Carroll, an industry leader in entertainment law, counters the arguments of CTEA proponents, who state that the CTEA was enacted to motivate creativity and contribute to the expanse of human knowledge. Furthermore, one can infer from Ms. Carroll's statements, that CTEA proponents' position regarding the enactment of the CTEA to prompt or protect support for the long-term bequeathing of property and financial interests of artists to their heirs is quite simply, either secondary or tertiary to the primary reasons as to why artists create in the first place. Hence, while CTEA proponents have argued considerably that the CTEA's enactment served multiple purposes, from the research that I have conducted through several key interviews, it can be inferred that many artists are simply not, either aware of the CTEA, its specific protections, or are motivated to create as a result of the CTEA's enactment.

My interview with Ms. Carroll concluded with some additional personal questions about Ms. Carroll and the legacy that she wished to leave behind. I asked Ms. Carroll, "What is the most important thing to you in your career?" Ms. Carroll's response further provided insight into her motivations, "To allow artists to create without hindrance, so that they can contribute to the arts. Also, to promote the inclusion of women into the

[legal] profession. Half of my lawyers for Carroll, Guido & Groffman LLP are women – and I am very proud of that."[374] Ms. Carroll's statements indicates that although the love of protecting artists' interests motivate her, advancing female attorneys and providing opportunities for them is also of primary importance. Ms. Carroll's statement supports an argument against CTEA proponents, which is that although copyright laws and enactments are necessary to provide the incentive framework for creative artists to potentially create, the creative ecosystem is also largely determined by other individuals, such as Ms. Carroll and her attorneys to ensure that her creative artist clients' interests are best served.

Dr. William Pursell – Musical Composer & Billboard 100 Artist

Speaking with the humble and articulate Dr. William "Bill" Pursell,[375] one would be hard pressed to find any taint of ego or arrogance for a world-renowned music composer. Dr. Pursell's pleasant demeanor is even more surprising, given that Dr. Pursell, had one of the hottest selling and top chart listed records in the 1960s. Dr. Pursell, before he received his Doctorate in Music, was known as Bill Pursell and was very famous for quite some time in 1963, when Dr. Pursell's recording of "Our Winter Love" on Columbia Records blasted through the charts to be one of the top selling records of the year. The year that "Our Winter Love" was released, it ranked #7 on the *Billboard* Hot 100. Dr. Pursell also worked with many other recording musicians and played in sessions for many of Johnny Cash's albums and also for artists like Patsy Cline, Chet Atkins,

[374] Rosemary Carroll interview circa 11:00 am-11:30 am (CST) on January 22, 2018.

[375] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

Eddy Arnold and Marty Robbins. An Internet search on Dr. Pursell quickly reveals the numerous accolades he has garnered over the years. Dr. Pursell, as of this writing, is primarily a composer, musician, songwriter and Prof. Emeritus at Belmont University located in Nashville, Tennessee. At the tender age of 91, Dr. Pursell has led a life that many would find enviable; Dr. Pursell is an accomplished artist, who most recently retired from teaching at Belmont University over the course of three decades, has travelled the world sharing his craft with many, while also serving as the patriarch of a family of five adult children and three grandchildren.

After a series of foundational questions for Dr. Pursell about his background, I proceeded to ask questions regarding Dr. Pursell's creative motivations and his decisions in pursuing a life-long career in music. Dr. Pursell stated that his love for music began at a very young age. In his own words, Dr. Pursell states, "I began playing the piano at age three and later received a scholarship in composition at the Peabody Institute, a conservatory in Baltimore. When I went into the service in 1946, I began writing for the United States 'Air Force Hour,' a broadcast over WOL Mutual Network in Washington, D.C."[376] After re-enlisting for an additional 18 months in the United States Air Force, and upon discharge, Dr. Pursell again began to pursue his academic career. Dr. Pursell states, "I was then accepted in the Eastman School of Music in Rochester, New York and eventually completed my B.M. and M.M. and then began my Doctoral studies."[377]

[376] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

[377] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

However, Dr. Pursell would not complete his Doctorate at Eastman at that time, as he mentioned to me in the interview, that being a father and starting a family in the late 1950s, Dr. Pursell wished to be able to support his family first. He states, "To make some money in 1957, I went on the road with a Rhythm and Blues trio under a booking management in New York. Later I worked with a versatile Show group in Florida before moving to Nashville to work with Eddy Arnold on his roadshow."[378] Dr. Pursell's statement indicates and is validated by his later answers to one of my interview questions, that although his love of music had prompted him on his life-long passion for musical composition and performance, the desire to take care of his family financially was paramount. To ensure that there was no mistaking Dr. Pursell's motivation to pursue the creative arts, I asked Dr. Pursell again, "What motivated you to be a working musician?" Dr. Pursell's response was just as certain as it was prior, "Obviously to make a living. I have always been practical about this." I then asked, "So you chose to be a musician, composer and pianist to make a living?" Dr. Pursell's response was, "Yes, because I loved it and wanted to support myself working in it."

Dr. Pursell's efforts would come to yield significant fruits as his performance and sound recording of "Our Winter Love" as Columbia Recording Artist would achieve incredible Billboard success in 1963 and would make Dr. Pursell an international celebrity. As Dr. Pursell's fame skyrocketed, he was asked by Reader's Digest in 1969 to go to London to record "Our Winter Love" on an LP with other hit instrumentals; however, through various circumstances and British labor union opposition at the time, he was prevented from recording it personally; but eventually through an agreement with

[378] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

the English Musicians Union and the United States National Associated Federation of Musicians, union changes resulted with Dr. Pursell and other musicians moving forward with other projects in the United Kingdom. Eventually in 1980, Dr. Pursell was asked to teach at Belmont University. Since then from an academic perspective, Dr. Pursell has also been involved deeply in scholarly research and can appreciate the effort required for content creation. In 1990, Dr. Pursell took a leave of absence from teaching and worked on his remaining academic requirements for his Doctorate at The Eastman School of Music eventually completing his work and receiving his Dissertation at the age of 70. Given Dr. Pursell's joint domestic and international commercial work experience as well as his academic achievements, Dr. Pursell can effectively provide opinion regarding creative motivation both from an academic and commercial vantage point.

I proceeded to ask Dr. Pursell about his understanding of copyright law as well as the CTEA. When I asked whether Dr. Pursell had heard of copyright law, he stated, "I worked as a musicologist expert witness here in Nashville as well as other places in this country dealing with copyright infringement."[379] When I further asked Dr. Pursell, "Were you ever concerned about copyright protection length or duration?" Dr. Pursell responded, "Oh Yes! I started a publishing company called Omni Music Incorporated when I recorded for Columbia." Dr. Pursell's statements and his serving as an expert witness in the field of music litigation, indicate that Dr. Pursell was and is aware of the impact of copyrights on his works. Furthermore, when I asked if Dr. Pursell had heard of

[379] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

the CTEA, Dr. Pursell's response was, "No I have not. When did that come through?"[380] Dr. Pursell's response regarding the CTEA indicates that he was and is not presently aware of the CTEA or the impact that it has had on his artistic endeavors; hence, while Dr. Pursell is aware of copyright protections and their importance, neither the CTEA nor its particular attributes have influenced Dr. Pursell's work since its enactment. Dr. Pursell's statements clearly indicate support for the CTEA proponents' position, that some economic incentive is required for artists to create; however, Dr. Pursell's statements do not support CTEA proponents' position that copyright term-length duration is a motivating factor for artists to create. As a result, the position of CTEA proponents' regarding additional term length serving as motivation for artistic creation continues to be in a precarious position.

Mr. Josh Escovedo – International Entertainment and Intellectual Property Lawyer

Mr. Escovedo,[381] who was introduced in Chapter VI Disney's CTEA influence, is an entertainment and intellectual property lawyer who published an interesting and relevant article about Disney and the CTEA in 2016. Although Mr. Escovedo's interview contributed significantly to the conversation regarding Disney's intellectual property assets and diversified portfolio, Mr. Escovedo's interview also provided interesting insights regarding the creative process and into the motivations of creative authors. During the interview, I asked Mr. Escovedo some background questions, to provide the reader some foundation and perspective to Mr. Escovedo's responses. I asked Mr.

[380] Dr. William "Bill" Pursell interview circa 10:00 am-10:30 am (CST) on January 27, 2018.

[381] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

Escovedo, "Did you know, that you always wanted to practice IP Law?" Mr. Escovedo, responded with, "I had heard of trademarks, copyrights and patents. Even before starting law school, I did not know that I wanted to practice in IP [Intellectual Property]. But after law school, I started to work on trademarks and the interest began. I realized after my interest, that I didn't actually take any IP [Intellectual Property] law school classes in law school."[382] I then later asked Mr. Escovedo, "What prompted to you write that piece about Disney and CTEA?" Mr. Escovedo responded with, "My practice involves several areas. I focus on trademark and copyright law, but also have a strong interest in IP [Intellectual Property]. I also have quite the love for Disney and all that is Disney…and it is great when those two things come together."[383] Hence, it is quite apparent from Mr. Escovedo's response that he is quite enamored with Disney and the influence that Disney has had on the copyright and trademark law landscape.

After asking foundational questions of Mr. Escovedo, I proceeded to ask about Mr. Escovedo's experience working with creative authors and content creators. This is where Mr. Escovedo's statements provided additional support to most of the other interviewees regarding creative author motivation, awareness of the CTEA as well as the influence of copyright law on creative endeavors. I asked Mr. Escovedo, "Do you work with creative artists and actors?" Mr. Escovedo replied, "Yes." Hence, Mr. Escovedo's response clearly indicates that his practice and work involves creative artists, actors and author content creators. I then asked Mr. Escovedo, "Have your clients heard of the CTEA?," so that I could better understand to what extent Mr. Escovedo's client base was aware of the

[382] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

[383] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

CTEA. Mr. Escovedo's response was, "No. Let me rephrase − if we [lawyers] are working with a client that has a legal department, then yes, they have heard of the CTEA. However, if we are talking about the artist themself, then I would say no, they have not heard of the CTEA." Mr. Escovedo's response provides depth, which has not been covered within the other interviews, as it focuses upon the bifurcation of creative content creators and authors, who are and who are not well versed with the CTEA. Mr. Escovedo's statements indicate that individual content creators or authors are more focused on the art and their artistic endeavors and less concerned specifically about copyright laws or the CTEA. Furthermore, Mr. Escovedo's comments also indicate that his or his law firm's clients who own intellectual property assets and have legal teams in house are well versed with the CTEA and copyright law.

My interview of Mr. Escovedo then proceeded to gain a better understanding of the genesis of artistic creativity and how potentially, the CTEA may be involved in that process. I asked Mr. Escovedo, "What do you think motivates your individual artist clients to create?" To this Mr. Escovedo responded with, "I really don't know. Creativity is inherent. When you have the capability, you can create. They [artists] have this innate drive to create."[384] Mr. Escovedo's response indicates, that although artistic creativity may have an unknown genesis, he believes that the drive to create comes from within the artist; nowhere in Mr. Escovedo's response, is financial reward, copyright law or the CTEA mentioned, either as a catalyst for artistic creation or its sponsorship.

The interview continued with my asking, "Do you think that copyright law influences creative artists' decision to create?" Mr. Escovedo then responded with, "I think that the

[384] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

general concept of copyright law influences their [creative artists] decisions to create. They [creative artists] know that when they put in the effort, that they will be able to protect their idea and creations. From that perspective, it [copyright law] does influence them. When we get to the fine details, such as copyright term-length duration, it really doesn't influence [the artist]. Knowing that they [creative artist] can protect their idea for some duration concerns them; I am sure that it crosses their [creative artists'] mind and gives them some comfort."[385] This past response by Mr. Escovedo is quite telling, as it elaborates that while the artist may be generally aware of copyright protection, he or is she is not necessarily intimately aware of the details of copyright law, the CTEA or copyright term length. Quite simply, the artist, according to Mr. Escovedo is prompted to create by some general understanding that their work is protected for some period of time; however, they are not motivated by the specific term length that copyright law or the CTEA provides. From Mr. Escovedo's perspective, copyright law does influence the artist to create, albeit in a more general way than CTEA proponents state.

Lastly, I asked Mr. Escovedo two questions related to the principal arguments CTEA proponents make when discussing the financial benefits that the CTEA affords content creators and their heirs. I asked Mr. Escovedo, "Do you think that creative content producers are concerned of their bequeathing their intellectual property rights to their heirs?" Mr. Escovedo responded with "Certainly."[386] I then followed up with, "Where do you see this?" as I was interested in ascertaining at what point does the creative artist become concerned with the bequeathment of their intellectual property rights as well as

[385] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

[386] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

future royalties. Mr. Escovedo responded with, "I see this primarily with older [established] artists as opposed to within younger artists. Younger artists haven't dealt with their mortality yet. Older [established] artists develop an understanding over the course of their career that they need to take care of their copyrights, as part of their estate planning."[387]

Mr. Escovedo's experiential comments indicate that young artists are either less concerned with, or less driven by their assignment of intellectual property rights compared to their more established artistic peers. Hence, if Mr. Escovedo's comments based upon his practical observations are correct, then part of the rationale for the CTEA to prompt new authorship and content wanes, because, emerging content authors are not motivated by the additional years or term lengths associated with copyright law to benefit their heirs. In essence, the copyright term length is of zero value to emerging artists, as they do not consider this as a part of their motivation; hence, whether the copyright term length is life plus seventy years or five hundred years, Mr. Escovedo's comments indicate that it does not matter to the emerging artist. Furthermore, if Mr. Escovedo's comments are followed to their logical conclusion, then this has significant implications against the effort-reward argument from CTEA's proponents.

From a creativity prompt perspective, Mr. Escovedo's comments would imply that newer or emerging artists will create because they wish to create, and that they will not increase the rate or magnitude of their creation simply because copyright law is providing additional protections for them. Nor does an increase in copyright term length imply that emerging artists will create more, because they are able to bequeath their intellectual

[387] Mr. Josh Escovedo interview circa 5:00 pm-5:30 pm (CST) on April 30, 2018.

property rights and future royalties to their heirs for a longer period of time. Additionally, if Mr. Escovedo's comments are empirically validated through a clinical longitudinal experiment of creative artists, then this would imply, that the artists who would be more likely to be prompted to create by copyright term-length changes, would be the more established creative content authors or creators. However, this is where a complex paradox occurs. If one is to assume that younger and emerging creative content creators have more vivacity and energy than their more established and prolific creative peers, then this would imply that the rate of creation should be pretty high, regardless of copyright term-length changes. But, if Mr. Escovedo's statements hold true, and if one were to assume that more established content creators have less energy or that they have already contributed greatly to "progress of science and the useful arts," then it would seem that these more established artists would be the ones primarily prompted to create if copyright term length were more favorable to them; however, their rate of creation would be at a much slower pace than their younger emerging creative peers. Given this analysis, it would seem that while the content created would continue to increase, that the rate of content created will increase based upon legislative changes to copyright term length, such as the CTEA and not through the emotional drive of the creative artists. As such, the CTEA would in essence negate a very important objective that it was attempting to address in the first place, which is to prompt the "progress of science and the useful arts;" the CTEA would essentially just be incentivizing already established artists and content creators to protect their economic interests longer, while providing very little to no incentive for emerging artists to create. Only through a longitudinal study, can it be

determined if the CTEA prompted primarily mature of younger artists and the rate in which they were prompted.

Mr. Charles Fox – Musical Composer & Grammy Award Winner

As a young boy, I would spend several hours every day watching television. Prior to the age of the Internet, personal computer and parental controls, my formal and information education as well as cultural awareness came initially from a black and white television with a hand operated channel turn dial. I watched in wonder as various characters from some of my favorite television shows such as *Happy Days*, *The Love Boat*, *Laverne and Shirley*, *Wonder Woman*, and *The Paper Chase*, fell in love, forged new friendships and saved the world respectively. I marveled at the sights and sounds. Oh, how I enjoyed the delicate and many time complex compositions of music that would provide context to the scenes, which would be just as important to me as the imagery that they accompanied. Little did I know that someday I would be interviewing Mr. Charles Fox[388], the very music composer and Grammy Award winner to some of my favorite television shows, and one who had such a profound impact on my life at such an impressionable age.

Mr. Fox was born in the Bronx, a borough of New York City in 1940, and began studying the piano from the age of 9 years old. Mr. Fox was interested in music, specifically writing music from a very early age, and later attended the prestigious La Guardia High School of the Arts in New York. At the tender age of 18, Mr. Fox left to study composition at the Conservatoire de Musique in Fontainebleau, France, under the

[388] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

world renowned Ms. Nadia Boulanger, who according to Mr. Fox, is considered, "the greatest music composition teacher of the 20th Century."[389] When Mr. Fox returned from Paris at the age of 21, he was a pianist and arranger for artists such as Tito Puente and Ray Barretto, which were popular Latin bands of the era. In addition, Mr. Fox then later started to write arrangements and original material for *The Tonight Show* band, as well as original television themes for *ABC's Wide World of Sports* as well as *Monday Night Football*. As Mr. Fox' reputation increased, he was asked to compose his first film score for the 1967 film, *The Incident*, which later led to being hired to compose for the now cult classic film *Barbarella* starring Jane Fonda, followed by *Goodbye Columbus* as well as many television shows. All told, according to various published sources and by his own accounts, Mr. Fox has composed musical scores for over 100 motion pictures, television movies and television series. However, one of the greatest successes for Mr. Fox came from his musical composition of *Killing Me Softly with His Song* with lyrics by Mr. Norman Gimbel. *Killing Me Softly with His Song* won the Grammy Award for Best Song in 1973 and led to international hits for Ms. Roberta Flack in 1973 as well as the *Fugees* in 1997; Mr. Fox later published his memoirs in 2010 named, *Killing Me Softly: My Life In Music*. Given Mr. Fox' prolific contribution to the arts over nearly six decades, his multiple roles as music composer, author, performer as well as his plethora of awards, makes him a credible contributor to this thesis.

Following some foundational questions regarding Mr. Fox' background, I asked Mr. Fox, "What motivated you as you began your musical career?" Mr. Fox' response provides great insight into one of the most accomplished and influential musical

[389] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

composers of all time, "I never had a thought of anything else in my life except music. I loved practicing and playing the piano and discovered that I could make up my own tunes. From the day that I took my first composition lesson, it was like finding out how music worked – I was a like a watchmaker who found out how time works. It all totally enthralled me. When I went to France to study with Nadia Boulanger, I wrote to my parents in one of my letters from Paris, that I don't know if I need anything to fall back on and I stated in that letter, 'I am a composer and I will prove myself.'"[390] Mr. Fox has definitely proved the assertion that he made to his parents several decades ago, given that he has composed some of the most memorable music for television, film, symphony orchestras, ballets, stage plays, and chamber music.

I then asked Mr. Fox, "Did you ever think about the money that you would make creating musical works?" Mr. Fox responded with the following, "I didn't then and I don't now. It never occurred to me that I would own a home or a fancy car. Over the years, I have been very fortunate as I have been able to continue doing what I love to do and I have been very actively employed. I always looked at how lucky I am and how I could do and love, what I do. It never occurred to me that I would be the writer of popular songs. When I went to my first Emmy Award show where I won my first Emmy, I was talking to my friend and it didn't even occur to me that I could possibly win. When they announced my name, that I had won the Emmy for Best Theme Song for the TV series, 'Love American Style,' I didn't realize what was happening…it has always been about music."[391]

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[390] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

[391] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

Mr. Fox continued with, "It is just what I do…it is what occupies my everyday thoughts. I just turned 77 and I have so many projects in the works. I write music for myself. I am involved with a show right now. I have an opera that I would like to continue with. It is all about the music." Hence, it is evident from Mr. Fox' own statements, that his love of music and not monetary gain has been and continues to be influential in his creative endeavors. As Mr. Fox elaborated, there was no mention of copyright law, copyright term length or the CTEA, as providing any influence to Mr. Fox' creative endeavors.

While Mr. Fox' response provided insight regarding his motivations, the subsequent portions of his interview validated and refuted several salient points within this thesis. I carried on and asked Mr. Fox, "Are you familiar with the concept of copyright?" Mr. Fox's responded with, "Of course I am! First of all, as a writer of music, I live off the income of my copyrights. My copyrights are the protected works of mine that I have done over the years. The fact that some of my copyrights provide me with income, provides proof, that copyright is important. A copyright for a composer is his life-blood. I have been to court in Washington and have been a witness in a copyright dispute, between BMI, Disney and BET entertainment, to testify on importance of copyrights to the composers."[392]

Mr. Fox continued with, "The value of our [music composers'] music is worthless unless someone protects it. You turn on the radio, most radio stations play music. Most radio stations pay about 1% of the revenue they receive for the value they get from the music played …If you simply wrote music, or have it played on the radio, without

[392] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

performances, you make nothing. It is all about the performances. ASCAP [American Society of Composers, Authors & Publishers] and BMI [Broadcast Music Incorporated] have revenue streams from each of their networks and any place that plays music. A restaurant may pay $50 a year for unlimited access for BMI's music catalog. Without that revenue stream, a composer wouldn't have any way to profit from his/her music being played on the air. Nick, there are 3 ways that composers can earn money from the works they create. The first is through mechanicals, downloads, physical sales of records, the second is by being on the air and through public performance, with the third being the sale of printed sheet music. If someone plays my song on the radio, that has value. I should benefit from that."[393]

Initially my impression of Mr. Fox was that of a highly talented and successful musical composer; however, per Mr. Fox' astute statements regarding copyrights and the value derived from them as well as his understanding of compensation models, my opinion of Mr. Fox included that of savvy entrepreneur. This opinion was further validated through Mr. Fox' response to my question, "Have you heard of the CTEA? Do you know when it was enacted?" Mr. Fox responded with an answer that was more holistic and comprehensive than he may have realized at the time; Mr. Fox did not just respond specifically about the CTEA but provided commentary, about copyright law and enactments prior to the CTEA's enactment in 1998. The following was Mr. Fox' response,

> "I am well aware of it [CTEA of 1998]. Prior to 1978, a copyright length designated by an Act of Congress was 28 years and you had to renew it for additional 28 years and then it was released into the public domain. So a person, within his own life, could see his own work become valueless. A

[393] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

> copyright is the birthright. When we work in Hollywood, we work under 'for-hire' agreements. This stipulates that the person who hires you becomes the legal owner and author of your work. In that case, we give up ownership but not the income that we are entitled to as the creators of the work. 1978 changed it [U.S. copyright law] to be on parity with the rest of the world. 1978 [the Act] extend the copyright to life plus 50 years, then it went up to life plus 70 years. There was a terrible injustice which has now been corrected."[394]

I continued with my interview with Mr. Fox and further inquired about Mr. Fox' motivations and if the CTEA had been a contributory force in them. I asked, "Has the CTEA motivated or contributed to your artistic endeavors?" Mr. Fox crisply and clearly answered, "Bravo! Long overdue [CTEA]. It [CTEA] hasn't altered anything in my life. I wake up and go to the piano just as I did before…for the love of music."[395] Mr. Fox' response is quite telling, as although Mr. Fox is a savvy artist, when it comes to copyright law familiarity, he self-discloses that the CTEA has not "…altered anything in my life."[396] Hence, while the CTEA may have been necessary to provide the very copyright protections and financial benefits that Mr. Fox has earned for decades, the CTEA nonetheless, did not really prompt Mr. Fox's creativity.

I further asked Mr. Fox a question regarding his thoughts on bequeathing his rights to his heirs, as CTEA proponents have frequently cited that the CTEA has motivated such forward thinking about future family compensation. I asked, "Have you thought about bequeathing the rights of your work to your heirs?" Mr. Fox' response was quite telling. Mr. Fox stated, "Oh sure! It is the obligation that I have. My work has value and the

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[394] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

[395] Mr. Charles Fox interview, conducted via telephone at 2:30 pm – 3:30 pm (CST) on January 30, 2018.

[396] Mr. Charles Fox interview, conducted via telephone at 2:30 pm – 3:30 pm (CST) on January 30, 2018.

value of my work will go to my children and my grandchildren. Why would I not provide for my family? Of course! Who wouldn't provide for their family?"[397] Mr. Fox' response indicates that Mr. Fox has thought about his family and his heirs significantly; however, Mr. Fox is also an accomplished artist with decades of successes behind him, as well as a loving and close knit family.

Mr. Fox' prior response to my question earlier, regarding how the CTEA has influenced his life also informed the inferences that can be made from my previous question to Mr. Fox. The primary implication, is that the CTEA's enactment did not influence Mr. Fox' decision to bequeath his copyrights and associated royalties to his immediate family, children, grandchildren or heirs. Mr. Fox' thoughts about the bequeathment of his rights is primarily the resultant of his being a caring husband, father and grandfather, and not due to the 1998 enacted CTEA. In the interview, Mr. Fox further elaborated the essence of great stewardship and his penchant for contributions to the expanse of human knowledge by his donations. In response to my question of bequeathment, Mr. Fox digressed slightly and stated, "I have donated all my [sheet] music to the Motion Picture Academy for their Margaret Herrick Library."[398] Here again Mr. Fox demonstrates that his motivations for intellectual contributions are not motivated primarily by money, but something more complex, which prompts Mr. Fox to create, contribute and donate.

One of the most insightful comments that Mr. Fox made during my interview of him, was related to the lack of parity of music composers throughout the world. Mr. Fox

[397] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

[398] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

stated, "We [music composers] used to get royalties in motion pictures. We still do around the world, in France, in Italy. But, a [music] composer still gets royalty overseas, but not here in the U.S. Parity is something that we [music composers] should seek."[399] Mr. Fox' statement illuminates something highly relevant to the foundation of this thesis as well as the opinions of both CTEA proponents and opponents; this is, that although the CTEA was to address areas of copyright term length and financial protections as well disparities between U.S. and international copyright law, it has not completely addressed the disparity for all content creators and authors, as expressed by Mr. Fox, who further stated that his musical compositions as heard in foreign motion picture theaters produces revenue but not from theaters within the U.S. Mr. Fox also elaborated that his international musical colleagues feel deprived of their financial rights when composing music for the U.S. film industry given this disparity.

One of the last questions, which I asked Mr. Fox prior to the close of the interview, was related to the legacy that Mr. Fox wished to leave behind. I asked frankly, "Mr. Fox, what do you wish to be remembered for?" Mr. Fox' emotional response needs no analysis, "My family has been the most important thing to me my whole life. As far as my music is concerned, it is a very nice thought that my music will have some value in the life of the world. Recently, I recorded my music for Steinway [Steinway & Sons]. I went to New York and performed 10 pieces of mine. In the future, my performances will play as if though I was sitting at the piano. I have written hundreds and hundreds of songs that have been recorded and released commercially on CDs and DVDs. It is awfully nice to think that my music will go on having a life. It is nice to think that my children and

[399] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

grandchildren will hear my music in a restaurant or someplace in public and will think of me. The value of life is how you touch other people. In the end it is how we touch each other with our lives."[400]

[400] Mr. Charles Fox interview circa 2:30 pm-3:30 pm (CST) on January 29, 2018.

Chapter XI.

Conclusion

There has been considerable discussion that has been thoroughly described over the course of this thesis regarding the value and challenges associated with the CTEA. Although there are significant arguments by both CTEA proponents and opponents, the research conducted by this thesis provides keen insights regarding the scope of where the CTEA has been beneficial and where it has had little to no influence.

CTEA Motivates Little

As evident by the direct interview research conducted of Musical Composers, Actors, Musicians, Entertainment Lawyers, Creative Content Authors and Publicists, the CTEA has had little to absolutely no influence upon their desires to pursue their careers or their motivations to create artistic content. While it has been demonstrated through detailed academic research that the CTEA was necessary to provide parity with primarily European and international copyright laws, it's prospective impact on the creation of additional artistic content, such as music, books, film and other creative endeavors is difficult to measure. However, the CTEA's retrospective impact in limiting musical compositions, films, books and other creative content into the public domain can be calculated by all of those works that will become available in the public domain by the end of December 2018.

In addition, as referenced by Ammori, an effective plan to increase copyright term length can be implemented such that it benefits content creators while also minimizing

any negative effects to the public. While some industries such as book publishing have copyrights that provide for long-term protections and revenue streams, other areas such as high technology have copyrights that provide for very little protection as technology advances at an accelerated rate, thereby diminishing the value of prior technologies and copyrights quickly. As such, a specific and modal scheme depending upon the medium of creative content would serve both CTEA proponents and opponents well.

CTEA & Corporation Asset Protection

Additionally, although Bernaski states her case against CTEA opponents, that companies "can now grow into huge conglomerates that withstand the test of time for generations,"[401] and that copyright protection is needed to protect their interest, Bernaski's claim is over-reaching, as it does not take into account situations where iconic industry content producers have become extinct through poor business decisions. Just because copyright law exists to protect corporations, it does not protect corporations from their own poor business decisions or regulatory landscape changes. A notable example of this is the *Atari Corporation (Atari)*, which was considered during the 1980s to be an organization that would last forever, and one that would not be forecasted to ever file for bankruptcy or be divested; unfortunately, *Atari*, in the late 1980s as well as the decades thereafter did file for bankruptcy and was later divested multiple times. There are other notable companies that were considered pioneering for their time, which are no longer operating. A sample of what were considered to be indestructible companies that are no

[401] Bernaski, "Saving Mickey Mouse," 15.

longer operating are[402]: Compaq, MCI Worldcom, Woolworth's, Pan American World Airways (Pan Am), Standard Oil, General Foods, and Transworld Airlines (TWA). Additionally, the following venerable companies are also either no longer in business today or have a significant reduced footprint from their prominent days:[403] Blockbuster, Kodak, Radio Shack, Circuit City, Tower Records and Polaroid. One of the most notable examples is of Borders bookstore, which filed for bankruptcy in 2011.[404] Hence, for Bernaski to make such a broad brush claim is inappropriate as there were many influential companies during their time that are no longer in existence.

Additionally Bernaski states that if the copyright term is not long enough, that individuals will "refrain from creating" because they will believe that their initial investments would not be "recovered."[405] Bernaski provides very little evidence that this is the case for all content creators; the interview research conducted for this thesis indicates that there are individuals who are motivated at many times, by intangible and non-monetary incentives. Hence, it has been demonstrated through research conducted for this thesis that creativity frequently arises from a non-compensation origin. Bernaski does support CTEA opponents' position by citing that CTEA opponents argue that it was neither the purpose of copyright law, nor the intent of the Framers to "benefit

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[402] "15 most memorable companies that vanished," Nbcnews.com http://www.nbcnews.com/id/41027460/ns/business-us_business/t/most-memorable-companies-vanished/#.Wq28rujwbcc (accessed 8/14/2018).

[403] "10 Famous Companies That Went Bankrupt or No Longer Exist," learn.stashinvest.com. https://learn.stashinvest.com/famous-companies-bankrupt-no-longer-exist (accessed 8/14/2018).

[404] Josh Sanburn, "5 Reasons Borders Went Out of Business (and What Will Take Its Place)," Business.time.com. http://business.time.com/2011/07/19/5-reasons-borders-went-out-of-business-and-what-will-take-its-place/ (accessed 8/14/2018).

[405] Bernaski, "Saving Mickey Mouse," 15-16.

descendants" who the content creators or authors do not or will ever potentially know.[406] Bernaski also supports CTEA opponents' view, that an additional term length for an additional amount, for instance another 20 years may not provide that additional incentive for current or future authors to create additional works.[407]

Bernaski presupposes that which she sets out to prove, by stating, without ample evidence, that she believes the benefits for copyright term extension outweigh those benefits gained from copyright term-length curtailment.[408] Bernaski presents formidable arguments from both opponents and proponents in her analysis; however, those arguments cannot all be applied in a broad-brush manner to all situations impacted by copyright term-length extension. However, there needs to be a more customized solution that addresses various situations differently and more justly.

Bernaski also cites that the Copyright Act of 1976 and the 1988 Berne Convention had increased copyright registrations by 16% and 10% respectively.[409] However, Bernaski erroneously uses the number of copyright registrations to provide evidence that copyright term extensions somehow provide value to society, when in essence, Bernaski is simply showing that number of copyright registrations has increased. Bernaski also specifically states, "it seems that any increase in copyrights can be considered an increase in creativity and beneficial to the public, making more works available."[410] There is no evidence between the causation of the number of registrations and the direct

[406] Bernaski, "Saving Mickey Mouse," 18.

[407] Bernaski, "Saving Mickey Mouse," 20.

[408] Bernaski, "Saving Mickey Mouse," 20-21.

[409] Bernaski, "Saving Mickey Mouse," 21.

[410] Bernaski, "Saving Mickey Mouse," 21.

accumulation or contribution to the expanse of human knowledge. For instance, individuals may have created works far previously in time than 1976 or 1988, however, felt that for whatever reason, they did not wish to have their works formally registered through copyright. The contribution of information to society may not have increased and may have essentially been the same.

What is evident, however, from Bernaski's incomplete analysis, which Bernaski had 15 years of historical data to make, was the omission of the number of increases in registration after the CTEA's enactment. While Bernaski cites Png and Wang's analysis of the increase in movie production from the years of 1991 and 2002.[411] Png and Wang had only 4 years of data from the enactment of 1998 to rely upon and 8 years of data to rely upon prior to the 1998 CTEA enactment to come up with their conclusions. Hence, it is premature to speculate that the CTEA had the sole benefit of increasing movie production. Other global factors such as interest rates, global investments and other global indices may have contributed to the increase that Png and Wang observed; the CTEA may have simply been a correlation as opposed to a causal factor.

Disney's Future Copyright Term Extension Lobbying Prediction

Additionally, the CTEA was initially introduced in 1995 to both the House and Senate and had taken 3 years to be passed.[412] Given the duration that it took to have the CTEA finally pass, one would anticipate that if Disney were to lobby for another copyright term extension, that the legal community would have heard something by now.

[411] Bernaski, "Saving Mickey Mouse," 23.

[412] Ammori, "The Uneasy Case for Copyright Extension," 292.

My research has demonstrated that Disney is not currently lobbying for another copyright term extension during this period; however, there are several more years before the expiry of Mickey Mouse in 2023, within which Disney may decide to begin its lobbying endeavors.

How the U.S. Congress will respond moving forward remains uncertain, given that the past and recent enactments such as The Copyright Act of 1976 and the CTEA's enactment in 1998 addressed the last of the gaping holes between the U.S. and international copyright protection landscape. However, based upon my research thus far, I am forecasting that Disney will be met with considerable opposition, much more so than it was in 1997 and 1998, should Disney move forward with lobbying for another copyright term extension. My reasons for this are because the previous foundations of Disney's argument for copyright term-length extension simply no longer exist.

Appendix I.

Definition of Terms

Assets: Tangible objects or intangible concepts that provide some inherent or monetary value to an individual or organization. Assets can be real such as physical property like buildings, or intangible such as the merchandise value of a name brand of an animation character, such as Mickey Mouse.

Copyright Term Extension Act: CTEA was a Congressional Act passed in 1998 that afforded additionally copyright term protection to works created prior to 1998. Essentially, CTEA has resulted in a stay of any literary, visual or musical works from being released into the public domain for the last twenty years.

Collaboration: An individual or group working in a systematic manner with another individual or group to amicably resolve a disputed issue between the two parties.

Combative: The working or communicative style of an individual or group who has developed animus towards a particular individual or group, which frequently results in either litigation or long-term prejudice against the other.

Copyright: The legal right that automatically subsists upon creation or expression of an idea in any tangible medium. While ideas cannot be protected through copyright, their

expressions in either literary works, choreographic works, pantomimes, movies, music, and paintings all have protection of the author's life plus seventy years after demise.

Curtailment: The act of confining, restricting, or reducing an activity. The process or set of activities that either individually or taken collectively greatly inhibit a particular process or activity.

Infringement: A legal term identifying the act or series of acts where one party infringes on the intellectual property of another, without receiving permission by the injured party. In essence, infringement is the act of copying, creating a derivative work or duplicating another's work for any purpose without the prior consent of the original author of that work.

Innovation: Any advance made in either creative technique, development methodologies, product development, music techniques, art production, technical advancement, structural improvements, visual techniques, motion picture production, animation development and in other creative efforts.

Patent: A U.S. government grant for the patent holder to have an exclusive monopoly for a period of 20 years to prohibit others from making, using, licensing and performing their patented invention. Any party violating the laws protecting patents will be deemed to infringe on a patent and will be subsequently subjected to the appropriate legal injunctions and penalties.

Prospective Analysis: A detailed analysis focused upon assessing the most probable courses of actions that will take place in the future, based upon heavily research data and facts.

Prospective Grants: Grants for future copyrights[413]

Retrospective Analysis: A detailed analysis focused upon assessing the prior outcomes that resulted due to a specific action or set of actions that occurred.

Retrospective Grants: Grants for prior and existing copyrights[414]

Strategy: The overall plan and set of activities that are executed to achieve a specific outcome that is beneficial to an individual or organization.

[413] Ammori, "The Uneasy Case for Copyright Extension," 289.

[414] Ammori, "The Uneasy Case for Copyright Extension," 289.

Appendix II.

Interview Schedule and Survey Questions

#	Interviewee Name	Occupation(s)	Major Works / Representations / Accomplishments
1	Mr. Karl Austen	Hollywood Entertainment Lawyer	Represents Natalie Dormer of *Game of Thrones*, Kristen Wiig, Oscar Nominee and Actress of *Bridesmaids*, Peter Dinklage of *Game of Thrones*, Joseph Gordon-Levitt of *Inception* and *Snowden*, Jude Law, Oscar Nominee and Actor of *GATTACA* and *The Talented Mr. Ripley*, Jonah Hill, Oscar Nominee and *Actor of War Dogs*, *The Wolf of Wall Street* and *21 Jump Street*, Seth MacFarlane, Oscar Nominee, Creator of *Family Guy*, Dame Judi Dench, Oscar Award Winner and Actress of *James Bond's Skyfall,* Robert Forster, Oscar Nominee and Actor of *Jackie Brown*, T.J. Miller of *Silicon Valley*, Hilary Swank, Oscar Award Winner and Actress of *Million Dollar Baby* and *Boys Don't Cry*.
2	Mr. Harlan Böll	Hollywood Publicist, Producer, Author, Business Owner	Mr. Böll is the exclusive publicist for Carol Channing (Tony Award Winner, Golden Globe Award Winner, Oscar Nominee), Valerie Harper (Emmy Winner, Tony Nominee), Tippi Hedren (Lead Actress in Hitchcock's "*The Birds*" and Golden Globe Winner), Rich Little (The most prolific master of voice mimicry), Julie Newmar (The original Catwoman and Tony Award Winner), Loretta Swit (2 Time Emmy Award Winner for her role as Major Margaret "Hot Lips" Houlihan on *M*A*S*H*, Animal Rights Activist, Watercolor Artist), Marion Ross ("Mrs. C" on *Happy Days* and Emmy Nominee), Dawn Wells (Mary Ann from *Gilligan's Island* &

#	Interviewee Name	Occupation(s)	Major Works / Representations / Accomplishments
			Animal Rights Activist) and Anson Williams ("Potsie Weber" of *Happy Days* and Inventor/Entrepreneur), and has been the exclusive publicist for Bob Hope (The Most Honored Entertainer with 1,500 awards and "citations for humanitarian and professional efforts), Florence Henderson ("Mrs. Brady" on *The Brady Bunch),* Debbie Reynolds (of "*Singin' in the Rain*" and Mother of Carrie Fisher), Jack Klugman (The Odd Couple, Three Time Emmy Winner and Golden Globe Winner), John Forsythe (*Dynasty*), Phyllis Diller, Dick Van Patten and Doris Roberts.
3	Ms. Rosemary Carroll	Hollywood Entertainment Law Firm Founder & Lawyer	Cannot disclose per Ms. Carroll's request.
4	Ms. Erika Eleniak	Hollywood Actress, Writer, Producer, Model & Author	*Baywatch*, *Under Siege, E.T., Chasers, The Blob, The Beverly Hillbillies, Playboy Playmate Centerfold*
5	Mr. Josh Escovedo	Entertainment & Intellectual Property Lawyer	Associate at Weintraub Tobin, who has represented and worked with both individual and corporate content creators and copyright holders.
6	Mr. Charles Fox	Hollywood Music Composer, Author	*Grammy Award Winner, Primetime Emmy Award Winner for Best Music Composition - Special Program, Primetime Emmy Award for Outstanding Original Music And Lyrics, Killing Me Softly with His Song* Television Compositions: *Love Boat, The Paper Chase, Laverne and Shirley, Happy Days, Wonder Woman.* Film Compositions: *Barbarella (1968) Oh, God! Book II (1980), 9 to 5 (1980), National Lampoon's European Vacation (1985), Short Circuit 2 (1988), The Gods Must Be Crazy II (1990),*
7	Dr. Bill Pursell	Music Composer, Author, Educator/Teacher	*Our Winter Love (1963)*- #7 on *Billboard's Hot 100.* Collaborations with Johnny Cash, Patsy Cline, Chet Atkins, Eddy Arnold and Marty Robbins. Prof. Emeritus of Music at

#	Interviewee Name	Occupation(s)	Major Works / Representations / Accomplishments
			Belmont University
8	Mr. Rafae "Trent" Zuberi	Musician	Lead vocals and Bass Guitar for Rock Band *Hemi.* Albums: *MotörHEMI: A TRIBUTE TO MOTÖRHEAD*,*Undivided Intentions, The Chosen Ones: LIVE IN THE FIRE, ENDGAME, ATRICK FOR THREE, THE END IS THE BEGINNING, FIRE IN THE SKY*
9	Tom Nabee	Retired Disney Corporation Employee	Retired Disney Corporation Employee
10	Anonymous	Retired ABC / Disney Affiliate Corporation Employee	Retired ABC / Disney Affiliate Corporation Employee

Table 1. Interviewee List.

The list of individuals who were interviewed for this thesis. These names are only of those individuals who were interviewed by Nick H. Kamboj and who reviewed their respective sections for accuracy upon completion.

#	Survey Question	Selections & Possible Responses
1	What is your full name?	1 open text field box for response
2	What is your occupation? (You may select more than 1)	o Actor/Actress o Director o Producer o Lawyer o Agent o Publicist o Musician o Author o Artist o Singer o Educator/Teacher o Inventor o Business Owner o Other Occupation Not Listed

#	Survey Question	Selections & Possible Responses
3	Why did you pursue your current profession? (You may select more than 1)	o Monetary Rewards o Travel Opportunities o Fame o Making New Friends o Intellectual Rewards
4	How much do you know about Copyright?	o Not Much (I have never heard of it) o A little (I have heard of it) o Somewhat (I know what it is) o A Lot (I can thoroughly explain what a Copyright is) o I am an Expert (I can tell the difference between a Copyright, Trademark and Patent)
5	Have you heard about the Copyright Term Extension Act?	o Yes o No
6	Do you know if you are the owner of any copyrights?	o Yes o No o I do not know o The question is unclear
7	Do you get paid royalties?	o Yes o No o I do not know o The question is unclear
8	Do you know the duration of copyright?	o Yes o No o The question is unclear
9	How likely is it that you would recommend participating in Nick H. Kamboj's Harvard University ALM Thesis Research to a friend or colleague?	Respondent to select one radio button. Radio button value starts at 0 and ends at 10. o 0 o 1 o 2

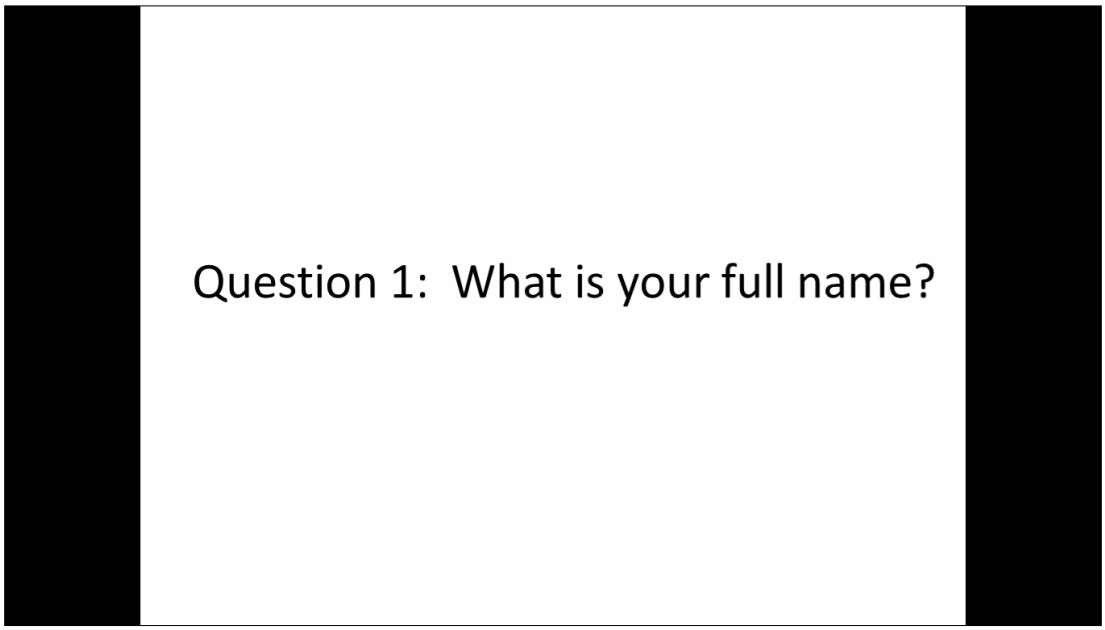
#	Survey Question	Selections & Possible Responses
		○ 3 ○ 4 ○ 5 ○ 6 ○ 7 ○ 8 ○ 9 ○ 10
10	If you are more likely to recommend participating in this survey, who else would you recommend be contacted to participate in this Harvard University Thesis/Study?	3 open text field boxes to provide names of 3 other individuals

Table 2. Survey Questions.

The survey questions that were consistently asked by the Survey Monkey on-line web-enabled software of each of the participants. Although each of the participants received

Appendix III.

CTEA On-Line Survey Responses



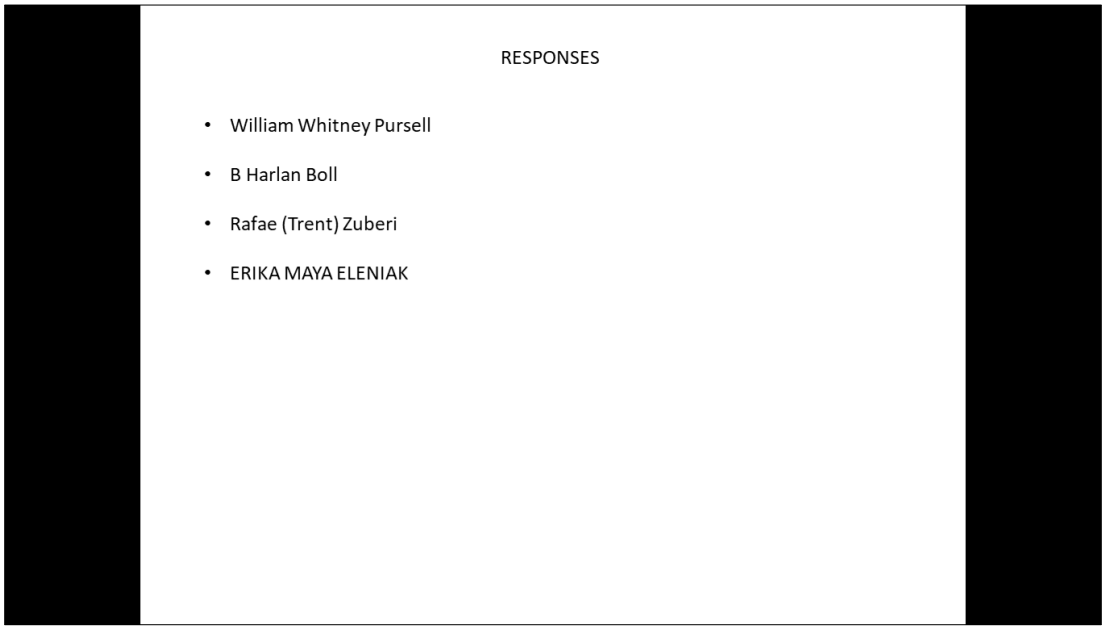
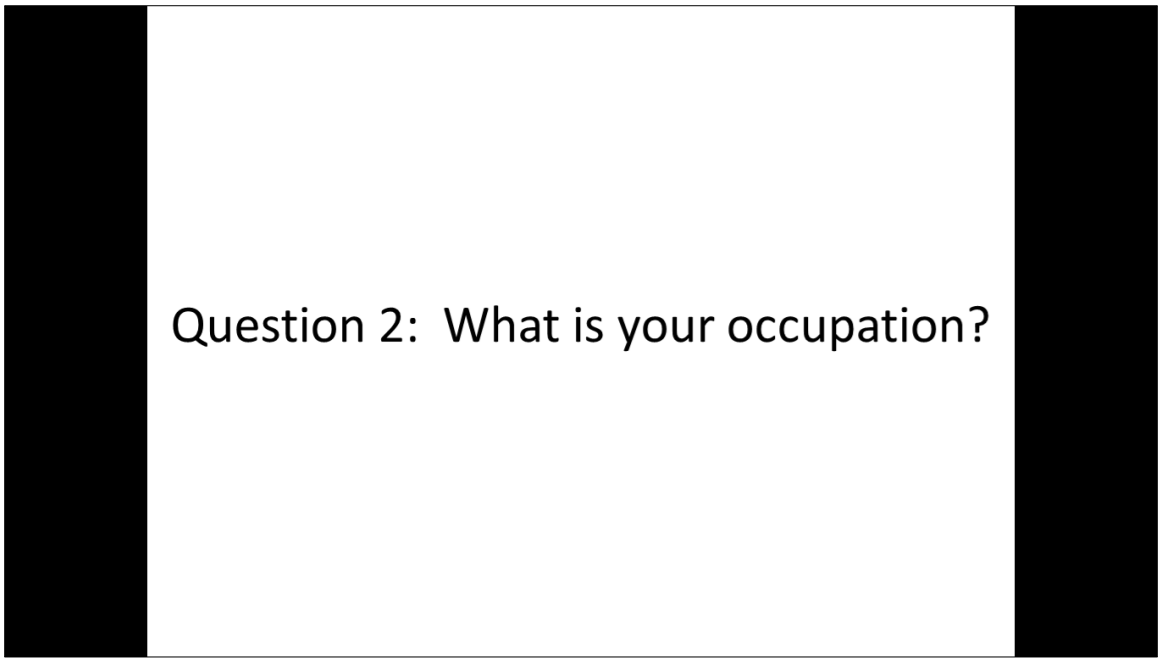


Figure 1. CTEA Survey Results – Question 1

Question 1 of the CTEA survey requests the full name of the respondents?



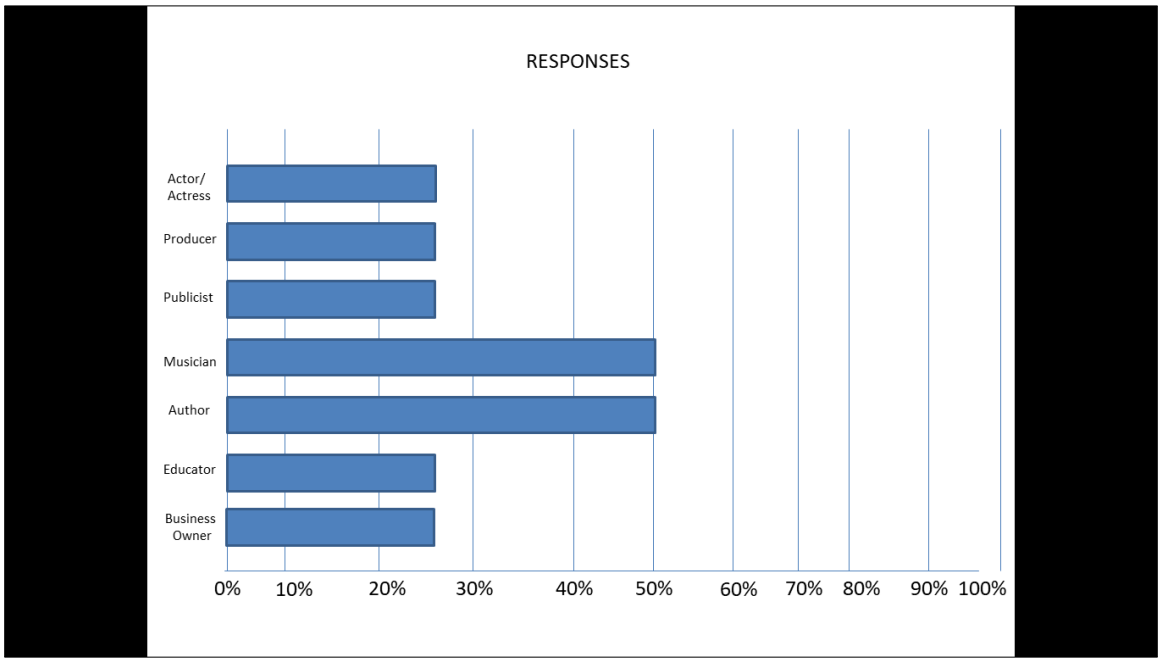


Figure 2. CTEA Survey Results – Question 2

Question 2 of the CTEA survey demonstrating occupation types or roles that respondents occupy

Figure 3. CTEA Survey Results – Question 3

Question 3 of the CTEA survey requesting information regarding motivation to pursue current career profession

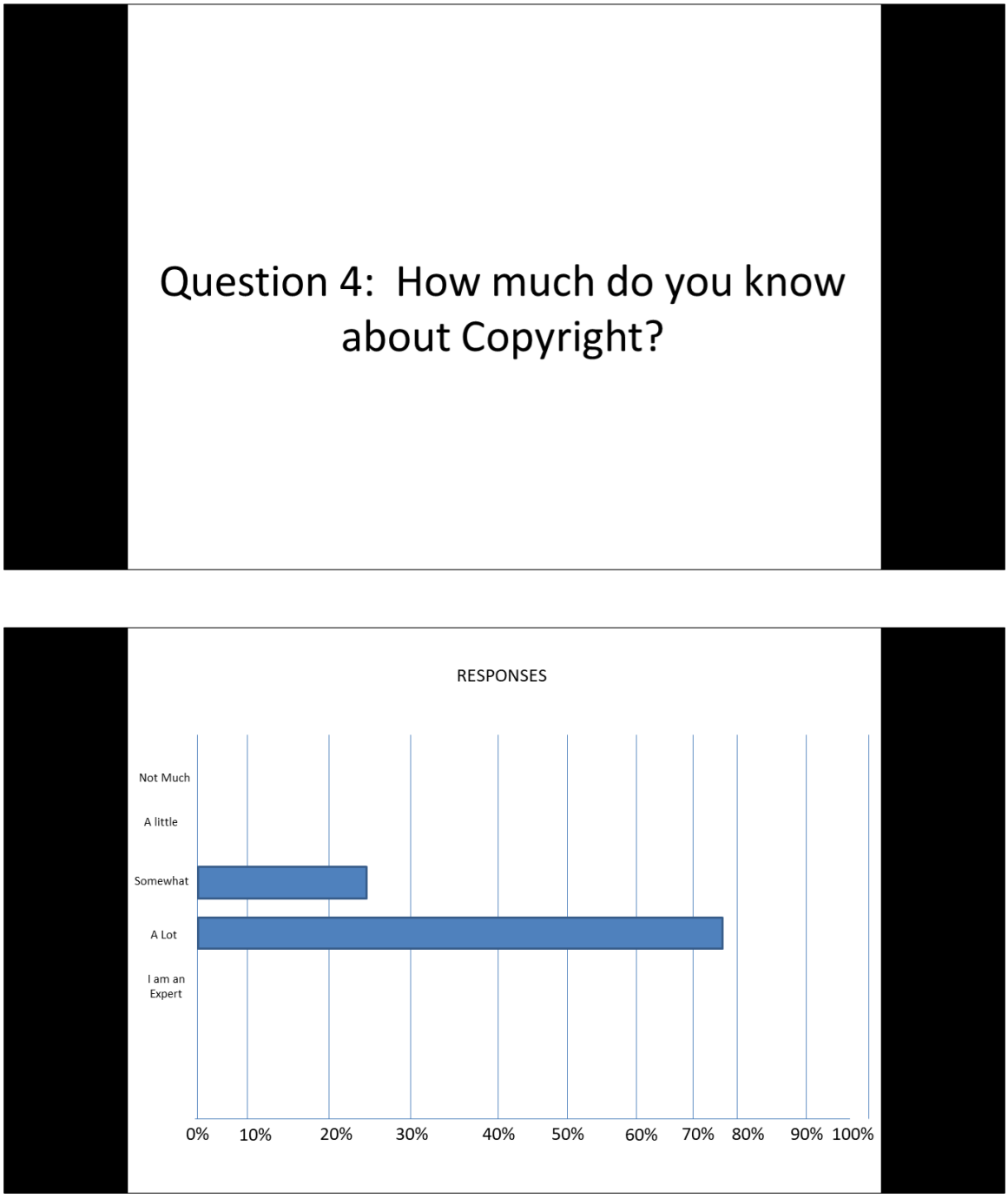


Figure 4. CTEA Survey Results – Question 4

Question 4 of the CTEA survey requesting information regarding the level of copyright fluency that respondents have

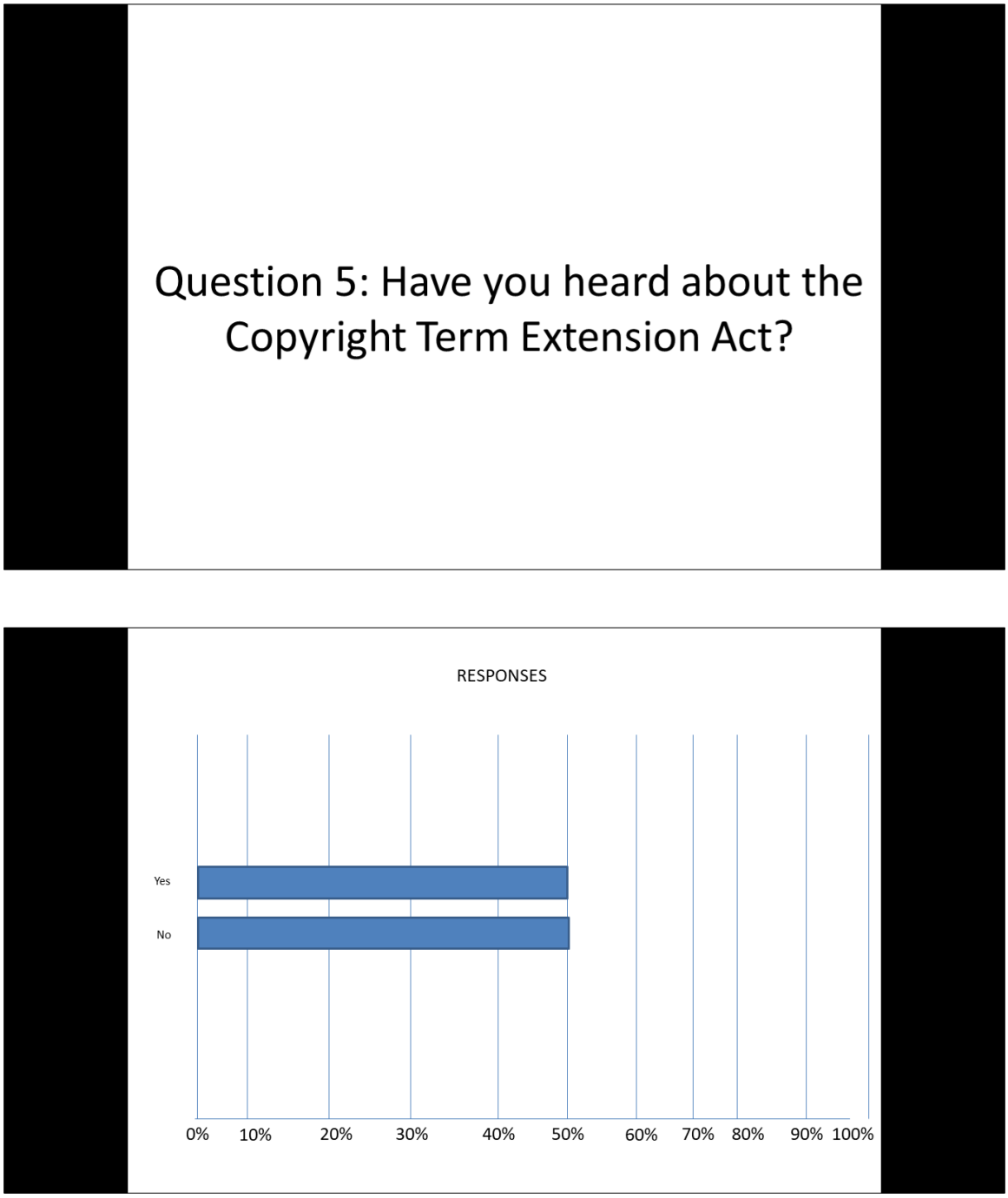


Figure 5. CTEA Survey Results – Question 5

Question 5 of the CTEA survey requesting information regarding the awareness of the CTEA by respondents

Figure 6. CTEA Survey Results – Question 6

Question 6 of the CTEA survey requesting information regarding ownership of copyrights by respondents

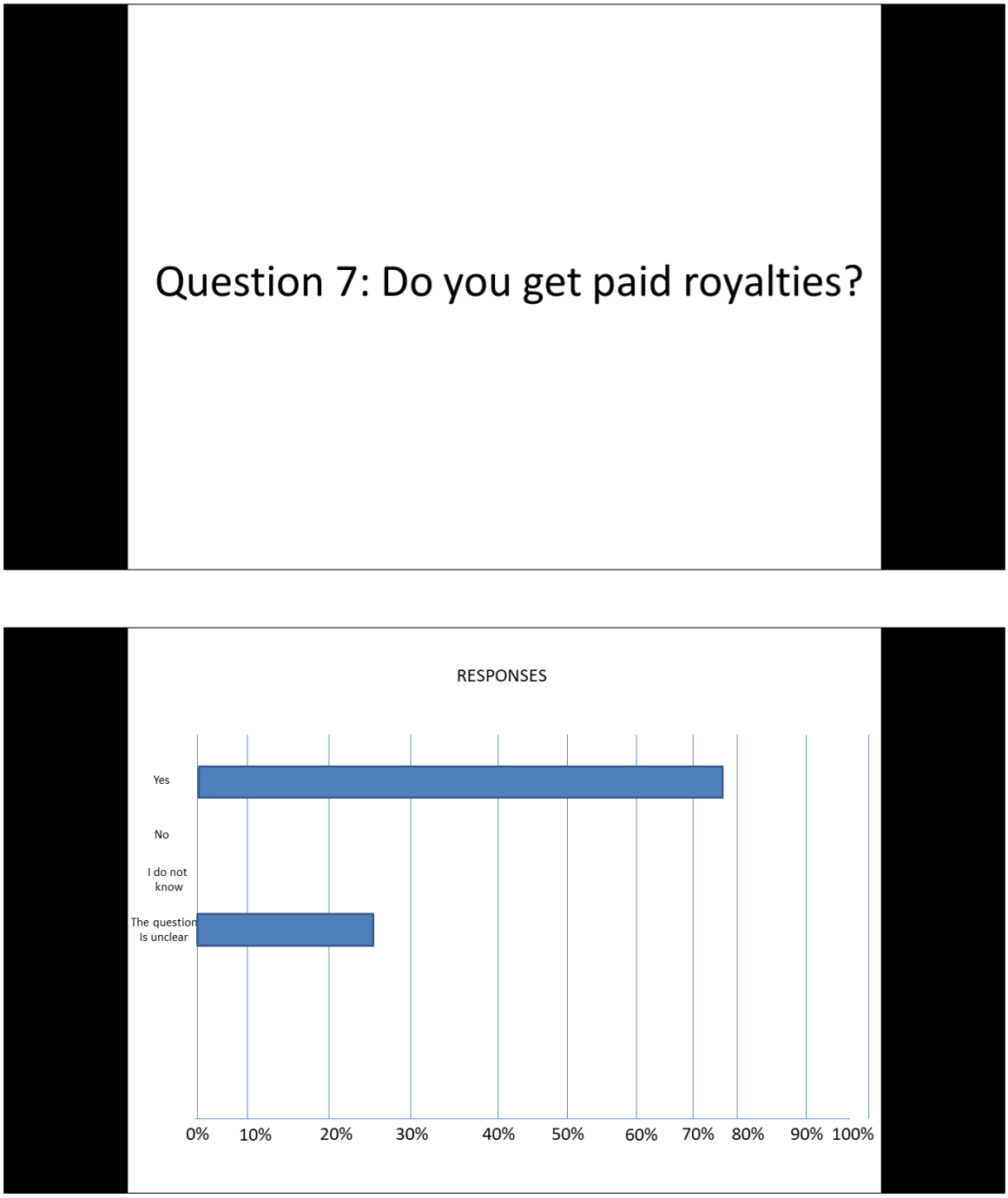


Figure 7. CTEA Survey Results – Question 7

Question 7 of the CTEA survey requesting information regarding royalty payments received by respondents

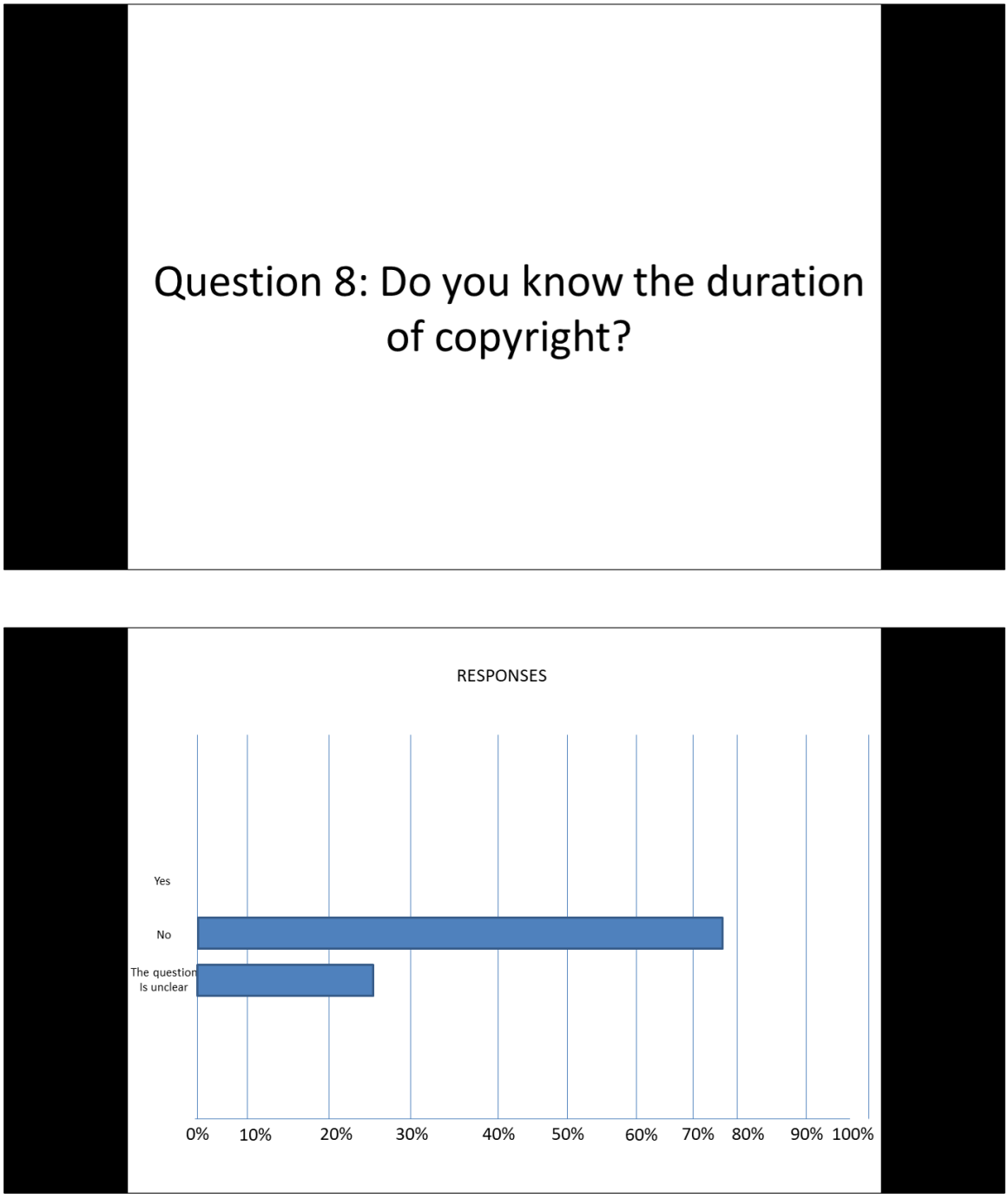


Figure 8. CTEA Survey Results – Question 8

Question 8 of the CTEA survey requesting information regarding respondents' awareness of copyright duration length

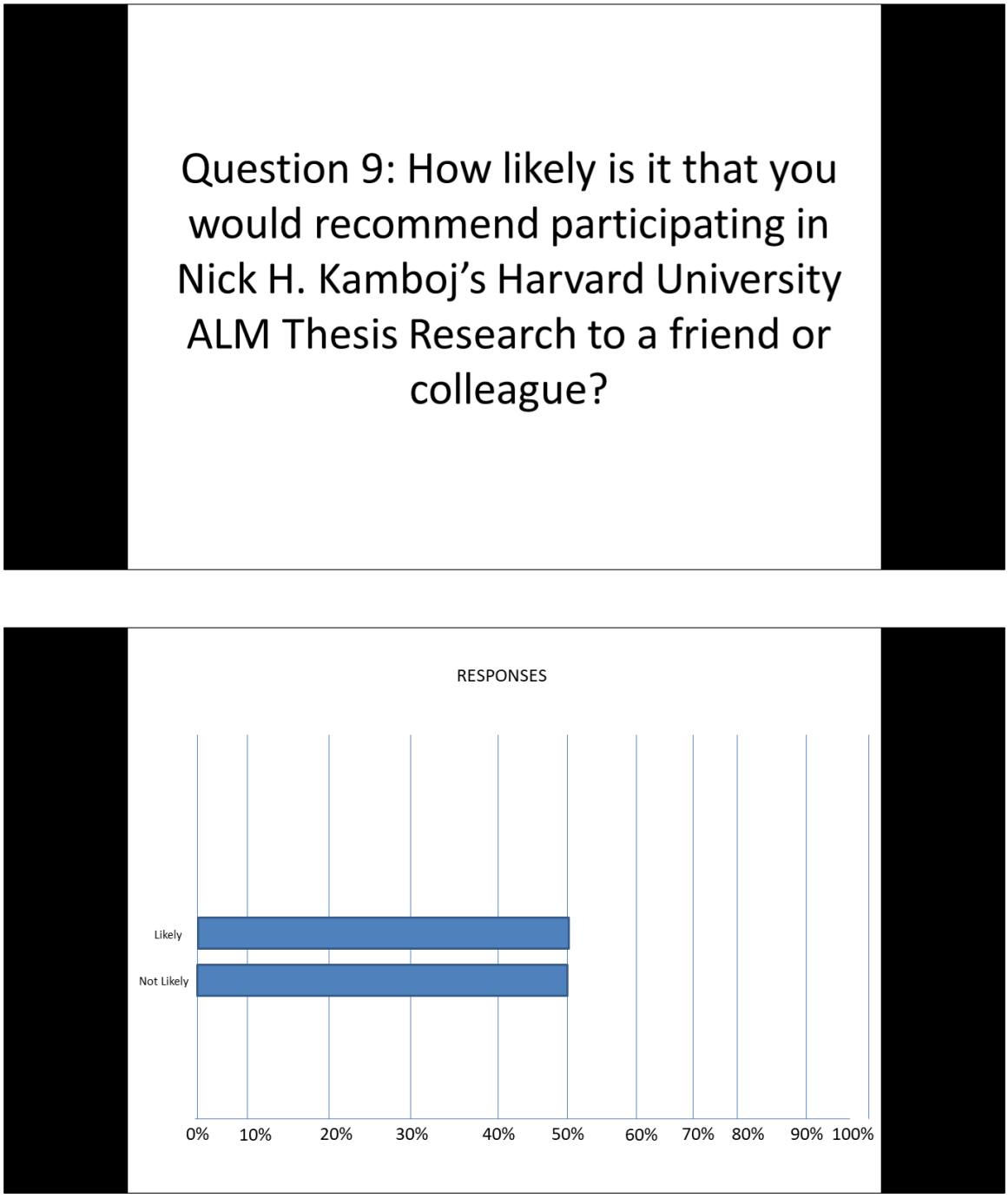


Figure 9. CTEA Survey Results – Question 9

Question 9 of the CTEA survey requesting information regarding How likely is it that respondents would recommend participating in Nick H. Kamboj's Harvard University ALM Thesis Research to a friend or colleague

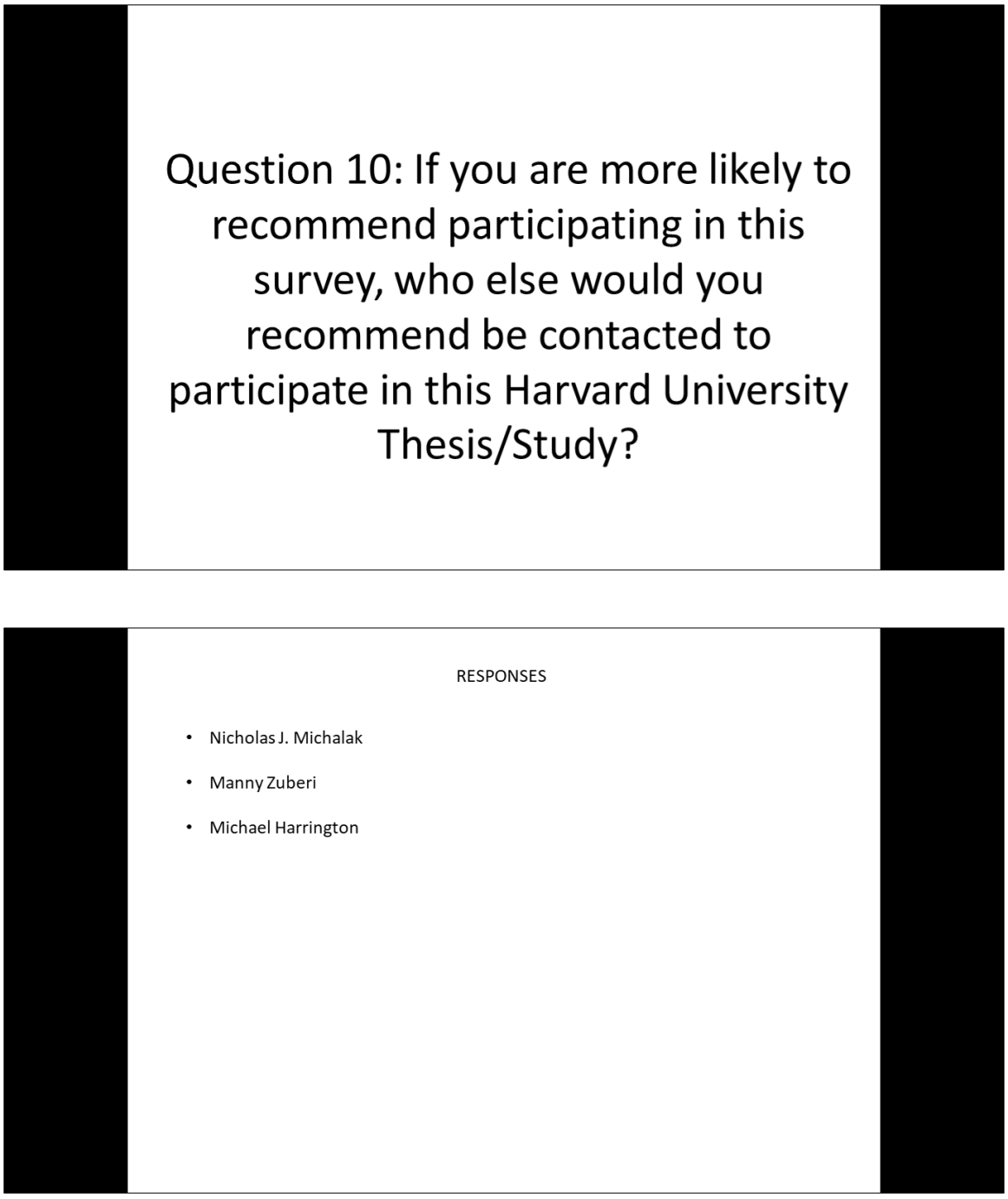


Figure 10. CTEA Survey Results – Question 10

Question 10 of the CTEA survey requesting information regarding respondents' referral to be contacted to participate in this Harvard University Thesis/Study

Appendix IV.

Pertinent Email Communications

1st Version of Email Requesting Interview for Thesis

Hello CELEBRITY/AUTHOR/MUSICAN/ATTORNEY/PUBLICIST NAME HERE,

I hope this message finds you well.

I am a Harvard University Graduate Student writing a Thesis/Book on the Copyright Term Extension Act (CTEA). The formal topic of the Thesis is: "The Disney Corporation's Influence on the Enactment of the Copyright Term Extension Act ("CTEA"), as well as the CTEA's Retrospective and Prospective Impact." Mr. Larry Lessig, Harvard Law School Professor and world-renowned Legal Scholar is serving as my Thesis Director.

I would like to interview you regarding your thoughts on Hollywood, the Entertainment Industry and Copyrights as well as other related topics. Please do not be intimidated by the Thesis title; I am reaching out to you, as I believe that your knowledge of the industry can contribute to my work in multiple ways. The Thesis/Book will be formally published by May 25th, 2018. For your involvement, your name will be credited along with the title of "Contributor" within the Thesis/Book.

In the electronic age, anyone can become anyone on-line, and it is very difficult sometimes to determine genuine inquiry from fallacious ones. As such, I am providing to you in confidence, my legal name, which is Nanha H. Kamboj; however, I go by "Nick." My Harvard Student Id# = 61263071 and my Harvard Extension School ID#=@00693899. If all goes as planned, I will graduate with a ALM (Masters of Liberal Arts) Degree in Legal Studies in May of 2018.

In closing, you may at your discretion, contact Harvard University at the following telephone number to verify my enrollment 617-495-4024. Please let them know that you would like to find out if a student is enrolled at Harvard University and any other questions you may have.

Cheers,
Nick H. Kamboj
Harvard University
Harvard Extension School
Graduate Student

2nd Version of Email Requesting Interview for Thesis

Hello CELEBRITY/AUTHOR/MUSICAN/ATTORNEY/PUBLICIST NAME HERE,

I hope this message finds you well.

I am a Harvard University Graduate Student writing a Thesis/Book. Mr. Larry Lessig, Harvard Law School Professor and world-renowned Legal Scholar is serving as my Thesis Director.

I would like to interview you regarding your thoughts on Hollywood, the Entertainment Industry and other related topics. The Thesis/Book will be formally published by May 25th, 2018. For your involvement, your name will be credited along with the title of "Contributor" within the Thesis/Book.

In closing, you may at your discretion, contact Harvard University at the following telephone number to verify my enrollment 617-495-4024. Please let them know that you would like to find out if a student is enrolled at Harvard University and any other questions you may have.

I look forward to your response.

Cheers,
Nick H. Kamboj
Harvard University
Harvard Extension School
Graduate Student
ALM Legal Studies 2018

Appendix V.

Individuals Contacted to Be Interviewed

#	Contact Name	Associated With or Represents Following Celebrity / Musician / Actor / Actress / Author
1 2	Leonard Hirshan Bruce Ramer	Clint Eastwood
3 4	Stan Rosenfeld Jason Sloane	Morgan Freeman
5	Nina Shaw	James Earl Jones
6 7	Megan Senior Robert Offer	Ryan Gossling
8	Erika Eleniak	Erika Eleniak
9	Ina Treciokas	Harrison Ford
10	Robert M. Lange	Mark Hamill
11 12	Danica Smith Jay Rosenthal	Dave Bautista
13	Robin Baum	Jared Leto
14	Perla Aboulache	Edward James Olmos
15	(Rafae) Trent Zuberi	(Rafae) Trent Zuberi
16 17	Simon Halls Mark Gochman	Annette Bening
18	Sobel Law	Julianne Moore
19 20	Melanie Greene Or Kesha Williams Risa Shapiro Or Dar Rollins	David Duchovny
21	Peter Nelson	Tea Leoni
22 23	Constance Freiberg Kevin Huvane Or Peter Levine	Gillian Anderson
24	Steve Younger	Natascha Mcelhone
25	Mark Armstrong	Evan Handler
26	J.R. Mcginnis	Pamela Adlon
27 28	Dara Gordon Howard Fishman	Winona Ryder
29 30 31 32	Heidi Lopata Peter Hess Jamieson Baker Kevin Marks	Demi Moore
33 34	Joel Lubin Kathleen Flaherty	Ashton Kutcher
35	Andrea Braff	Henry Cavill
36	Cindy Morgan	Cindy Morgan

37	Dan Schor	Dan Schor
38	Kristin Konig	Haley Joel Osment
39 40 41	Carly Morgan Bradley Singer Karl Austen	Fred Savage
42	Purepublicity@Aol.Com	Kirk Cameron
43	Cece Yoke	Alyssa Milano
44	Adam Kersh	Rose Mcgowan
45	Leslie Sloane	Shannon Doherty
46	Nate Steadman	Henry Thomas
47	Christine Tripicchio	Jason Bateman
48	Kelly Bush Novak	Kate Beckinsale
49	Http://Www.Estevezsheenprods.Com	Charlie Sheen
50	Ryan Goldhar	Yaphet Kotto
51	Chris Smith	Lindsay Lohan
52	Annett Wolf	Holly Hunter
53	Maggie Bryant	Ray Romano
54	Cece Yoke	Patricia Heaton
55	Megan Moss	Margot Robbie
56	Allison Douglas	Laura Dern
57	Phil Viardo	Christopher Knight
58	Mike Eisenstadt	Barry Williams
59	Wes Stevens	Mike Lookinland
60	Anthony Anzaldo	Susan Olsen
61	Dana Supnick Guidoni	Priyanka Chopra
62	Jennifer Allen	Matt Damon
63	Brooke Blumberg	Ben Affleck
64	Sally Fischer	Jeremy Irons
65	Barry Hirsch	Val Kilmer
66	Paul Nelson	Sharon Stone
67	Claudia Greene	Tara Reid
68	Thora Birch	Thora Birch
69	Cindy Guagenti	Sean William Scott
70	Judy Katz	David Hassellhoff
71	Cheryl Maisel	Robin Wright
72	B. Harlan Böll	Dee Wallace
73 74	Ann Gurrola Pascval Loperena	Pamela Anderson
75	Jerry Shandrew	Alexandra Paul
76	Trent Lott	Trent Lott
77	Jonathan@Identityagencygroup.Com	Waleed Akhtar
78	Bebe Lerner	Emily Blunt
79	Megan Moss	Ewan Mcgregor
80	Donna Mills	Kristin Scott Thomas
81	Lindsay Galin	Liam Neeson
82	Brett Rutenberg Karl Austen	Maggie Grace
83	Steve Lovett	Jonathan Gries
84	Contact@Europacorp.Com	Luc Besson

85	Rosemary Carroll	Rosemary Carroll
86	Jennifer Hebert	Gena Lee Nolin
87	Bobby Moses	Angie Everhart
88	A. Garman	Chris Pratt
89	Steve Warren	Jennifer Lawrence
90	Nicole Caruso	Bradley Cooper
91	Heather@Rpmediaco.Com	Kurt Russell
92	Graehme Morphy	Goldie Hawn
93	Howard Fishman	Noomi Rapace
94	Marc Chamin	Glenn Close
95	Dr. Bill Pursell	Dr. Bill Pursell
96	Charles Fox	Charles Fox
97	Joan Severance	Joan Severance
98	Chaz Bono	Chaz Bono

Table 3. Interview Contact List.

Nick H. Kamboj personally made contact with approximately 100 individuals either via email or telephone to participate in this Thesis study.

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