ArtI.S8.C8.1.1 Origins and Scope of the Power

Article I, Section 8, Clause 8:

[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.

This clause is the foundation upon which the national patent and copyright laws rest, although it uses neither of those terms. As to patents, modern legislation harks back to the Statute of Monopolies of 1624, whereby Parliament endowed inventors with the sole right to their inventions for fourteen years.[1] Copyright law, in turn, traces back to the Statute of Anne of 1710, which secured to authors of books sole publication rights for designated periods.[2] These English statutes curtailed the royal prerogative to bestow monopolies to Crown favorites over works and products they did not create and many of which had long been enjoyed by the public.[3]Informed by these precedents and colonial practice, the Framers restricted the power to confer monopolies over the use of intellectual property through the Copyright and Patent Clause. For example, the exclusive Right conferred to the writings of authors and the discoveries of inventors must be time limited. Another fundamental limitation inheres in the phrase [t]o promote the Progress of Science and useful Arts: To merit copyright protection, a work must exhibit originality, embody some creative expression;[4] to merit patent protection, an invention must be an innovative advancement, push back the frontiers.[5] Also deriving from the phrase promotion of science and the arts is the issue of whether Congress may only provide for grants of protection that broaden the availability of new materials.[6]

Acting within these strictures, Congress has broad leeway to determine how best to promote creativity and utility through temporary monopolies. It is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors, the Court has said.[7] Satisfied in Eldred v. Ashcroft that the Copyright Term Extension Act did not violate the limited times prescription, the Court saw the only remaining question to be whether the enactment was a rational exercise of the legislative authority conferred by the Copyright Clause.[8] The Act, the Court concluded, reflects judgments of a kind Congress typically makes, judgments we cannot dismiss as outside the Legislature's domain.[9] Moreover, the duration of copyrights and patents may be prolonged and, even then, the limits may not be easily enforced. The protection period may extend well beyond the life of the author or inventor.[10] Also, in extending the duration of existing copyrights and patents, Congress may protect the rights of purchasers and assignees.[11]

The copyright and patent laws do not, of their own force, have any extraterritorial operation.[12]