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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GOLAN ET AL. *v.* HOLDER, ATTORNEY GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 10–545. Argued October 5, 2011—Decided January 18, 2012

The Berne Convention for the Protection of Literary and Artistic Works (Berne), which took effect in 1886, is the principal accord governing international copyright relations. Berne's 164 member states agree to provide a minimum level of copyright protection and to treat authors from other member countries as well as they treat their own. Of central importance in this case, Article 18 of Berne requires countries to protect the works of other member states unless the works' copyright term has expired in either the country where protection is claimed or the country of origin. A different system of transnational copyright protection long prevailed in this country. Throughout most of the 20th century, the only foreign authors eligible for Copyright Act protection were those whose countries granted reciprocal rights to American authors and whose works were printed in the United States. Despite Article 18, when the United States joined Berne in 1989, it did not protect any foreign works lodged in the U. S. public domain, many of them works never protected here. In 1994, however, the Agreement on Trade-Related Aspects of Intellectual Property Rights mandated implementation of Berne's first 21 articles, on pain of enforcement by the World Trade Organization.

In response, Congress applied the term of protection available to U. S. works to preexisting works from Berne member countries. Section 514 of the Uruguay Round Agreements Act (URAA) grants copyright protection to works protected in their country of origin, but lacking protection in the United States for any of three reasons: The United States did not protect works from the country of origin at the time of publication; the United States did not protect sound recordings fixed before 1972; or the author had not complied with certain

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U. S. statutory formalities. Works encompassed by §514 are granted the protection they would have enjoyed had the United States maintained copyright relations with the author's country or removed formalities incompatible with Berne. As a consequence of the barriers to U. S. copyright protection prior to §514's enactment, foreign works "restored" to protection by the measure had entered the public domain in this country. To cushion the impact of their placement in protected status, §514 provides ameliorating accommodations for parties who had exploited affected works before the URAA was enacted.

Petitioners are orchestra conductors, musicians, publishers, and others who formerly enjoyed free access to works §514 removed from the public domain. They maintain that Congress, in passing §514, exceeded its authority under the Copyright Clause and transgressed First Amendment limitations. The District Court granted the Attorney General's motion for summary judgment. Affirming in part, the Tenth Circuit agreed that Congress had not offended the Copyright Clause, but concluded that §514 required further First Amendment inspection in light of *Eldred* v. *Ashcroft*, 537 U. S. 186. On remand, the District Court granted summary judgment to petitioners on the First Amendment claim, holding that §514's constriction of the public domain was not justified by any of the asserted federal interests. The Tenth Circuit reversed, ruling that §514 was narrowly tailored to fit the important government aim of protecting U. S. copyright holders' interests abroad.

Held:

1. Section 514 does not exceed Congress' authority under the Copyright Clause. Pp. 13–23.

(a) The text of the Copyright Clause does not exclude application of copyright protection to works in the public domain. *Eldred* is largely dispositive of petitioners' claim that the Clause's confinement of a copyright's lifespan to a "limited Tim[e]" prevents the removal of works from the public domain. In *Eldred*, the Court upheld the Copyright Term Extension Act (CTEA), which extended, by 20 years, the terms of existing copyrights. The text of the Copyright Clause, the Court observed, contains no "command that a time prescription, once set, becomes forever 'fixed' or 'inalterable,' " and the Court declined to infer any such command. 537 U. S., at 199. The construction petitioners tender here is similarly infirm. The terms afforded works restored by §514 are no less "limited" than those the CTEA lengthened. Nor had the "limited Tim[e]" already passed for the works at issue here—many of them works formerly denied any U. S. copyright protection—for a period of exclusivity must begin before it may end. Petitioners also urge that the Government's position would allow Con-

gress to legislate perpetual copyright terms by instituting successive "limited" terms as prior terms expire. But as in *Eldred*, such hypothetical misbehavior is far afield from this case. In aligning the United States with other nations bound by Berne, Congress can hardly be charged with a design to move stealthily toward a perpetual copyright regime. Pp. 13–15.

(b) Historical practice corroborates the Court's reading of the Copyright Clause to permit the protection of previously unprotected works. In the Copyright Act of 1790, the First Congress protected works that had been freely reproducible under State copyright laws. Subsequent actions confirm that Congress has not understood the Copyright Clause to preclude protection for existing works. Several private bills restored the copyrights and patents of works and inventions previously in the public domain. Congress has also passed generally applicable legislation granting copyrights and patents to works and inventions that had lost protection. Pp. 15–19.

(c) Petitioners also argue that §514 fails to "promote the Progress of Science" as contemplated by the initial words of the Copyright Clause. Specifically, they claim that because §514 affects only works already created, it cannot meet the Clause's objective. The creation of new works, however, is not the sole way Congress may promote "Science," *i.e.,* knowledge and learning. In *Eldred*, this Court rejected a nearly identical argument, concluding that the Clause does not demand that each copyright provision, examined discretely, operate to induce new works. Rather the Clause "empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause." 537 U. S., at 222. Nothing in the text or history of the Copyright Clause, moreover, confines the "Progress of Science" exclusively to "incentives for creation." Historical evidence, congressional practice, and this Court's decisions, in fact, suggest that inducing the dissemination of existing works is an appropriate means to promote science. Pp. 20–22.

(d) Considered against this backdrop, §514 falls comfortably within Congress' Copyright Clause authority. Congress had reason to believe that a well-functioning international copyright system would encourage the dissemination of existing and future works. And testimony informed Congress that full compliance with Berne would expand the foreign markets available to U. S. authors and invigorate protection against piracy of U. S. works abroad, thus benefitting copyright-intensive industries stateside and inducing greater investment in the creative process. This Court has no warrant to reject Congress' rational judgment that exemplary adherence to Berne would serve the objectives of the Copyright Clause. Pp. 22–23.

2. The First Amendment does not inhibit the restoration author-

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ized by §514. Pp. 23–32.

(a) The pathmarking *Eldred* decision is again instructive. There, the Court held that the CTEA's enlargement of a copyright's duration did not offend the First Amendment's freedom of expression guarantee. Recognizing that some restriction on expression is the inherent and intended effect of every grant of copyright, the Court observed that the Framers regarded copyright protection not simply as a limit on the manner in which expressive works may be used, but also as an "engine of free expression." 537 U. S., at 219. The "traditional contours" of copyright protection, *i.e.*, the "idea/expression dichotomy" and the "fair use" defense, moreover, serve as "built-in First Amendment accommodations." *Ibid.* Given the speech-protective purposes and safeguards embraced by copyright law, there was no call for the heightened review sought in *Eldred.* The Court reaches the same conclusion here. Section 514 leaves undisturbed the idea/expression distinction and the fair use defense. Moreover, Congress adopted measures to ease the transition from a national scheme to an international copyright regime. Pp. 23–26.

(b) Petitioners claim that First Amendment interests of a higher order are at stake because they—unlike their *Eldred* counterparts—enjoyed "vested rights" in works that had already entered the public domain. Their contentions depend on an argument already considered and rejected, namely, that the Constitution renders the public domain largely untouchable by Congress. Nothing in the historical record, subsequent congressional practice, or this Court's jurisprudence warrants exceptional First Amendment solicitude for copyrighted works that were once in the public domain. Congress has several times adjusted copyright law to protect new categories of works as well as works previously in the public domain. Section 514, moreover, does not impose a blanket prohibition on public access. The question is whether would-be users of certain foreign works must pay for their desired use of the author's expression, or else limit their exploitation to "fair use" of those works. By fully implementing Berne, Congress ensured that these works, like domestic and most other foreign works, would be governed by the same legal regime. Section 514 simply placed foreign works in the position they would have occupied if the current copyright regime had been in effect when those works were created and first published. Pp. 26–30.

609 F. 3d 1076, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, and SOTOMAYOR, JJ., joined. BREYER, J., filed a dissenting opinion, in which ALITO, J., joined. KAGAN, J., took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 10–545

LAWRENCE GOLAN, ET AL., PETITIONERS *v.* ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January 18, 2012]

JUSTICE GINSBURG delivered the opinion of the Court.

The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention or Berne), which took effect in 1886, is the principal accord governing international copyright relations. Latecomer to the international copyright regime launched by Berne, the United States joined the Convention in 1989. To perfect U. S. implementation of Berne, and as part of our response to the Uruguay Round of multilateral trade negotiations, Congress, in 1994, gave works enjoying copyright protection abroad the same full term of protection available to U. S. works. Congress did so in §514 of the Uruguay Round Agreements Act (URAA), which grants copyright protection to preexisting works of Berne member countries, protected in their country of origin, but lacking protection in the United States for any of three reasons: The United States did not protect works from the country of origin at the time of publication; the United States did not protect sound recordings fixed before 1972; or the author had failed to comply with U. S. statutory formalities (formalities Congress no longer requires as prerequisites to copyright protection).

The URAA accords no protection to a foreign work after

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