

Troll Co. v. Uneeda Doll Co.: A Clarification of the Requirements for Reliance Party Status

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I. OVERVIEW

In this copyright infringement appeal, the United States Court of Appeals for the Second Circuit upheld a decision by the United States District Court for the Southern District of New York that enjoined Uneeda Doll Company (Uneeda) from manufacturing, distributing, or selling a line of troll dolls because Troll Co. had successfully restored its copyright on the dolls.¹ The first troll doll was created by Thomas Dam in Denmark in the late 1950s.² Dam then founded Dam Things Establishment in 1962.³ In 1963 or 1964, Dam Things Establishment licensed Uneeda Doll Co., Inc. (UDCI) to produce a line of troll dolls, called Wish-niks, and in 1965, Dam Things Establishment obtained a U.S. copyright for the troll doll.⁴ Although the Danish copyright is still valid, the U.S. copyright was invalidated in 1965 because there was no proper notice of copyright on the dolls.⁵ However, in 1994, Congress enacted the Uruguay Round Agreements Act (URAA), which allows restoration of copyrights on foreign works that fell into the public domain

1. *Troll Co. v. Uneeda Doll Co.*, 483 F.3d 150, 154 (2d Cir. 2007).
 2. *Id.* at 152.
 3. *Id.*
 4. *Id.* at 152-53.
 5. *Id.*

in the United States because of a failure to comply with a formality.⁶ On January 1, 1996, the troll doll's copyright was restored pursuant to the URAA.⁷ After Thomas Dam's death in 1989, his heirs granted Troll Co., a Danish company, the exclusive right to exploit and license troll dolls.⁸ UDCI continued to sell troll dolls until 1996.⁹ In 1996, UDCI sold all of its assets to Uneeda. Uneeda then stopped selling troll dolls until 2005, when it began selling Wish-niks to Wal-Mart.¹⁰

Troll Co. brought the copyright infringement action in the United States District Court for the Southern District of New York on September 7, 2005, seeking injunctive and monetary relief.¹¹ Troll Co. then gave Uneeda written notice that it would enforce its copyright on October 18, 2005.¹² The district court found that Uneeda's sales of Wish-niks threatened irreparable harm to Troll Co., that Troll Co. was likely to succeed on its copyright infringement claim, and that Uneeda could not have reliance party status where there was no continuous activity of infringing acts before the copyright was restored.¹³ The court issued a preliminary injunction to enjoin Uneeda from manufacturing, distributing, or selling Wish-niks.¹⁴ Uneeda then appealed to the Second Circuit arguing that Troll Co. did not have ownership of the restored copyright and that Uneeda met reliance party status.¹⁵ The Second Circuit *held* that (1) authorship of a restored copyright is to be decided based on the law of the source country, (2) judicial estoppel does not prevent a party from arguing a different theory of ownership, and (3) where a party had (a) ceased exploitation of a restored work for close to a decade even though acts were done that would have infringed the restored copyright before the source country became an eligible country of the URAA, and (b) planned to sell items manufactured after the source country became an eligible country of the URAA, the party cannot qualify as a reliance party. *Troll Co. v. Uneeda Doll Co.*, 483 F.3d 150, 155, 159, 160 (2d Cir. 2007).

6. *Id.* at 153.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 154.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

II. BACKGROUND

Before the enactment of the Berne Convention Implementation Act (BCIA) in 1988 and the URAA in 1994, courts held strictly to the formalities of traditional U.S. copyright law when applying U.S. copyrights to foreign works.¹⁶ However, many U.S. copyrighted works were exploited abroad resulting in hundreds of millions of dollars in losses per year.¹⁷ In order to ensure protection of U.S. copyrights abroad, Congress agreed to enforce foreign copyrights that entered the public domain in the United States by enacting the BCIA, which implemented the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in the United States, and the URAA, which implemented the Uruguay round of the General Agreement on Tariffs and Trade (GATT).¹⁸ Berne Convention signatories must recognize copyrights of all other member countries.¹⁹ The Uruguay Round of the GATT is an international agreement that establishes, among many other policies, a unified set of copyright rules for all WTO countries.²⁰ As per the GATT, the URAA allows copyrights that entered the public domain in the United States to be restored so that previously exploited foreign works are no longer exploited.²¹

The constitutionality of the URAA has been challenged on grounds of violating the Copyright and Patent Clause, the Free Speech Clause, and the Due Process Clause of the United States Constitution.²² Although it has been determined that the restorative effects of the URAA do not violate the Copyright and Patent Clause or the Due Process Clause, courts disagree whether the URAA violates the Free Speech Clause, because once works enter the public domain, everyone has a First Amendment right to use those works artistically.²³ Therefore, Congress may need a compelling reason to justify the URAA, or at least show that the URAA is narrowly tailored to serve a significant government interest sufficient to supersede the First Amendment.

16. See, e.g., *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1205 (10th Cir. 2005); *Basevi v. Edward O'Toole Co.*, 26 F. Supp. 41, 45 (S.D.N.Y. 1939); see also *Scandia House Enters., Inc. v. Dam Things Establishment*, 243 F. Supp. 450, 454 (D.D.C. 1965).

17. 140 CONG. REC. E2263-03, E2263 (1994).

18. *Id.* at E2264.

19. Berne Convention for the Protection of Literary and Artistic Works art. 1, July 24, 1971, available at http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P82_10336.

20. 140 CONG. REC. E2263-03, E2264.

21. 17 U.S.C. § 104A (2000); see *Scandia*, 243 F. Supp. at 455.

22. *Golan v. Gonzales*, No. 05-1259, 2007 WL 2547974, at *16 (10th Cir. Sept. 4, 2007); *Luck's Music Library, Inc. v. Ashcroft*, 321 F. Supp. 2d 107, 108-09, 112-13 (D.D.C. 2004).

23. *Golan*, 2007 WL 2547974, at *16; *Luck's Music*, 321 F. Supp. 2d at 112-13, 118-19.

A. Preliminary Injunction for Copyright Infringement

A party alleging copyright infringement may seek a preliminary injunction in order to stop the alleged infringing activity while court proceedings continue.²⁴ In the noted case, the Second Circuit followed the lower court's decision when determining the requirements for a preliminary injunction in a copyright infringement case:

In order to obtain a preliminary injunction, [a] plaintiff . . . must demonstrate "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief."²⁵

Irreparable harm is generally presumed where there is a likelihood of success on the merits for copyright infringement because of a clearly resulting confusion in the marketplace.²⁶ However, to decide on the likelihood of success or fair grounds for litigation, the court is forced to look at the elements of copyright infringement.²⁷

B. Copyright Infringement and the Effects of the URAA on Ownership

Copyright infringement requires (1) that the party alleging infringement have ownership of the copyright and (2) that the alleged infringing party is copying original elements of the copyrighted work.²⁸ With the enactment of the URAA, courts have shown ownership of restored copyrights of foreign works based on the law of the source country.²⁹ Courts have tested whether the alleged infringing party is

24. *Golan*, 2007 WL 2547974, at *16.

25. *Troll Co. A/S v. Uneeda Doll Co.*, 400 F. Supp. 2d 601, 603 (S.D.N.Y. 2005) (quoting *Hasbro, Inc. v. Lanard Toys, Ltd.*, 858 F.2d 70, 73 (2d Cir. 1988)).

26. *See Apple Computer, Inc. v. Formula Int'l Inc.*, 725 F.2d 521, 525-26 (9th Cir. 1984); *Troll Co.*, 400 F. Supp. 2d at 603.

27. *See Troll Co.*, 400 F. Supp. 2d at 603.

28. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *Dam Things from Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 561 (3d Cir. 2002).

29. 17 U.S.C. § 104A(h)(8) (2000) ("The 'source country' of a restored work is—(A) a nation other than the United States; (B) in the case of an unpublished work- (i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or (ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and (C) in the case of a published work- (i) the eligible country in which the work is first published, or (ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work."); *see also Alameda Films SA de CV v. Authors Rights Restoration Corp.*, 331 F.3d 472, 477 (5th Cir. 2003); *Films by Jove, Inc. v. Berov*, 154 F. Supp. 2d 432, 448 (E.D.N.Y. 2001).

copying the copyright owner by analyzing whether the infringing work is substantially similar to the protected work.³⁰ This substantially similar test results in the court considering (1) whether there are concrete elements that can be examined objectively to show similarity and (2) whether an ordinary, lay person would assume the two works to be substantially similar.³¹

C. *Reliance Parties*

Congress, through the URAA, allows for parties who have been infringing a restored copyright to continue limited infringing acts if they qualify for reliance party status.³² If a party is eligible for reliance party status, the party has a twelve-month time period to sell off its existing inventory from the time that notice of enforcement is given by the copyright holder.³³ The URAA, codified at 17 U.S.C. § 104A, confers reliance party status on

any person who—(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts; (B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or (C) . . . is a successor, assignee, or licensee of that person.³⁴

Despite the text of the statute, some courts in prior cases tested whether the infringing acts were continuous through the registration date or the restoration date as opposed to the date of eligibility of the source country.³⁵

30. See, e.g., *Dam Things from Denmark*, 290 F.3d at 561; *Robert R. Jones Assocs., Inc. v. Nino Homes*, 858 F.2d 274, 276-77 (6th Cir. 1988); *Eden Toys, Inc. v. Marshall Field & Co.*, 675 F.2d 498, 500 (2d Cir. 1982).

31. See *Dam Things from Denmark*, 290 F.3d at 562; *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 485 (9th Cir. 2000); *Herzog v. Castle Rock Entm't*, 193 F.3d 1241, 1257 (11th Cir. 1999).

32. 17 U.S.C. § 104A(d)(2).

33. *Id.*; *Dam Things from Denmark v. Russ Berrie & Co.*, 173 F. Supp. 2d 277, 285 (D.N.J. 2001); *Hoepker v. Kruger*, 200 F. Supp. 2d 340, 346 (S.D.N.Y. 2002).

34. 17 U.S.C. § 104A(h)(4).

35. *Compare Películas y Videos Internacionales, S.A. de C.V. v. Harriscope of L.A., Inc.*, 302 F. Supp. 2d 1131, 1137 (C.D. Cal. 2004) (holding that the defendants qualified as reliance parties because they began infringing acts before registration of the copyright on January 1, 1996 and continued infringing afterwards), and *Dam Things from Denmark*, 173 F. Supp. 2d at 285 n.9, *rev'd on other grounds*, 290 F.3d at 566 (assuming that the defendant would qualify as a reliance party because the defendant engaged in infringing acts before the restoration of the copyright in 1996 and continued those acts after the restoration), *with* Fed. Treasury Enter. *Sojuzplodoimport*

In addition, courts had not defined “continues” within this statute, but had provided a definition for “continues” with respect to the statute allowing statutory damages and attorney fees.³⁶ In that context, “continues” is defined as the first infringing act in a series of infringing acts that occurred before the registration of a copyright and where the series of acts was ongoing past the registration date of the copyright.³⁷ Under this rule, a party with a registered copyright cannot receive statutory damages or attorney fees if the ongoing infringing activities commenced before the date of registration.³⁸ However, any cessation in activity would constitute a new series of acts where statutory damages and attorney fees could be accepted if that series began after registration.³⁹

D. *Derivative Works*

The URAA adds a second protection for reliance parties that exploit derivative works.⁴⁰ If the derivative work has at least some minimal degree of creativity, greater than a trivial change, then the reliance party is treated like a licensee for the remainder of the copyright, where the court determines the applicable licensing fee.⁴¹

III. THE COURT’S OPINION

In the noted case, the Second Circuit (1) confirmed that ownership of the copyright should be based on the source country, (2) replaced previous case law analysis regarding the date when infringement must have commenced for reliance party status with the statutory text requiring infringement to have begun before the source country became an eligible country according to the URAA, (3) extended the definition

v. Spirits Int’l N.V., 425 F. Supp. 2d 458, 473 (S.D.N.Y. 2006) (holding that an assignee of the right to use the Stolichnaya label qualified as a reliance party where the assignor used the label starting in 1992 and continued selling Stolichnaya after Russia became an eligible country when it acceded to the Berne Convention in 1995), *and* Cordon Holding B.V. v. Nw. Publ’g Corp., No. 98 CIV. 4797(AGS), 2002 WL 530991, at *10 (S.D.N.Y. Aug. 8, 2002) (holding that the defendants were reliance parties because infringing acts began nearly six months after the enactment of the URAA when the Netherlands became an eligible country).

36. *Johnson v. Jones*, 149 F.3d 494, 505 (6th Cir. 1998); *Ez-Tixz, Inc. v. Hit-Tix, Inc.*, 919 F. Supp. 728, 735-36 (S.D.N.Y. 1996); *Whelan Assocs., Inc. v. Jaslow Dental Lab., Inc.*, 609 F. Supp. 1325, 1331 (D.C. Pa. 1985).

37. *Johnson*, 149 F.3d at 505; *Ez-Tixz*, 919 F. Supp. at 735-36; *Whelan Assocs.*, 609 F. Supp. at 1331.

38. *Johnson*, 149 F.3d at 506.

39. *Id.*

40. 17 U.S.C. § 104A(d)(3) (2000).

41. *Id.*; *see also Dam Things from Denmark*, 290 F.3d at 563.

of “continues” as seen in the requirement for statutory damages and attorney fees to reliance parties, and (4) more specifically defined the twelve-month grace period for reliance parties under 17 U.S.C. § 104A(h)(4)(B) as a sell-off period for works that were acquired or manufactured before the source country became eligible.⁴² Because Troll Co. sought a preliminary injunction, it was required to show the requisite elements of irreparable harm and a likelihood of success on the merits.⁴³ The Second Circuit confirmed that irreparable harm is presumed for copyright infringement cases and analyzed the merits of copyright infringement, which requires proof of ownership of the copyright.⁴⁴ Uneeda did not argue that there was no copying because it was exploiting a doll that was originally licensed to its predecessor.⁴⁵

A. *Ownership of the Restored Copyright*

Uneeda first argued that Troll Co. did not have ownership of the copyright because according to U.S. copyright law, a chain of ownership must be shown from the original author identified on the U.S. copyright to the current rightholder.⁴⁶ Troll Co. claimed ownership of the copyright based on a transfer from Thomas Dam’s heirs, even though the original U.S. copyright from 1965 shows Dam Things Establishment as the author.⁴⁷

However, the court abided by the URAA statute, stating that the chain of ownership of a copyright is not based on U.S. copyright law, but rather the law of the source country.⁴⁸ For purposes of a preliminary injunction, the court accepted that it was possible that Danish law could determine the chain of ownership from the original creator of the work, rather than the author listed on an invalidated U.S. copyright registration.⁴⁹

Uneeda then argued that Troll Co. is judicially estopped from arguing a different chain of ownership because, in a prior proceeding, it claimed to have acquired the rights from Dam Things Establishment.⁵⁰ However, the court found that the source of ownership is irrelevant here because Troll Co. had previously shown ownership of the copyright and

42. Troll Co. v. Uneeda Doll Co., 483 F.3d 150, 155, 157, 159, 160 (2d Cir. 2007).

43. Troll Co. A/S v. Uneeda Doll Co., 400 F. Supp. 2d 601 (S.D.N.Y. 2005).

44. *Troll Co.*, 483 F.3d at 154-55.

45. *Id.* at 154.

46. *Id.* at 155.

47. *Id.*

48. *Id.* (citing 17 U.S.C. § 104A(h)(4) (2000)).

49. *Troll Co.*, 483 F.3d at 155.

50. *Id.*

would be able to prove ownership under either theory.⁵¹ The Second Circuit found that because ownership of the copyright by Troll Co. can be shown from either chain, the elements of copyright infringement were met.⁵²

B. Uneeda as a Reliance Party and the Definition of “Continues”

If Troll Co. was likely to prove ownership of a valid copyright at trial, the court could grant a preliminary injunction only if Uneeda did not qualify as a reliance party.⁵³ The court first found that prior courts had erred when allowing reliance party status to turn on whether infringing acts had begun before the date of copyright restoration, rather than the date of the source country’s eligibility under the URAA.⁵⁴ The noted case confirmed the statute’s text by determining that in order to qualify for reliance party status, any infringing acts must have begun before Denmark’s eligibility, which is the date of the URAA’s enactment.⁵⁵ The court stated that, using the proper standard for determining reliance party status, Uneeda’s predecessor, UDCI, would have been a reliance party until 1996 because UDCI began the infringing activity in 1965 and continued it through 1996 at the latest.⁵⁶ However, the court declined to remand this case on the issue of UDCI’s reliance party status because it was not relevant to the outcome of the noted case.⁵⁷

To decide Uneeda’s status as a reliance party, the Second Circuit defined the word “continues” in order to decide whether the time gap between infringing acts from 1996 to 2005 destroyed reliance party status.⁵⁸ Because “continues” had never before been defined in this context, the court looked to prior case law and to legislative history.⁵⁹ The Second Circuit found that courts have interpreted the continuing infringement doctrine with respect to statutory damages and attorney fees to mean ongoing infringement activity where the first act occurred before the registration of the copyright and where there has been no

51. *Id.* at 155 n.7.

52. *Id.* at 155.

53. *Id.* at 154.

54. *Id.* at 157 (citing *Películas y Videos Internacionales, S.A. de C.V. v. Harriscope of L.A., Inc.*, 302 F. Supp. 2d 1131, 1137 (C.D. Cal. 2004)); *Dam Things from Denmark v. Russ Berrie & Co.*, 173 F. Supp. 2d 277, 285 n.9 (D.N.J. 2001), *rev’d on other grounds*, 290 F.3d 548 (3d Cir. 2002)).

55. *Troll Co.*, 483 F.3d at 157; *Dam Things from Denmark*, 173 F. Supp. 2d at 285 n.9.

56. *Troll Co.*, 483 F.3d at 159.

57. *Id.*

58. *Id.* at 157-58.

59. *Id.* at 158.

cessation of infringing acts for an appreciable time.⁶⁰ The Second Circuit then assumed that Congress intended to incorporate this definition of “continues” from 17 U.S.C. § 412 into the text of 17 U.S.C. § 104A(h)(4)(A).⁶¹

The court found that UDCI continuously took part in infringing acts before and after the URAA enactment in 1994.⁶² However, as UDCI’s successor, Uneeda had only the same rights as UDCI while continuing to infringe Troll Co.’s copyright.⁶³ The court held that when Uneeda stopped producing Wish-niks for almost a decade, it gave up its right as a reliance party by ceasing to exploit the copyrighted work for an appreciable period of time before beginning a new series of infringing acts.⁶⁴

C. *The Sell-Off Period for 17 U.S.C. § 104A(h)(4)(B)*

The Second Circuit extended the analysis from 17 U.S.C. § 104A(h)(4)(A) to 17 U.S.C. § 104A(h)(4)(B) by requiring that restored works must have been acquired or manufactured before Denmark became a URAA-eligible country in order for reliance parties to sell off the works.⁶⁵ Uneeda argued that any acquisition or manufacture before the URAA’s enactment gives the party the right to continue to manufacture the infringing works, but the court disagreed, finding that such a broad interpretation would undermine the purpose of the statute.⁶⁶ If it accepted Uneeda’s argument, the court stated that any party that purchased even a single Wish-nik before the URAA enactment would be permitted to manufacture trolls and become a reliance party.⁶⁷ Because Uneeda was attempting to sell Wish-niks manufactured and acquired after the URAA enactment, Uneeda did not meet the requirements for reliance party status according to the statute.⁶⁸

IV. ANALYSIS

In the noted case, the Second Circuit continually stressed the importance of protecting foreign works in the United States as suggested

60. *Id.* (citing *Johnson v. Jones*, 149 F.3d 494, 506 (6th Cir. 1998)).

61. *Id.* at 158-59; 17 U.S.C. § 412 (2000) (governing the requirement of registration of a copyright in eligibility for certain types of relief; namely, statutory damages and attorney’s fees).

62. *Troll Co.*, 483 F.3d at 159.

63. *Id.*

64. *Id.*

65. *Id.* at 160.

66. *Id.*

67. *Id.*

68. *Id.*

by statute.⁶⁹ Determination of copyright ownership utilizing the source country's law, as opposed to U.S. law, is consistent with prior case law and legislative intent.⁷⁰ It seems logical that Congress and the courts, pursuant to the GATT agreements, would honor foreign copyright laws so that U.S. copyright law would be respected abroad.⁷¹

However, the new application of the statute, which requires the first act of a series of infringing acts to occur before the source country's eligibility as opposed to before copyright restoration, limits the possible number of qualified reliance parties, because the deadline is set at 1994, instead of a variable deadline based on copyright restoration dates.⁷² This new interpretation is consistent with the text of the statute but inconsistent with prior case law.⁷³ The interpretation does not allow U.S. companies to qualify for reliance party status in cases where they have been continuously exploiting a work for years, but where they started exploiting the work after the source country gained URAA eligibility. This provides protection for foreign copyright holders, contradicting the traditional role of U.S. courts to benefit solely U.S. companies.⁷⁴ This may be consistent with legislative intent, as the agreement was originally a bargain to protect foreign works in the United States so that U.S. works would be protected in foreign countries.⁷⁵

Certain countries in the emerging world that are not signatories to the URAA are not protected, and U.S. companies may still exploit works from those countries. However, if the purpose is to protect U.S. copyrights abroad as well, those emerging countries will continue to exploit U.S. works until they become eligible countries.⁷⁶ It is in both an emerging country's favor, and the United States' favor, for an emerging country to become eligible under the URAA. Only then the emerging country can protect its copyrights here in the United States and in all

69. *Id.* at 156.

70. *Películas y Videos Internacionales, S.A. de C.V. v. Harriscope of L.A., Inc.*, 302 F. Supp. 2d 1131, 1134 (C.D. Cal. 2004); 140 CONG. REC. E2263-03, E2263 (1994).

71. 140 CONG. REC. E2263-03, E2263 (“[Enactment of the URAA] should assist U.S. patent and copyright owners in their worldwide fight for protection.”); 6 WILLIAM F. PATRY, PATRY ON COPYRIGHT § 24:31 (2007).

72. *Troll Co.*, 483 F.3d at 157.

73. 17 U.S.C. § 104A(h)(4) (2000); *see also Películas*, 302 F. Supp. 2d at 1137; *Dam Things from Denmark v. Russ Berrie & Co.*, 173 F. Supp. 2d 277, 285 n.9 (D.N.J. 2001), *rev'd on other grounds*, 290 F.3d 548, 566 (3d Cir. 2002).

74. *See, e.g., Scandia House Enters., Inc. v. Dam Things Establishment*, 243 F. Supp. 450, 454 (D.D.C. 1965).

75. 140 CONG. REC. E2263-03, E2263.

76. *Id.*

other eligible countries, and U.S. companies will be guaranteed some level of protection for their copyrights in the emerging countries.

Similarly, only infringing items acquired and manufactured before the country became eligible should be permitted to be sold, as opposed to before the infringing party is given notice via copyright restoration, because the United States would want its copyrights protected from the moment it enacted the URAA.⁷⁷ The Second Circuit has argued for its newly applied definition of continuity by claiming that a party that voluntarily ceased exploitation for a non-trivial amount of time does not have as significant an interest as a continuously infringing party.⁷⁸ This substantial interest argument is consistent with the purpose of reliance parties, which is to prevent irreparable harm to parties that possess a substantial interest in a recently restored work.⁷⁹

On the other hand, this substantial interest argument could be used to invalidate the court's argument for changing the date for which a party must commence infringing acts to the date of URAA's enactment, because a party could have an extremely substantial interest in continuing the acts even though the acts commenced after the source country became eligible. Although the statute was written in 1994, some case law has interpreted the date for which a party must commence infringing acts to be when a copyright is restored, and Congress has not taken action to clarify the law.⁸⁰ However, after the URAA passed on December 8, 1994, all parties using works that can potentially be restored should be on notice that the rightholder may restore the copyright and enforce his rights. This notice is perhaps sufficient to keep the key date at the eligibility of the source country.

Because Uneeda did not qualify as a reliance party, they did not have the opportunity to argue that their Wish-niks are derivative works.⁸¹ Any argument to this effect would have been irrelevant.

In the noted case, the Second Circuit clarified the law on the URAA by specifying the cutoff date for reliance party status and defining the role of "continues" within the statute.⁸² The court interpreted the statute at face value and enforced the congressional intent behind the statute. Protection of foreign copyrights in U.S. courts allows a rightholder to

77. *Id.*

78. *Troll Co. v. Uneeda Doll Co.*, 483 F.3d 150, 159 (2d Cir. 2007).

79. 140 CONG. REC. E2263-03, E2264.

80. *See Películas y Videos Internacionales, S.A. de C.V. v. Harriscope of L.A., Inc.*, 302 F. Supp. 2d 1131, 1137 (C.D. Cal. 2004); *Dam Things from Denmark v. Russ Berrie & Co.*, 173 F. Supp. 2d 277, 285 n.9 (D.N.J. 2001), *rev'd on other grounds*, 290 F.3d 548, 566 (3d Cir. 2002).

81. *Troll Co.*, 483 F.3d at 159-60.

82. *Id.* at 157-59.

market his product safely in any participating nation and promotes a consistent global market for copyrighted products. The standards set out by the court will likely make it easier for American and foreign parties to understand the rules that protect foreign copyrights in the United States, allowing parties that lost a legitimate U.S. copyright due to a technicality to reassert their rights in the United States.

Justin A. Levy*

* © 2007 Justin A. Levy. J.D. candidate 2009, Tulane University School of Law; B.S. 2006, Boston University. The author would like to thank his parents, Roger and Regina Levy, for their constant support and encouragement which enable him to keep seeking out his aspirations. The Author would also like to thank the members of the *Tulane Journal of Technology and Intellectual Property* for their excellent work with this Case Note.