monopolistic privileges that are forbidden by those acts are entirely consistent in their holdings.[1446]

Congress has the power to pass copyright laws that, in its political judgment, will serve the ends of the Copyright Clause. Congress may "promote the Progress of Science" (*i.e.*, the creation and dissemination of knowledge and learning) not only by providing incentives for new works, but also by conferring copyright protection to works in the public domain.[1447] The Copyright Clause also broadly empowers Congress to extend the terms of existing copyrights, so long as the extended terms are for determinable periods.[1448]

Copyright and the First Amendment

The Copyright Clause nominally restricts free speech by allowing for an author's monopoly to market his original work. The Court has "recognized that some restriction on expression is the inherent and intended effect of every grant of copyright." [1449] However, that the Copyright Clause and the First Amendment were adopted close in time reflects the Framers' belief that "copyright's limited monopolies are compatible with free speech principles." [1450] "[T]he Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." [1451]

The Court has noted on several occasions that the copyright law contains two important First Amendment safeguards: (1) limiting copyright protection to an author's creative expression of ideas, but prohibiting protection of ideas in and of themselves; and (2) permitting fair use of a copyrighted work in certain circumstances, including for purposes of criticism, teaching, comment, news reporting, and parody. These traditional contours of copyright protection have foreclosed heightened First Amendmebnt scrutiny of copyright laws.[1452]

[1446] *See* Motion Picture Co. v. Universal Film Co., 243 U.S. 502 (1917); Morton Salt Co. v. Suppiger Co., 314 U.S. 488 (1942); United States v. Masonite Corp., 316 U.S. 265 (1942); United States v. New Wrinkle, Inc., 342 U.S. 371 (1952), where the Justices divided 6 to 3 as to the significance for the case of certain leading precedents; and Walker Process Equip., Inc. v. Food Mach. & Chem. Corp., 382 U.S. 172 (1965).

[1447] Golan v. Holder, 565 U.S. ___, No. 10–545, slip op. (2012).

[1448] Eldred v. Ashcroft, 537 U.S. 186 (2003).

[1449] Golan v. Holder, 565 U.S. ___, No. 10–545, slip op. (2012).

[1450] Eldred v. Ashcroft, 537 U.S. 186, 219 (2003).

[1451] Harper & Row Publishers, Inc., v. Nation Enterprises, 471 U.S. 539, 558 (1985).

[1452] Eldred v. Ashcroft, 537 U.S. 186 (2003); Golan v. Holder, 565 U.S. ___, No. 10–545, slip op. (2012).