

Sec. 8—Powers of Congress

Cl. 8—Copyrights and Patents

Congress was within its powers in giving to authors the exclusive right to dramatize any of their works. Even as applied to pantomime dramatization by means of silent motion pictures, the act was sustained against the objection that it extended the copyright to ideas rather than to the words in which they were clothed.¹⁴³⁹ But the copyright of the description of an art in a book was held not to lay a foundation for an exclusive claim to the art itself. The latter can be protected, if at all, only by letters patent.¹⁴⁴⁰ Because copyright is a species of property distinct from the ownership of the equipment used in making copies of the matter copyrighted, the sale of a copperplate under execution did not pass any right to print and publish the map which the copperplate was designed to produce.¹⁴⁴¹ A patent right may, however, be subjected, by bill in equity, to payment of a judgment debt of the patentee.¹⁴⁴²

Power of Congress Over Patents and Copyrights

Letters patent for a new invention or discovery in the arts confer upon the patentee an exclusive property in the patented invention that cannot be appropriated or used by the government without just compensation.¹⁴⁴³ Congress may, however, modify rights under an existing patent, provided vested property rights are not thereby impaired,¹⁴⁴⁴ but it does not follow that it may authorize an inventor to recall rights that he has granted to others or reinvest in him rights of property that he had previously conveyed for a valuable and fair consideration.¹⁴⁴⁵ Furthermore, the rights the present statutes confer are subject to the antitrust laws, though it can hardly be said that the cases in which the Court has endeavored to draw the line between the rights claimable by patentees and the kind of

¹⁴³⁹ *Kalem Co. v. Harper Bros.*, 222 U.S. 55 (1911). For other problems arising because of technological and electronic advancement, *see, e.g.*, *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390 (1968); *Sony Corp. v. Universal City Studios*, 464 U.S. 417 (1984).

¹⁴⁴⁰ *Baker v. Selden*, 101 U.S. 99, 105 (1880).

¹⁴⁴¹ *Stevens v. Gladding*, 58 U.S. (17 How.) 447 (1855).

¹⁴⁴² *Ager v. Murray*, 105 U.S. 126 (1882).

¹⁴⁴³ *James v. Campbell*, 104 U.S. 356, 358 (1882). *See also* *United States v. Burns*, 79 U.S. (12 Wall.) 246, 252 (1871); *Cammeyer v. Newton*, 94 U.S. 225, 234 (1877); *Hollister v. Benedict Mfg. Co.*, 113 U.S. 59, 67 (1885); *United States v. Palmer*, 128 U.S. 262, 271 (1888); *Belknap v. Schild*, 161 U.S. 10, 16 (1896).

¹⁴⁴⁴ *McClurg v. Kingsland*, 42 U.S. (1 How.) 202, 206 (1843).

¹⁴⁴⁵ *Bloomer v. McQuewan*, 55 U.S. (14 How.) 539, 553 (1852).