ment, "push back the frontiers." [1401] 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.[1402]

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.[1403] "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." [1404] The Act, the Court concluded, "reflects judgments of a kind Congress typically makes, judgments we cannot dismiss as outside the Legislature's domain." [1405] 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 au-

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U.S. 53, 58–60 (1884), the requirement is expressed in nearly every copyright opinion, but its forceful iteration in *Feist* was noteworthy, because originality is a statutory requirement as well, 17 U.S.C. § 102(a), and it was unnecessary to discuss the concept in constitutional terms.

[1401] A. & P. Tea Co. v. Supermarket Equipment Corp., 340 U.S. 147 (1950). In a concurring opinion, Justice Douglas wrote, for himself and Justice Black: "Every patent is the grant of a privilege of exacting tolls from the public. The Framers plainly did not want those monopolies freely granted. . . . It is not enough that an article is new and useful. The Constitution never sanctioned the patenting of gadgets. Patents serve a higher end—the advancement of science. An invention need not be as startling as an atomic bomb to be patentable. But it has to be of such quality and distinction that masters of the scientific field in which it falls will recognize it as an advance." 340 U.S. at 154–55 (Justice Douglas concurring).

[1402] Kendall v. Winsor, 62 U.S. (21 How.) 322, 328 (1859) ("[T]he inventor who designedly, and with the view of applying it indefinitely and exclusively for his own profit, withholds his invention from the public, comes not within the policy or objects of the Constitution or acts of Congress.").

In Golan v. Holder, publishers and musicians challenged a law that allowed for copyright protection of certain foreign works theretofore in the public domain, in conformance with international practice. Plaintiffs alleged the provision was invalid because, *inter alia*, it failed to give incentives for creating new works. Though this view found support in Justice Breyer's dissent, the majority held the Copyright Clause does not require that every provision of copyright law be designed to encourage new works. Rather, Congress has broad discretion to determine the intellectual property regime that, in its judgment, best serves the overall purposes of the Clause, including broader dissemination of existing and future American works. 565 U.S. ___, No. 10–545, slip op. at 21 (2012).

[1403] Eldred v. Ashcroft, 537 U.S. 186, 205 (2003) (quoting Sony Corp. of America v. Universal City Studios, 464 U.S. 417, 429 (1984)).

[1404] 537 U.S. at 204.

[1405] 537 U.S. at 205.