

## A TUNE-UP ON THE ENGINE OF FREE EXPRESSION:

### THE TRADITIONAL CONTOURS OF COPYRIGHT IN *GOLAN*

#### I. INTRODUCTION

This note examines a recent Tenth Circuit decision, *Golan v. Gonzales*, which found that a federal statute altered the “traditional contours of copyright law” and remanded the case to the district court for a First Amendment analysis.<sup>1</sup> *Golan* constructed a workable test for determining whether a piece of legislation violates the traditional contours of copyright law, and the Tenth Circuit correctly applied the test. On remand, the district court should hold that § 514 of the Uruguay Round Agreements Act (“URAA”) does not pass the heightened scrutiny of even content-neutral legislation, because Congress can more narrowly tailor the law to fit its important interest. Congress can do this by implementing a system similar to that in the United Kingdom, where the owner of the copyright of the restored work may negotiate to compensate a party who relied upon the work’s presence in the public domain.<sup>2</sup>

Part II examines *Eldred v. Ashcroft*, the most recent Supreme Court attempt to refine the balance between the Copyright Clause and the First Amendment, and the Court’s “traditional contours” test.<sup>3</sup> Additionally, Part II investigates the application of the traditional contours test in the federal court system between the *Eldred* decision and the *Golan* decision. Part III considers the circumstances surrounding *Golan* and delineates the decision

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1. *Golan v. Gonzales*, 501 F.3d 1179 (10th Cir. 2007).

2. *Id.* at 1196 n.5.

3. *Eldred v. Ashcroft*, 537 U.S. 186 (2003).