

Copyright Controversy Has Scholars' Attention

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A legal storm is brewing about copyright law, with ground zero centered at the U.S. Supreme Court. Not just a conundrum for lawyers, it has broad implications for researchers, readers and music and art lovers everywhere, says Elizabeth Townsend Gard of Tulane Law School.



An important copyright case heading to the U.S. Supreme Court has the attention of legal experts such as Elizabeth Townsend Gard, associate professor at Tulane Law School. (Photo by Paula Burch-Celentano)

The controversy centers around millions of foreign books, music compositions and artwork published after 1923 that have long been in the public domain in the United States, whereby anyone could reprint them or create new versions without paying the copyright holder or getting permission.

But a ruling by the 10th U.S. Circuit Court of Appeals last June upheld a law that removed the works from the public domain, restoring copyright protections and giving copyright holders exclusive rights.

The [copyright ruling](#) impacts published items such as J.R.R. Tolkien's *The Hobbit*, symphonies by Dmitri Shostakovich and artwork by Pablo Picasso -- potentially any foreign work created between 1923 and 1989.

Now it's headed to the fall session of the Supreme Court.

Townsend Gard, associate professor and co-director of the [Tulane Center for Intellectual Property Law and Culture](#), is among many who will be watching. Among that group are Google and Amazon, which want to digitize works and post them online, and academic researchers who frequently use public domain materials.

“Is it constitutional?” she asks. “It's like taking a public park back and giving the land back to the original owners. This kind of amendment to the Copyright Act brings instability and uncertainty to the whole system.”

[Townsend Gard](#) says complicated political issues are at play because Congress first mandated the copyright as part of a broad foreign trade agreement.

The case could have huge implications, she says, not just for copyright, but for trade law, the First Amendment and power relations between Congress and the Executive Branch. “What is the future of copyrights? We are in a battle between domestic law versus implementation of trade treaties. What do we as a society think is important and what is not?”