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Duration in Intellectual Property

This paper is a comparative investigation into the structure of duration in copyright and patent law. Currently, copyright duration is based on the lifetime of the author plus seventy years. How long a copyright endures in a work is a function, then, solely of the author (and his or her death). By contrast, a patent currently lasts for twenty years from the filing of a patent application for an invention. This date is also seen as the constructive date of invention. In that sense, how long a patent right lasts for an invention is a function solely of the invention (constructively, or at the very least the administrative act of application). After exploring the evolving history of duration structure in copyright and patent, the paper seeks to explain why copyright duration and patent duration are keyed to such different variables (the author for copyright, and the invention for patent) and whether these varying structures are optimal for each form of intellectual property. This work is part of a larger project on a unified theory of intellectual property, looking at copyright and patent law comparatively to understand their differences and examine whether they are justifiable.