No. _____

In the
Supreme Court of the United States

BMG RIGHTS MANAGEMENT (US) LLC et al.,

Petitioners,

v.

CYRIL E. VETTER et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Every creative success (music, movies, TV, books, and more) depends on two groups working together: the authors who create the work, and the publishers who make significant investments in marketing, promoting, and distributing it. For this collaboration to work, authors and publishers must enter durable agreements early in a work's lifecycle, often before anyone (including the author) knows a work's long-term value. If a work outperforms expectations—often due to publishers' efforts and investment—authors sometimes want to renegotiate these deals.

Countries have balanced authors' and publishers' interests in different ways. U.S. law previously used a two-term structure, with the initial copyright lasting 28 years, but authors (or their heirs) starting fresh with another 28-year renewal term. Congress later added a termination right: After an enumerated interval, and under certain circumstances, an author gets a five-year window to reclaim certain rights. Recognizing other countries have struck different balances, however, Congress caveated that "[t]ermination … affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. §304(c)(6)(E). Given that express instruction and the territorial nature of copyrights, until the decision below it was settled, literal hornbook law that statutory reversion provided by U.S. law extended only to U.S. copyrights.

The question presented is:

When copyright rights revert to authors or their heirs by operation of U.S. law, is the reversion limited

to U.S. copyrights (as numerous courts hold and everyone has long understood), or does the reversion extend worldwide to dictate the ownership of foreign copyrights (as the Fifth Circuit held below)?

PARTIES TO THE PROCEEDING

Petitioners are BMG Rights Management (US) LLC; Capitol CMG, Inc. (Parent Company Stock Ticker: UMG); Essential Music Publishing LLC (Parent Company Stock Ticker: SONY); and Warner-Tamerlane Publishing Corp (Parent Company NASDAQ Stock Ticker: WMG). Respondents (plaintiffs-appellees below) are Cyril E. Vetter and Vetter Communications Corporation.

Robert Resnik and Resnik Music Group (defendants-appellants below) qualify as parties under Supreme Court Rule 12.6. Resnik and Resnik Music Group originally owned the copyright interest at issue in this litigation. After the Fifth Circuit's mandate issued on February 2, 2026, Petitioners acquired the disputed copyright interest and successfully moved to substitute themselves as defendants in Resnik and Resnik Music Group's place. *See* Telephone Conference Report & Order 2-3, *Vetter v. Resnik*, No. 23-cv-1369 (M.D. La. Mar. 31, 2026) (Dkt.61). Petitioners believe that Resnik and Resnik Music Group no longer have an interest in the petition's outcome.

CORPORATE DISCLOSURE STATEMENT

BMG Rights Management (US) LLC is wholly owned by Bertelsmann, Inc., a Delaware corporation, which in turn is wholly owned by Bertelsmann SE & Co. KGaA, a German corporation.

Capitol CMG, Inc. is a wholly owned, indirect subsidiary of Universal Music Group Holdings, Inc., which is in turn a wholly owned indirect subsidiary of Universal Music Group N.V. (Stock Ticker: UMG), a Netherlands public limited company. Bollore SE (Stock Ticker: BOIVF) owns more than 10% of Universal Music Group N.V.'s stock. No other company owns 10% or more of Universal Music Group N.V.'s stock.

Essential Music Publishing LLC is a wholly owned, indirect subsidiary of Sony Group Corporation (Stock Ticker: SONY), a publicly held company organized under the laws of Japan. No publicly held company owns more than 10% of Sony Group Corporation's stock.

Warner-Tamerlane Publishing Corp. is a wholly owned, indirect subsidiary of Warner Music Group Corp. (NASDAQ Stock Ticker: WMG), a publicly traded company. AI Entertainment Holdings LLC and certain of its subsidiaries (which are not publicly traded) own more than 10% of Warner Music Group Corp.'s stock. No other company owns 10% or more of Warner Music Group Corp.'s stock.

STATEMENT OF RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

Vetter v. Resnik, No. 25-30108 (judgment entered January 12, 2026).

United States District Court (M.D. La.):

Vetter v. Resnik, No. 23-cv-1369 (judgment entered January 29, 2025).

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PETITION FOR WRIT OF CERTIORARI

Section 304 of the Copyright Act reflects a carefully negotiated attempt to develop fair and administrable rules for the term of protection and termination of transfers for copyrights secured before 1978. All parties here agree that §304 is enormously consequential for authors and publishers alike: It sets the rules for when and how authors can reclaim rights they previously granted to publishers, and for what rights may be reclaimed. All parties also agree that §304 (and a substantively identical provision in §203 governing post-1978 works) has been long and universally understood to limit reclamation to rights in the U.S., not to any rights (or grants of rights) involving foreign copyrights and governed by foreign laws. That settled understanding is grounded in clear text that itself reflects the territorial nature of copyright: "Termination of a grant … affects only those rights covered by the grant that arise under this title *and in no way affects rights arising under any … foreign laws*." 17 U.S.C. §304(c)(6)(E) (emphasis added). Undeterred, respondents initiated this litigation with the avowed intent to advance a "fringe" theory that bucks the "common industry reading of the statute," in hopes of "reach[ing] the Supreme Court." Tim Kappel & Loren Wells, *Returning Music to Its Creator*, 5 Fla. Ent. & Sports L. Rev. 13, 14-16 (2026).

Remarkably, that gambit worked in the courts below. In unsettling what had long been settled, the Fifth Circuit held that authors can invoke U.S. copyright law to regain not only their rights under U.S. law, but their rights throughout the world, on the theory that *all* copyright rights—foreign and domestic

alike—in U.S. works arise under U.S. law. Under that novel view, when respondents did what countless other authors have done—transferred "the exclusive right to secure copyright therein throughout the entire world, and to have and to hold the said copyrights," C.A.ROA.30—they actually conveyed only a single U.S. copyright "to the extent that it extends internationally." App.9. That headscratching conclusion allowed respondent Cyril Vetter to use his U.S. termination right not just to reclaim U.S. rights to his 1963 song, but to purportedly make himself the sole and exclusive owner throughout the world, on the unprecedented theory that the foreign rights in the song were not a matter for foreign copyright laws (with their own varying rules concerning termination, reversion, and myriad other issues), but rather could be recaptured worldwide in one fell swoop under U.S. law.

That startling conclusion departs from bedrock copyright law. As the Copyright Office has long explained, "[t]here is no such thing as an 'international copyright.'" U.S. Copyright Office, *Circular 38A: International Copyright Relations* 1, https://perma.cc/TN5X-HH9Q. Nor does the scope of copyright protection turn on the nationality of the author or on the work's country of origin. Authors instead have "a bundle of national, territorially defined, rights" in a single work mapping on to each country where the work has been published. Jane C. Ginsburg, *International Copyright*, 47 J. Copyright Soc'y U.S.A. 265, 266 (2000). So when an author properly uses §304 or §203 to recapture his rights, everyone—courts, scholars, and the author and publishing communities too—have long understood

the author to recapture "only" the rights for "uses within the geographic limits of the United States." 3 Nimmer on Copyright §11.02(B)(2) (2025). That is, upon termination, the assignee of a worldwide grant "retain[s] the foreign rights to the copyright," subject to the rules of the foreign countries governing their own copyrights. *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17, 20 (2d Cir. 1998).

That is not just hornbook law; it is the foundation for all manner of international industry norms. It is why non-U.S. authors like Paul McCartney have been able to invoke this U.S. statutory right in the first place. Even though Sir Paul remains a British subject and *Yesterday* and *Hey Jude* are U.K. works, and even though U.K. law currently has nothing like §203 and §304, the uniform understanding has been that McCartney nonetheless has distinct U.S. rights in those musical works that he could recapture under the U.S. Copyright Act, as he did in 2017. *See McCartney v. Sony/ATV Music Publishing LLC*, No. 17-cv-363 (S.D.N.Y. filed Jan. 18, 2017); *accord Ennio Morricone Music Inc. v. Bixio Music Group Ltd.*, 936 F.3d 69 (2d Cir. 2019) (same for famed Italian composer Ennio Morricone); *cf.* 17 U.S.C. §101 (defining "United States work"). Yet under the decision below, McCartney (and Morricone) never had distinct U.S. rights subject to reclamation.

That stark departure from settled understanding is every bit as disruptive as it sounds. Indeed, disruption was the whole point of this lawsuit: As respondents have forthrightly admitted, their "ultimate goal" was to "give terminating songwriters

leverage they never had before"—and to sow confusion about the status and validity of innumerable author-publisher agreements, many decades old and worth millions. Kappel & Wells, *supra*, at 13-14. The resulting chaos benefits no one—not U.S. authors, not publishers, not investors, and certainly neither foreign authors nor "the Progress of Science and useful Arts." U.S. Const. art. I, §8, cl.8. This chaos belies any suggestion that further percolation will sharpen the issues. The Fifth Circuit decision calls countless settled agreements into question and gives U.S. authors every incentive to steer cases into the Fifth Circuit, risking its outlier and atextual decision becoming the new law of the land. Unless and until the Court intervenes, uncertainty will bedevil every author-publisher interaction, and the comity that typifies international cooperation on copyright law will be endangered by the Fifth Circuit's unsound holding. The Court should grant review and reverse.

OPINIONS AND ORDERS BELOW

The Fifth Circuit's opinion (163 F.4th 951) is reproduced at App.1-34. The district court's opinion granting Vetter's motion for summary judgment (2025 WL 338295) is reproduced at App.35-44. The district court's opinion denying Resnik's motion to dismiss (2024 WL 3405556) is reproduced at App.45-95.

JURISDICTION

The Fifth Circuit entered its judgment on January 12, 2026. Justice Alito extended the deadline to file a petition to June 11, 2026. *See* No. 25A1109. The Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced at App.96-110.

STATEMENT OF THE CASE

A. Legal Background

To "promot[e] broad public availability of literature, music, and the other arts," two groups must work together: the authors who create the art, and the publishers who fund, market, license, promote, and distribute it. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975). Both groups benefit when a work succeeds—but as this Court has recognized, both groups also depend on authors "mak[ing] an effective assignment of" their rights to publishers early in a work's life. *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643, 656 (1943). If authors "cannot sell" their work, the work is functionally "worthless to" the author. *Id.* And without the certainty of a durable agreement, publishers are in turn unable to undertake the substantial investments to promote and distribute the work. These investments encompass all manner of services to make a work successful, including public-facing marketing as well as less public services like protecting works from infringers and securing licensing opportunities—*Bohemian Rhapsody* to *Wayne's World*, *Don't Stop Believin'* to the *Sopranos*, etc.—and then auditing licensees to ensure proper payments too. Because those investment-backed efforts (and accompanying risks) are a necessary ingredient in a work's success, it means that authors and publishers often enter long-term deals decades before either side knows the true value of the work. Over time, both sides have lobbied Congress to

balance publishers' desire for a fair return on those investments with authors' desire to benefit from unanticipated successes.

1. In the 1909 Copyright Act, Congress struck this balance by crafting a two-term structure, under which the initial copyright extended for 28 years and "the author of such work … shall be entitled to a renewal and extension of the copyright" for another 28 years if the author filed an application for renewal within one year before the original term expired. Pub. L. No. 60-349, §23, 35 Stat. 1080 (1909); *see Fred Fisher Music*, 318 U.S. at 653-54. Over time, market forces eroded the utility of the two-term structure, as authors realized they could get more money by assigning both the rights to their work for the initial term *and* the right to file for a renewal term. *See id.* at 656-58. The utility of U.S. law's two-term structure endured in one scenario: If the author died during the initial term, the author's heirs obtained the right to file for a renewal term free-and-clear, even if the author assigned the renewal term away during her lifetime. *See Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 375-76 (1960).

2. Unsatisfied with that dynamic, Congress returned to the drawing board in the 1976 Copyright Act. Although the Takings Clause cabined Congress' ability to alter the property rights granted by the existing regime, Congress enacted a new default for works created in or after 1978: As relevant here, there would be a single U.S. copyright term lasting the last-surviving author's life plus an additional 50 years, with a five-year window for an author or his heirs to terminate an assignment and recapture the relevant

rights, beginning when an assignment turns 35 years old. Pub. L. No. 94-553, §§203(a)(3), 302(a), 90 Stat. 2569, 2572 (1976) (codified at 17 U.S.C. §§203(a)(3), 302(a)).[1] For pre-1978 works, Congress made corresponding changes (consistent with constitutional constraints) by increasing the renewal term from 28 years to 47 years and giving authors or their heirs a five-year window to reclaim their rights starting 56 years into the U.S. copyright term. *Id.* §304(a), (c)(3).[2]

As it had in 1909, Congress balanced the interests of authors and publishers both. On the one hand, the new statutory termination provisions gave authors powerful rights; on the other hand, Congress limited the time during which authors can exercise those rights and required authors or their heirs to serve a termination notice "not less than two … years" before the termination's effective date, which affords publishers an opportunity to negotiate, and the exclusive right to make a new deal, before any termination takes effect. *Id.* §203(a)(4)(A), (b)(4); *accord id.* §304(c)(4)(A), (c)(6)(D).

Congress cabined termination rights in another respect that reflects the territorial nature of copyrights. In both §203 (for post-1978 works) and §304 (for pre-1978 works), Congress specified that "[t]ermination of a grant under this section affects only those rights covered by the grants that arise under this title"—i.e., Title 17 of the U.S. Code,

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[1] Congress later extended this life-plus-50 term to life-plus-70. *See* Pub. L. No. 105-298, §102(b)(1), 112 Stat. 2827 (1998).

[2] Congress later extended the renewal term even further, from 47 years to 67 years. *See* Pub. L. No. 105-298, §102(d)(1), 112 Stat. 2827.

governing copyrights—"and in no way affects rights arising under any other Federal, State, or foreign laws." *Id.* §203(b)(5); *accord id.* §304(c)(6)(E). So, for example, although authors may execute a single agreement purporting to "irrevocably transfer and assign" *both* copyright and trademark rights, the new Title 17 termination rights would not apply to the trademark rights because they arise under Title 15. *E.g.*, Yale Univ., Copyright Assignment Template (Oct. 13, 2011), https://perma.cc/H2N7-2GSL; *see also, e.g.*, *Gary Friedrich Enters. v. Marvel Characters, Inc.*, 716 F.3d 302, 310 (2d Cir. 2013). Likewise, although authors frequently execute agreements giving the publisher the right to publish a work "throughout the world," *e.g.*, Yale Univ., *supra*, the Title 17 termination provisions would not "affect[] rights arising under … foreign laws," 17 U.S.C. §§203(b)(5), 304(c)(6)(E).

3. Other countries have adopted different solutions to this same author-publisher dynamic for all manner of reasons, including the absence of a Takings Clause analog to constrain legislative options. For instance, most other countries abandoned a two-term structure long before the U.S. did. *Cf.* Copyright Act 1911, 1&2 Geo. 5 c.46, §3 (Eng.) (establishing a unitary life-plus-50 term as early as 1911); *see generally* U.S. Copyright Off., *General Guide to the Copyright Act of 1976* ch.2 p.4 (1977), https://perma.cc/H6Q8-T8FK (noting that the two-term structure had become an international outlier). Countries have adopted varying copyright term lengths. *See, e.g.*, Ley Federal del Derecho de Autor [LFDA] tit.II art.29 cl.1, Diario Oficial de la Federación [DOF] 12-24-1996, última reforma DOF

01-07-2020 (Mex.) (adopting a life-plus-100 term). The rights parties possess sometimes differ too. *See, e.g.*, Copyright, Designs and Patents Act 1988, pt.I c.48, §§77-89 (Eng.) (giving authors, *inter alia*, the general rights to be identified as author or director, and to object to derogatory treatment of a work, neither of which exists under U.S. law); *Copyright* 80 (Andrew H Bart et al. eds., 2012), https://perma.cc/N6YV-TDBP (noting that Japan has "no general doctrine of 'fair use'"). And "[o]nly a small number of countries" have anything close to §203 and §304. Goldstein & Hugenholtz, *International Copyright* 367 (3d ed. 2013); *see, e.g.*, Casey Chisick et al., *A Message From Your Future: Reversion of Copyright in Canada*, Cassels (Nov. 11, 2022), https://perma.cc/UD4Q-978S (describing the "uniquely Canadian concept" of automatic reversion 25 years after an author's death); *see also infra* pp.29-30 (discussing France); *see also* Ananay Aguilar, *The New Copyright Directive* (Aug. 1, 2019), https://perma.cc/67XM-2BS3 (discussing the E.U.'s "bestseller" provision).

The international community has sought to reconcile this patchwork of rights and term lengths through the Berne Convention for the Protection of Literary and Artistic Works, which "is the principal accord governing international copyright relations." *Golan v. Holder*, 565 U.S. 302, 306-07 (2012). Rather than try to steamroll longstanding differences among member countries' copyright laws, Berne follows a more modest rule of comity: Member countries may have their own rules, but they must "treat authors from other member countries as well as they treat their own." *Id.* at 308 (citing Berne Convention, art. 5(1), (3), revised July 14, 1967, 828 U.N.T.S. 221, 232-

33); *see* Jane C. Ginsburg, *Global Use/Territorial Rights: Private International Law Questions of the Global Information Infrastructure*, 42 J. Copyright Soc'y USA 318, 319 (1995); WIPO, *Summary of the Berne Convention*, https://perma.cc/2VUH-3XZH (describing "principle of 'national treatment'"). That respect for country-to-country variability is Berne's linchpin and something the U.S. has insisted upon. Thus, when the U.S. joined Berne in 1989, the implementing legislation specified that copyright rights within the U.S. would remain exclusively a matter of U.S. law. *See* 17 U.S.C. §104(c) ("No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto."). It also recognized the converse principle that copyright rights outside the U.S. are a matter of foreign law unaffected by U.S. law. *See id.*

Under Berne's national treatment rule, there is no such thing as—and no need for—an "international copyright." Instead, the existence of rights in other member countries "shall not be subject to any formality," including registration. Art. 5(2), 828 U.N.T.S. at 233. That is why authors can, but need not, register their work in multiple countries; by virtue of Berne, upon creating a work, an author is automatically "and at once, the proprietor of a French copyright, a U.S. copyright, a Mexican copyright, a Japanese copyright, and so on." Ginsburg, *Global Use*, *supra*, at 330. *See generally Golan*, 565 U.S. at 309 (describing Berne's "multilateral, formality-free

copyright regime").[3] And under Berne, "the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed." Art. 5(2), 828 U.N.T.S. at 233.

B. Factual Background

The song at the heart of this case is *Double Shot (Of My Baby's Love)*, which the parties agree was written by Cyril Vetter and Donald Smith in 1962. C.A.ROA.18-19. In 1963, Vetter and Smith transferred their entire copyright interests in the song to Windsong Music Publishers. The agreement gave Windsong "all rights, claims and demands in any way relating" to *Double Shot*, including "the exclusive right to secure copyright therein throughout the entire world, and to have and to hold the said copyrights … for and during the full terms of all of said copyrights," in exchange for Windsong's promise to pay Vetter and Smith royalties on sales, publications, and licenses. C.A.ROA.30.

In 1966, a band called the Swingin' Medallions recorded a version of *Double Shot* that went on to widespread acclaim and has since been featured in many popular TV shows and movies. C.A.ROA.18-19, 22. The same year, Windsong registered *Double Shot* with the U.S. Copyright Office, so the original 28-year

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[3] Patent and trademark follow a similar principle, with rightsholders holding independent patents or trademarks in multiple countries—although unlike copyright, patent and trademark holders generally must register their work in every country where they seek protection. *See* Paris Convention for the Protection of Industrial Property arts. 4*bis*(1), 6(3), July 14, 1967, 828 U.N.T.S. 305, 319, 325.

U.S. copyright term was set to run through 1994. App.3. Before the initial U.S. copyright term ended, Smith tragically died in a plane crash. App.3. So when it came time to renew the copyright, although both Vetter and Smith had purported to assign away their rights for both the initial and renewal terms, Smith's U.S. renewal-term rights had reverted to his heirs. App.3; *see supra* p.6. Smith's heirs ultimately assigned those rights to Vetter's corporate alter ego. App.3-4.

Because Windsong registered *Double Shot* in 1966, the song remains subject to the regime for pre-1978 works. Vetter's initial assignment to Windsong became eligible for termination under §304(c) in 2022. Vetter sent Windsong the requisite two-years notice of his intent to terminate effective March 3, 2022. C.A.ROA.43-44. By then, Windsong's interest had been acquired by Robert Resnik and his eponymous Resnik Music Group. App.4.

C. Procedural Background

1. Spurning Resnik's efforts to negotiate, C.A.ROA.21, Vetter brought this lawsuit seeking a declaration that he is "the sole owner of all right, title, and interest" in *Double Shot* not just in the U.S., but "throughout the world." C.A.ROA.27. That position bucked long-settled industry norms in two ways: first, by contending that the renewal-term rights that Smith's heirs regained after Smith died (and ultimately assigned to Vetter's corporate alter ego) comprised *both* U.S. *and* foreign ownership; second, by contending that the renewal-term rights Vetter recaptured via §304(c) also comprised both U.S. and foreign copyrights.

Both premises contradict not only longstanding judicial, industry, and hornbook consensus, but also §304's text, which (like §203) provides that "[t]ermination of a grant … affects only those rights covered by the grant that arise under this title and in no way affects rights arising under any … foreign laws." 17 U.S.C. §304(c)(6)(E). That language had long been understood to mean just what it says—i.e., that while Vetter's "termination" allowed him to regain the rights to *Double Shot* in the U.S., Resnik would "retain[] the foreign rights to" the song. *Fred Ahlert*, 155 F.3d at 20. While Vetter was well aware of the "common industry reading of the statute," he decided to test his "fringe" position in court, Kappel & Wells, *supra*, at 13, 16, and advance what he conceded was a "novel" theory. D.Ct.Dkt.17.at.6.

2. At the motion-to-dismiss stage, the district court acknowledged that Vetter's theory runs counter to both settled practice and the principle that U.S. "copyright laws generally do not have extraterritorial application." App.58. The court also recognized that every case and commentator to consider the issue had come down "contrary" to Vetter's position. App.83. But the court nonetheless concluded that Vetter's "overarching" premise—that "there is only one copyright, afforded in the work's country of origin and then recognized by the international community pursuant to treaty obligations," rather than "multiple and separate copyright interests in a single work in each given country throughout the world"—is at least facially "plausible" (albeit inconsistent with the plural assignment Vetter signed in 1963, *cf. supra* p.11). App.71-75. The court thus concluded that Vetter "demonstrated more than a sheer possibility of

entitlement to relief" and denied the motion to dismiss. App.78, 95. Just a few months later, however, the district court revisited the same record, shrugged off the conflicts with extraterritoriality principles, dismissed five decades of precedent, and awarded summary judgment to Vetter in a seven-page opinion. App.39-40, 44-45.

3. The Fifth Circuit affirmed. The panel recognized that Congress "[c]ritically" provided that §304 "affects only those rights … that arise under this title and in no way affects rights arising under … foreign laws." App.7 (quoting 17 U.S.C. §304(c)(6)(E)). But the panel barely engaged with that "critical[]" text, and instead treated Vetter's U.S. copyright rights and his other copyrights under foreign laws as one and the same. Although Vetter himself argued only that the phrase "under this title" in §304 is "ambiguous," the panel held that *all* of "Vetter's rights arose under the U.S. Copyright Act," and therefore that "his termination would be effective as to all of his rights—including his copyright to the extent that it extends internationally." App.9.

In lumping Vetter's discrete domestic and foreign rights together, the panel drew a superficial analogy to *Kirtsaeng v. John Wiley & Sons, Inc.*, where this Court held that licensed copies of copyrighted books produced overseas were "lawfully made under this title." App.11-12 (citing 568 U.S. 519, 528 (2013)). "Because 'arise under this title' … contains some of the same terms as 'lawfully made under this title,'" the panel concluded that the phrases "likely" mean the same thing. App.12. And because *Kirtsaeng* "adopted a nongeographical interpretation" of the latter phrase

(with respect to copies, not copyrights), the panel concluded "that the district court did not err in similarly adopting a nongeographical reading of" the former. App.12.

With nothing else to say about the text, the panel pivoted to what it deemed "the purpose of the Copyright Act." App.12-13. According to the panel, a House Report describing §304 as "a practical compromise" balancing "legitimate needs of all" foreclosed reading §304 to apply only to U.S. rights, because doing so would "leave[]" "terminating authors" "with only half of the apple—the opposite of [c]ongressional intent." App.13-14 (quoting H.R. Rep. No. 94-1476 at 124 (1976)).

The panel recognized that its holding conflicts with decisions from (at least) the Second Circuit and district courts in the Fourth and Ninth Circuits. App.14-16. It also acknowledged that leading academics such as Nimmer and Patry had endorsed those decisions, and that Vetter mustered no authority or even scholarship supporting his contrary view. App.16-18. But the panel brushed aside all contrary authority as "weak" and "nonbinding." App.19, 25.

The panel acknowledged that the Berne Convention requires members "to treat authors from other member countries as well as they treat their own." App.20 (quoting *Golan*, 565 U.S. at 306-08). But it waved away that "principle of national treatment" without explanation—albeit while recognizing that Vetter's theory not only would allow a U.S. author to reclaim foreign rights under §304 even if the laws of foreign countries do not permit that

result, but also would prevent a non-U.S. author from reclaiming U.S. rights that had previously been contracted away. App.21. In a similar maneuver, the panel acknowledged the well-established "principle" that the Copyright Act "do[es] not have extraterritorial effect," but it deemed that principle "minimal[ly]" relevant to §304 because that provision "is about ownership rather than infringement." App.23. Finally, using similar flawed logic, the Fifth Circuit held that when Smith's heirs regained the renewal-term rights to Smith's song upon his death, they regained the worldwide rights, not just the domestic rights. App.25-34.

4. Immediately recognizing the exceptional importance of the issue the Fifth Circuit created, petitioners—various music publishing entities—acquired Resnik's copyright interest after the Fifth Circuit's mandate issued and substituted themselves into the case as defendants "for purposes of filing a petition for a writ of certiorari." D.Ct.Dkt.59.at.1. On March 31, 2026, the district court entered an order substituting petitioners as defendants. D.Ct.Dkt.61.

REASONS FOR GRANTING THE PETITION

In a single stroke, the decision below unsettled "50 years of industry practice." Artists Rights Inst., *Vetter v. Resnik Update* at 18:44-51 (Mar. 31, 2025), https://perma.cc/2SUB-73KH. The Fifth Circuit's holding that U.S. law entitles an author to reclaim worldwide rights in a work, rather than only an assigned U.S. copyright, sharply diverges from the statutory text and settled understandings. And its conclusion that copyright law "is better understood" as granting "a single overarching international copyright

that each country is required to honor" than as granting "multiple and separate copyright interests in each country," App.22, bucks case law, scholarship, industry practice, principles of national sovereignty, multilateral treaties, and international norms. The court's stark departure from settled understandings vitiates the long-held multinational consensus that underpins the music, book, TV, and movie industries (and more), both in the U.S. and abroad. The decision immediately calls into question the scope and meaning of countless negotiated agreements backed by billions of dollars in consideration and undermines international agreements and comity.

The Fifth Circuit's decision is also profoundly wrong. Among other things, it is indefensible as a textual matter. And it turns the presumption against extraterritoriality on its head, projecting U.S. laws worldwide, but only for U.S. authors based on a tortured analogy to *Kirtsaeng* that sets U.S. law on a collision course with (among others) U.K. law and the U.S.' own international copyright obligations.

While Vetter undoubtedly disagrees on the merits, Vetter's counsel has readily—and rightly—acknowledged that this issue is of such surpassing importance to the industry as to warrant this Court's attention. *See, e.g.*, Artists Rights Inst., *supra*, at 18:40-19:35 ("Regardless of the outcome [in the Fifth Circuit], I think there will be a petition to the Supreme Court around this case."); Kappel & Wells, *supra*, at 14 (uncertainty will persist until "this issue … reach[es] the Supreme Court"). By embracing Vetter's "novel" "fringe" theory, the Fifth Circuit has upended the prevailing background rules around which

creative industries do business. That uncertainty benefits no one—not authors, not publishers, and certainly not foreign authors or the "broad public availability of literature, music, and the other arts." *Aiken*, 422 U.S. at 156. It not only leaves foreign authors entirely in the lurch, but harms U.S. authors and publishers both by forcing them to guess about what the default rule will turn out to be, uncertainty that chills investment in authors and works alike.

As Vetter's counsel has acknowledged, only "the Supreme Court" can restore uniformity. Kappel & Wells, *supra*, at 14. And percolation is not a realistic option given the incentives of authors to steer litigation to the Fifth Circuit and the enormous immediate effect on countless seemingly long-settled agreements. Rather than perpetuate the pall of uncertainty that the Fifth Circuit has created—or, worse still, allow its anomalous decision to inflict a tectonic shift on the creative marketplace—this Court should step in and reverse.

I. The Fifth Circuit Jettisoned The Well-Settled Reading Of §203 And §304.

As Vetter acknowledged from the get-go, his "novel" and "fringe" theory seeks to upend the long-settled understanding of what rights return to authors (or their heirs) under §203 and §304. Both provisions specify that "[t]ermination of a grant … affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under … foreign laws." 17 U.S.C. §304(c)(6)(E); *accord id.* §203(b)(5). Yet the Fifth Circuit nevertheless held that termination under those provisions returns both U.S. and *foreign* rights to authors, because the latter

are purportedly just an "exten[sion]" of the U.S. copyright that arises under Title 17. App.9. That conclusion flouts decades of hornbook law, industry practice (both national and international), and case law. As both Vetter and the Fifth Circuit acknowledged below, from the 1976 Act's enactment onward, scholars, courts, authors, and publishers have *always* understood the statutory termination process to permit an author to regain *only* the U.S. rights to a work, not any foreign copyrights also assigned away and subject to any applicable foreign rules for recovery of those foreign rights.

It is hard to overstate the consensus. For decades, the settled meaning of §203 and §304 was reflected in an unbroken line of commentary by leading jurists and scholars on both sides of the Atlantic that "[t]ermination of the grant of U.S. rights does not affect the ownership of rights granted for other territories." Lord Justice Richard Arnold & Jane C. Ginsburg, *Foreign Contracts and U.S. Copyright Termination Rights: What Law Applies?*, 43 Colum. J.L. & Arts 437, 453 (2020); *see also* Jeffrey P. Cunard & Brandon C. Gruner, *Statutory Termination Rights (Copyright)*, Practical Law Practice Note w-0100835 (2024) ("Any termination only affects US copyrights. It has no effect on other federal, state, or non-US rights.").[4]

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[4] *See also, e.g.*, Richard Colby, *Rohauer Revisited: 'Rear Window' Copyright Reversions, Renewals, Terminations, Derivative Works and Fair Use*, 13 Pepp. L. Rev. 569, 579 n.32 (1986) ("Reversion or termination under United States law does *not* of itself terminate rights under foreign law."); Frank R.

This understanding held across leading copyright scholars. From Patry: "Accordingly, where a U.S. author conveys worldwide rights and terminates under either [§§203 or 304], grants in all other countries remain valid according to their terms or provisions in other countries' laws." 7 Patry on Copyright §25:74 (2025). To Nimmer: "A grant of copyright 'throughout the world' is terminable only with respect to uses within the geographic limits of the United States." 3 Nimmer on Copyright §11.02(B)(2); *accord* Melville B. Nimmer, *Termination of Transfers Under the Copyright Act of 1976*, 125 U. Pa. L. Rev. 947, 960-61 (1977) (same). To Goldstein: "[T]he grantee of an author's worldwide rights in a copyrighted work faces statutory termination under section 203 only of its rights in the United States and not in other countries." Goldstein on Copyright §5.4.1.3 (3d ed. 2025). In short, it has long been hornbook copyright law that "[f]oreign rights are not affected by termination." 2 Entertainment Law 3d: Legal Concepts and Business Practices §§16:152, 16:153 (2025).

That settled understanding also comports with the Copyright Office's "contemporaneous[]" and "consistent" interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). The limiting

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Curtis, *Caveat Emptor in Copyright: A Practical Guide to the Termination-of-Transfers Provisions of the New Copyright Code*, 25 N.Y.U. L. Ctr. 19, 39 (1977) ("[T]he termination provisions affect only rights arising under United States copyright. … [A]ny rights under foreign copyright law are not terminable."); Marc R. Stein, *Termination of Transfers and Licenses Under the New Copyright Act*, 24 UCLA L. Rev. 1141, 1165 n.103 (1977) (similar).

language of §203(b)(5) and §304(c)(6)(E) came verbatim from proposed legislation submitted by the Copyright Office encouraging Congress to clarify that "termination affects only those rights arising under the U.S. copyright statute and has no effect, for example, on foreign rights" "covered by the same contract." Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law at xiii, 75 (1965); *see Mills Music, Inc. v. Snyder*, 469 U.S. 153, 160-61 (1985). For decades the Copyright Office has rejected any "unitary multi-national property right," instead embracing "a complex of copyright relations among sovereign states, each having its own copyright law applicable to acts within its territory." Jon Baumgarten, *Primer on the Principles of International Copyright*, *in* Fourth Annual U.S. Copyright Office Speaks 470, 471 (1992).[5] That understanding is shared by leading commentators from other countries too. *See, e.g.*, Axel Nordemann, *Berne and Beyond: Understanding International Conventions Relating to Copyright Law*, 59 J. Copyright Soc'y USA 263, 286 (2012) (noting "prevailing opinion in Germany" that an author "possesses a bundle of national copyrights which are basically independent of one another" (emphasis omitted)); *infra* n.6.

Until this case, the case law was in lockstep with the uniform view of scholars, industry, and

[5] *See also* U.S. Copyright Office, *International Issues*, https://perma.cc/627B-BBPQ ("Protection against unauthorized use in a particular country depends on the national laws of that country; in other words, copyright protection depends on the national laws where protection is sought.").

international practice. Indeed, Vetter readily conceded in the district court that every "court[] to consider the geographical scope of termination rights ha[d] ruled contrary to [his] position." App.83. The Second Circuit, for instance, has held that "an author's termination rights are not unlimited." *Fred Ahlert*, 155 F.3d at 18-19. *Contra* App.14 ("congressional intent" is for "terminating authors" to recapture "the full … apple"). There, a movie studio sought a license to use a song from an author who had validly exercised his termination right. Everyone—the studio, the author, and the publisher who had the rights before the author reclaimed them—agreed that the publisher "retained the foreign rights to the copyright after termination." *Fred Ahlert*, 155 F.3d at 20. So too in *Clancy v. Jack Ryan Enterprises*, 2021 WL 4888683 (D. Md. 2021). Tom Clancy's second wife disputed much about her late husband's copyrights, but everyone agreed that her reclamation of the rights to *The Hunt for Red October* "c[ould] only apply to the domestic copyright … not its foreign copyrights." *Id.* at *46.

In fact, for decades, virtually no one even tried to argue that the statute's plain text could be read any other way. *See* C.A.ROA.14 (Vetter conceding that his theory had never "been judicially tested"); *cf. Learning Res., Inc. v. Trump*, 146 S.Ct. 628, 640-41 (2026). From 1976 until the decision below, although §203 and §304 were amply litigated, *see* C.A.Dkt.21.at.14.n.4 (collecting cases), only one other author ever saw fit to raise anything resembling Vetter's argument—and not until 2008, to boot. That argument was spectacularly unsuccessful and abandoned on appeal in light of the district court's conclusion that "the

statutory text" of §203 and §304 "could not be any clearer":

> Congress expressly limited the reach of what was *gained* by the terminating party through exercise of the termination right; specifically, the terminating party only recaptured the *domestic* rights … Left expressly intact and undisturbed … [was] the right to exploit the work abroad that would be governed by the copyright laws of foreign nations.

Siegel v. Warner Bros. Ent., 542 F.Supp.2d 1098, 1101, 1140 (C.D. Cal. 2008), *rev'd on other grounds*, 504 F. App'x 586 (9th Cir. 2013).

In short, there can be no serious dispute that the decision below unsettles long-settled judicial, academic, industry, and international norms.

II. The Fifth Circuit's Outlier Decision Is Profoundly Wrong.

1. The Fifth Circuit's decision not only marks a dramatic split from decades of contrary authority, but is also profoundly wrong. As always, the analysis should start with the statutory text—and in particular, its "ordinary, contemporary, common meaning." *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014). Though the "[c]ritical[]" text here is §304 since *Double Shot* is a pre-1978 work, App.7, §203 and §304 are identical on the question at hand: Both expressly provide that statutory reversion "affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. §304(c)(6)(E); *accord id.* §203(b)(5). That language plainly limits reversion to the U.S. copyright rights

and does not, as the Fifth Circuit held, permit reclaiming all rights worldwide.

That makes this an exceptionally straightforward case. The "grant" at issue here is the 1963 transfer of rights in *Double Shot* from Vetter and Smith to Windsong. *See Mills Music*, 469 U.S. at 164-65. That grant was not only capacious, but plural: It conferred "*all* rights, claims and demands in any way relating" to *Double Shot*, *including* "the exclusive right to secure copyright therein throughout the entire world, and to have and to hold the said *copyrights* and all rights of whatever nature now and hereafter thereunder existing … for and during the full terms of all of said *copyrights*." C.A.ROA.30 (emphasis added). That broad language illustrates why Congress found it necessary to confirm that reversion "affects" (i.e., "make[s] a material impression on") "only" the singular U.S. copyright (i.e., the one "aris[ing] under" Title 17). *Cf. Affect*, Oxford English Dictionary (2d ed. 1989). Under that plain meaning, reversion does not encompass rights arising under other U.S. Code titles, like trademark (Title 15), *cf. Am. Express Co. v. Goetz*, 515 F.3d 156, 159 (2d Cir. 2008), nor state-law rights like the right of publicity. And it does not encompass foreign rights, whether they arise in copyright, trademark, or something else.

That is clear not only from the critical text, but from the words surrounding it. Congress passed §304 for a very particular reason: After market forces led pre-1978 authors to assign away their renewal rights up front, Congress wanted to ensure that pre-1978 authors would have the opportunity to "reap anew the profits" of their renewal term. *Brumley v. Albert E.*

Brumley & Sons, Inc., 822 F.3d 926, 927-29 (6th Cir. 2016) (Sutton, J.). That explains why Congress did not create a new term, but rather extended the renewal term from 28 to 47 years and allowed the author to recapture the rights from years 29 to 47. It also explains why §304(c) repeatedly refers to a "termination interest" in the "extended renewal term"—i.e., the particular portion of the renewal term that the author can recover. That phrase makes sense only if a country has a two-term structure, which by 1976 essentially only the U.S. had. *Supra* p.8. So when Congress referred to an "interest" in the "extended renewal term," it made clear that it was describing a distinctly U.S.-based interest. *See also Siegel*, 542 F.Supp.2d at 1140 ("Although the termination right contained in the 1976 Act sought to correct the damage done" after market forces "frustrated" the 1909 Act's two-term structure, "it did not revert to the author the full panoply of rights.").

2. The Fifth Circuit's contrary conclusion flouts that statutory text and history. The Fifth Circuit insisted that "[t]here is no explicit geographical limitation in section 304(c)(6)(E) that restricts the exploitation of Vetter's rights to uses within the United States." App.9. But that is exactly what the phrase "arising under any other Federal, State, or foreign laws" does. The statute expressly carves out the right to exploit the work abroad—a right that arises under and is governed by "foreign laws," not Title 17. As Patry aptly summarized: "It is difficult to overstate the intricacies of these provisions …. One provision is quite clear, however: termination only affects U.S. rights." 7 Patry on Copyright §25:74.

The Fifth Circuit's contrary conclusion reflects a fundamental misunderstanding of how copyright works. While the Fifth Circuit tried to lump the U.S. copyright and foreign copyrights together into a single copyright that "extends" abroad, "there is no such thing as 'international copyright'; instead, there are a multiplicity of national copyright regimes." Ginsburg, *Global Use*, *supra*, at 330; *see supra* pp.20-21. Or, as the U.S. Copyright Office has put it: "There is no such thing as an 'international copyright' that will automatically protect an author's writings throughout the world. Protection against unauthorized use in a particular country depends on the national laws of that country." U.S. Copyright Office, *supra*.[6]

The Fifth Circuit discarded that hornbook copyright law in favor of a tortured analogy to *Kirtsaeng* that drew an equivalence between the phrases "arising under" and "lawfully made under," the latter of which was at issue in *Kirtsaeng*. Even at the most superficial level, the analogy fails: "[L]awfully made" and "arising" are not remotely synonyms. *But see* App.12 ("Because 'arise under this title … contains some of the same terms as 'lawfully made under this title' … the former phrase likely also means" the same thing). But the analogy fares even

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[6] *See also, e.g.*, Gregory Swank, *Extending the Copyright Act Abroad*, 23 Depaul J. Art, Tech, & Intell. Prop. L. 237, 239 (2012) ("Under traditional copyright law, international protection of copyrights is afforded by 'a mosaic of distinct, national systems of protection.'"); Lorin Brennan, *Financing Intellectual Property Under Revised Article 9*, 23 Hastings Comm. & Ent. L.J. 313, 389 (2001) ("[T]here is only one U.S. copyright. But there is also a separate national copyright in each protecting country where the copyright is recognized.").

worse under the hood. *Kirtsaeng* holds that although a U.S. copyright holder can sue the importer of foreign copies if the foreign copies are pirated, the same U.S. copyright holder cannot cry foul if it authorized the creation of those copies abroad. *See* 568 U.S. at 528-30. That makes sense; once copyright holders have accepted benefits from overseas copying, they cannot complain about its impact on their ability to enforce their U.S. rights when those copies make their way to the U.S. market. But the Fifth Circuit turned *Kirtsaeng*'s logic upside down. According to the Fifth Circuit, copyright holders who authorized overseas conduct (by assigning away foreign rights) can cry foul if the authorized foreign conduct continues post-termination, even when that authorized overseas conduct has zero impact on their ability to enforce their U.S. rights. This case is nothing like *Kirtsaeng*, which concerned only that question of whether copies authorized abroad could still be considered counterfeit for U.S. law. And if *Kirtsaeng* stands for anything, it underscores that a copyright owner cannot wield U.S. law to make authorized overseas conduct *ultra vires*.

3. If any doubt remained that the Fifth Circuit got it wrong, the presumption against extraterritoriality would settle it. The Fifth Circuit deemed that presumption irrelevant because "this case is about ownership rather than infringement." App.23. But the presumption against extraterritoriality does not turn on what a case "is about"; it is a "longstanding" clear-statement rule teaching "that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S.

412, 417-18 (2023). "In other words, exclusively '[f]oreign conduct is generally the domain of foreign law.'" *Id.* *That* is why courts typically apply the background assumption "that Congress generally legislates with domestic concerns in mind." *Id.*

Of course, there is no need to resort to that presumption when it comes to §304, as the text is pellucid: Congress expressly provided that reversion "affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under … foreign laws." 17 U.S.C. §304(c)(6)(E). But the policy animating the presumption—"to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries," *Abitron*, 600 U.S. at 417—applies with full force here.

Indeed, the Fifth Circuit's conclusion that Title 17 "is better understood as" granting "a single overarching international copyright that each country is required to honor" all but guarantees international discord. App.22. As noted *supra*, Berne's Article 5 prescribes a "rule of national treatment" under which a foreign author must be treated the same as domestic authors whether or not the foreign author has formally registered for copyright protection in that jurisdiction. Ginsburg, *Global Use*, *supra* at 319. According to the Fifth Circuit, a U.S. author can invoke §304 or §203 and recapture worldwide rights to pre- and post-1978 works, respectively. At the same time, however, a U.K. court under U.K. precedent would refuse to give effect to non-U.K. laws purporting to change ownership of U.K. copyright rights. *See Peer Int'l Corp. v. Termidor Music Publishers Ltd.* [2003]

EWCA Civ. 1156 ¶¶11-48 (Eng.), *available at* https://perma.cc/X39B-P78Q. And that is just the tip of the iceberg of international discord sowed by the decision below. For example, what about U.K. authors of U.K. works? Can they invoke §304, even though (under the Fifth Circuit's logic) they hold only a U.K. copyright? If so, do they recapture only their U.S. rights (making their §304 rights considerably narrower than a U.S. author's §304 rights, *contra* Article 5)? Or can they also use U.S. law to recapture all their rights, including their home U.K. rights, *contra* the U.K. precedent discussed above?

Would it be different if the other country has an analog to §304? Consider France, which has something akin to termination—though France's right has no time limits, so authors can revoke a grant right away, but must compensate the grantee, and must also give the grantee first refusal before reintroducing the work to the public. *See* Christine L. Chinni, *Droit D'auteur Versus the Economics of Copyright: Implications for American Law of Accession to the Berne Convention*, 14 W. New Eng. L. Rev. 145, 153-54 (1992). If U.S. authors use §304 to reclaim their French rights, can they avoid providing compensation or a right of first refusal? If French authors can use §304 to reclaim their worldwide rights, can they avoid the French conditions for termination?

None of these questions has an easy answer, showcasing the havoc the Fifth Circuit has wreaked. "If the United States is to be able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors, its courts should be most cautious before interpreting its domestic

legislation in such manner as to violate international agreements." *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 539 (1995). The Fifth Circuit threw caution to the wind. Making matters worse, its conclusion that a home-country copyright extends internationally *by virtue of* Berne raises a separate textual problem. The notion that an author's reversion rights automatically extend to every other Berne signatory runs headlong into 17 U.S.C. §104(c)'s contrary rule: "Any rights in a work eligible for protection"—including statutory reversion rights—"shall *not* be expanded or reduced" by "the Berne Convention, or the adherence of the United States thereto" (emphasis added). While "U.S. nationals receive protection automatically under the copyright laws of all other member nations" under Berne, "[t]his does not mean" that Berne "vests authors with an international copyright." Eric Priest, *Acupressure: The Emerging Role of Market Ordering in Global Copyright Enforcement*, 68 SMU L. Rev. 169, 176 (2015). Rather, Berne "creates separate rights in multiple parallel national copyright regimes." *Id.*; *see supra* pp.20-21, 26. That is entirely consistent with the plain text of §203 and §304. And it is entirely inconsistent with the decision below.

III. The Industry Needs Uniformity, And This Case Presents An Ideal Vehicle To Restore It.

1. The question presented has profound legal and practical consequences—as Vetter himself has acknowledged. *E.g.*, Kappel & Wells, *supra*, at 13. Those consequences are immediate and will not await percolation. Unlike some issues, where the concerns

prompted by a mistaken decision remain inchoate until actions are undertaken or litigation is initiated, the unsettling impact of the decision below is immediate. Whenever authors send a new termination notice and seek to leverage the decision below in negotiations over a re-grant, both sides will be forced to guess about whether the deal actually pertains to only U.S. rights (as at least the Second Circuit, Nimmer, Patry, and the Copyright Office say) or whether worldwide rights are on the table (as the Fifth Circuit says).

That state of affairs not only leaves everyone worse off—"Nobody would pay an author for something he cannot sell," *Fred Fisher Music*, 318 U.S. at 657—it creates an urgent need for this Court's intervention. Imagine a U.S. author who used §304 in 2016 to reclaim her U.S. rights from publisher A and then assigned those U.S. rights to publisher B for more money. *Cf. Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1040-41 (9th Cir. 2005) (descendent of A.A. Milne attempted to revoke U.S. rights to *Winnie the Pooh* from original grantee and re-grant them to Disney). According to the decision below, publisher B potentially got a windfall by obtaining not only U.S. rights, but worldwide rights. Meanwhile, any international licensing agreements that publisher A entered into from 2016 on were, according to the Fifth Circuit, arguably *ultra vires*. That is a recipe for globetrotting litigation, not least because, as noted above, U.K. courts disagree with the Fifth Circuit and would continue to recognize publisher A's U.K. rights. So if publisher B now tries to license the work in the U.K., publisher A may be able to sue publisher B in the U.K. and win. The

upshot is that *neither* publisher A *nor* publisher B will license the author's work, given the mutually assured litigation risk. That is untenable. "[A] copyright law that can work in practice only if unenforced is not a sound copyright law. It is a law that would create uncertainty, would bring about selective enforcement, and, if widely unenforced, would breed disrespect for copyright law itself." *Kirtsaeng*, 568 U.S. at 545.

And the disruption will not be limited to the music industry. As noted, book authors frequently use §203 and §304 to reclaim rights they assigned to publishing houses and/or movie and TV studios. *See also Brumley*, 822 F.3d at 929 (using *Harry Potter* and the *Sound of Music* as theoretical examples); Rachel R. Alternose, *The Sooner the Better? How to Optimize Bargaining Power When Serving Notices of Copyright Termination*, 49 Colum. J.L. & Arts 637, 661 (2026) ("[R]ecent attempts to terminate source material for large movie franchises like *The Terminator*, *Friday the 13th*, and *Die Hard* left the movie industry scrambling."). And studios often find themselves needing international licenses for songs featured in movies or TV shows. With whom should they now be negotiating when it comes to acquiring a foreign license—the U.S. author who purportedly terminated a grant of worldwide rights, or the original publisher? That very dynamic arose here: ABC sought to acquire an international license in *Double Shot* so that it could upload to its worldwide streaming platform an episode of the hit 1980s comedy *Moonlighting* that featured the song, but that goal crashed into Vetter's and Resnik's competing claims to be the legitimate licensor. *See* ROA.22-23.

Copyright transfers or assignments can take years to negotiate, and they can last for decades after that. If an author of a 1972 work wants to leave open the possibility of terminating his rights when that work turns 56 in 2028, then he must serve his termination notice *now*, and both he and his counterparties must start planning for what a deal for 2028 up to 2067 might look like. *See* 17 U.S.C. §304(c)(4)(A). Indeed, authors are already sending termination notices and starting the negotiation process for 1977 works that will not become eligible for termination until 2033 (with deals potentially lasting through 2072). *Cf. id.* So too for licenses; for a studio to feature a song in a movie slated for worldwide distribution, it needs a worldwide license lasting decades hence. And because making those deals requires figuring out who owns what ex ante, dealmakers simply cannot tolerate prolonged uncertainty about the status of disputed foreign rights. *See* Weintraub Tobin, *The Briefing: Vetter v. Resnik* at 14:44-15:13, JDSupra (Feb. 27, 2026), https://bit.ly/4uu3wEY ("[T]his case raises a real due diligence issue. If a catalog includes works with term exposure and those works were granted worldwide, buyers can't assume that foreign exploitation is insulated, and they're going to have to reprice those works in that catalog accordingly."). In the age of global streaming, foreign rights often represent a significant portion of a license's value. *See id.* at 7:35-8:12.

2. In the few short months since the Fifth Circuit's ruling, a cottage industry has already popped up to try to help both sides of the industry—and both sides of the Atlantic—deal with the fall-out. *E.g.*,

Ass'n of Indep. Music Publishers, *Termination Rights After Vetter v. Resnik*, https://perma.cc/U2L4-H6CE (noting that the "ruling is already reshaping conversations around U.S. termination rights, with significant implications for … everything from catalog valuation and deal structuring to long-term rights strategy"); Gowling WLG, *Double Shot (of Copyright Termination): The Vetter Judgment and Worldwide Copyright Terminations* (Feb. 5, 2026), https://perma.cc/E7BS-J4XK (law firm alert describing the "frenzy through the music industry as well as the copyright law bar, as [the decision] upends decades of legal authority and music industry convention"). And already, this cottage industry has advised authors how to avoid deepening the circuit split: "[R]ace[] to … Fifth Circuit federal courts" and "seek declaratory judgment" (on a claim "framed" around "statutory ownership … rather than contract," to evade pesky "forum-selection clauses") before "rights-holders … attempt to preempt such filings by initiating actions in New York or California." Joshua Love et al., *Termination Beyond U.S. Borders? What Vetter v. Resnik Means for Authors and Rightsholders*, Reed Smith LLP (Jan. 26, 2026), https://perma.cc/MTY8-JWTA.

This indeterminacy is crippling, and it reinforces why the entire creative ecosystem—including authors, whose ability to profit from their creativity ultimately hinges on their ability to convey the fruits of their labor—needs an answer now. Putting off resolution of this issue would serve no one; it would just escalate what is already an extremely difficult situation into a Gordian knot, all in the name of waiting for percolation that may never come. And given the very

real prospect of forum-shopping, it would risk converting the Fifth Circuit's deeply erroneous and aberrational decision into the putative rule.

Granting certiorari now, by contrast, would enable the Court to resolve this vitally important issue and provide much needed clarity before authors and publishers of works currently in their five-year termination period are forced to guess what the right answer will turn out to be. For the sake of those authors and publishers alike, the Court should not let this opportunity pass.

CONCLUSION

The Court should grant certiorari and reverse.

Respectfully submitted,

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June 11, 2026

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30108

CYRIL E. VETTER; VETTER COMMUNICATIONS CORP.,
Plaintiffs-Appellees,
v.
ROBERT RESNIK; RESNIK MUSIC GROUP,
Defendants-Appellants.

Filed: Jan. 12, 2026

Before Smith, Stewart, and Ramirez, *Circuit Judges*.

OPINION

Carl E. Stewart, *Circuit Judges*:

Cyril E. Vetter and Vetter Communications Corporation (collectively, the "Vetter Plaintiffs") brought this lawsuit against Robert Resnik and Resnik Music Group (collectively, "Resnik") seeking a declaration that they are the sole owners of the copyright rights to the song "Double Shot (Of My Baby's Love)" ("Double Shot") throughout the world. Vetter and Donald Smith wrote Double Shot. Vetter then assigned his copyright rights to Double Shot to a music publisher and, years later, terminated the

assignment and recaptured his rights ("Vetter's Recaptured Copyright Interest"). After Smith died, Vetter Communications Corporation purchased the renewal copyright rights held by Smith's heirs ("VCC's Renewal Copyright Interest"). The Vetter Plaintiffs filed a complaint in the Middle District of Louisiana, alleging that they are the exclusive owners of the copyright rights to Double Shot, and that they may exploit it in the United States and abroad. The district court denied Resnik's motion to dismiss and granted the Vetter Plaintiffs' motion for summary judgment. It declared the Vetter Plaintiffs to be the sole owners of the copyright rights to Double Shot throughout the world. Thereafter, Resnik appealed. Because the district court's declaration is supported by statutory text, context, and purpose, we AFFIRM the district court's judgment in full.

I

A. Factual Background

In the summer of 1962, Vetter and Smith wrote Double Shot in Baton Rouge, Louisiana. The following year, they transferred in an assignment agreement (the "1963 Assignment") one hundred percent of their respective copyright interests in Double Shot to Windsong Music Publishers, Inc. ("Windsong") in exchange for one dollar. The 1963 Assignment included "a transfer of the exclusive rights to Double Shot throughout the world for the full term of copyright protection, including a contingent assignment of all renewal period rights under the [Copyright Act of 1909]." After Double Shot was released and received airplay across the country, Windsong filed for a copyright registration for it with

the U.S. Copyright Office in 1966. This registration provided Windsong with federal copyright protection under the Copyright Act of 1909 for an initial term of twenty-eight years with a possible renewal term of an additional twenty-eight years.

In 1972, Smith tragically died in a plane crash. Following Smith's death, his heirs and Vetter renewed the original copyright for Double Shot when its original term ended in 1994 (the "Renewal Copyright"). It is undisputed that the transfer of Vetter and Smith's renewal rights to Windsong in the 1963 Assignment was contingent on Vetter and Smith surviving the original term of the copyright and being alive during the renewal term.[1] Because Vetter was alive during the renewal term, his renewal rights transferred to Windsong under the 1963 Assignment. Because Smith died before the start of the renewal term, his heirs obtained his renewal rights rather than Windsong under the 1963 Assignment. Therefore, Windsong owned fifty percent of the Renewal Copyright given the transfer of Vetter's renewal rights, and Smith's heirs owned the remaining fifty percent of the Renewal Copyright in 1994.

In the spring of 1996, Vetter Communications Corporation purchased the renewal rights held by

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[1] *See Stewart v. Abend*, 495 U.S. 207, 219 (1990) (citing *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 374-75 (1960)) ("[W]hen an author dies before the renewal period arrives, his executor is entitled to the renewal rights, even though the author previously assigned his renewal rights to another party.").

Smith's heirs.[2] Later that year, Windsong assigned fifty percent of its interest in the Renewal Copyright to Lyresong Music, Inc. ("Lyresong"). At this point, Vetter Communications Corporation owned fifty percent of the Renewal Copyright given its purchase from Smith's heirs, and Windsong and Lyresong each owned twenty-five percent of the Renewal Copyright.

In March 2019, Vetter sent Windsong and Lyresong a notice of termination under 17 U.S.C. § 304(c). The notice of termination informed Windsong and Lyresong that Vetter was terminating "all authorship/ownership rights originally granted and conveyed by [Vetter] to [Windsong]" under the 1963 Assignment as of May 3, 2022.[3] In August 2019, Windsong's owner informed Vetter that the company had been sold to Resnik.

In 2022, American Broadcasting Companies, Inc. ("ABC") approached the Vetter Plaintiffs and

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[2] These rights are referred to as "VCC's Renewal Copyright Interest." In 1996, Windsong also executed an assignment agreement that "reduce[d] to writing" Vetter's transfer of his fifty-percent interest in the Renewal Copyright to Windsong. In their complaint, the Vetter Plaintiffs allege that "[t]here appears to be no legitimate basis" for this assignment because "per the [*Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643 (1943)] decision, the transfer of [Vetter's] interest in the renewal term was accomplished through the 1963 Assignment and did not need to be 'reduced to writing' again." The district court did not address this argument because it determined that "the parties appear to agree upon the ultimate fact that Vetter's renewal interest went to Windsong." *See Vetter v. Resnik*, No. 23-CV-1369, 2024 WL 3405556, at *1 n.16 (M.D. La. July 12, 2024). We agree with the district court that this assignment is not at issue.

[3] The rights are referred to as "Vetter's Recaptured Copyright Interest."

requested an expanded license to use Double Shot in a television episode. Although that television episode had previously aired, "ABC was seeking to expand the original music license to include *inter alia* worldwide digital broadcasts and on-demand streams." The Vetter Plaintiffs provided ABC with a quote, indicating that they were the sole and exclusive owners of Double Shot throughout the world. However, Resnik continued to claim twenty-five percent ownership of Double Shot even after receiving a copy of Vetter's notice of termination.

B. Procedural History

On September 27, 2023, the Vetter Plaintiffs filed a complaint in the Middle District of Louisiana, urging the district court to declare them the sole owners of Double Shot. Resnik moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), and the district court denied the motion. The Vetter Plaintiffs then moved for summary judgment, and the district court granted the motion. In doing so, the district court declared Vetter to be the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest and declared Vetter Communications Corporation to be the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest. In other words, it determined that the Vetter Plaintiffs are collectively the sole owners of Double Shot. Resnik timely appealed.

II

This court has jurisdiction under 28 U.S.C. § 1291 because the district court entered a final order and

judgment. It granted summary judgment in favor of the Vetter Plaintiffs on January 29, 2025.

We review a district court's ruling on a motion for summary judgment de novo. *Sanders v. Christwood*, 970 F.3d 558, 561 (5th Cir. 2020) (citing *Burell v. Prudential Ins. Co. of Am.*, 820 F.3d 132, 136 (5th Cir. 2016)). "Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). Because Resnik does not argue that there is a genuine dispute of material fact, we focus on whether the Vetter Plaintiffs are entitled to judgment as a matter of law.

III

On appeal, Resnik argues that the district court erred by declaring Vetter to be the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest for three main reasons. First, he asserts that Vetter's notice of termination does not affect foreign rights based on the plain language of 17 U.S.C. § 304(c). Second, he contends that the district court's interpretation of the statute contradicts case law on the statutory termination of foreign rights. And third, he maintains that the district court's holding conflicts with U.S. treaty obligations under the Berne Convention and Universal Copyright Convention. We address each of these arguments in turn.

A. Statutory Interpretation

We begin with the text of the statute in cases of statutory interpretation. *Matter of Durand-Day*, 134 F.4th 846, 851 (5th Cir. 2025) (citing *Matter of*

Imperial Petroleum Recovery Corp., 84 F.4th 264, 271 (5th Cir. 2023) (per curiam)). We seek the statute's "ordinary meaning." *Id.* (quoting *Niz-Chavez v. Garland*, 593 U.S. 155, 169 (2021)). "If the text of the statute is clear and unambiguous, [the] inquiry ends, and [this court] give[s] effect to the plain language." *Id.* (citing *Carpenters Dist. Council of New Orleans & Vicinity v. Dillard Dep't Stores, Inc.*, 15 F.3d 1275, 1282-83 (5th Cir. 1994)).

Section 304(c) of the Copyright Act of 1976 enables authors and artists to terminate transfers of their copyright rights covering an extended renewal term:

> In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination.

17 U.S.C. § 304(c). Critically, section 304(c)(6)(E) provides that "[t]ermination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. § 304(c)(6)(E).

Resnik first points to the plain language of section 304(c)(6)(E), contending that it shows that Vetter's notice of termination does not affect foreign rights. He asserts that this interpretation is consistent with

congressional intent. He quotes Staff of House Committee on the Judiciary, 89th Congress, Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law (Committee Print 1965), explaining that the language "arising under . . . foreign laws" was meant "to ensure that 'termination affects only those rights *arising under* the U.S. copyright statute and has no effect, for example, *on foreign rights that are covered by the same contract*.'"

The Vetter Plaintiffs respond that the phrase "under this title" is ambiguous, so its meaning should be determined from context. They cite *Kirtsaeng v. John Wiley & Sons, Inc.* ("*Kirtsaeng*"), 568 U.S. 519 (2013), for the proposition that "there is a presumption that 'under this title' *lacks* geographical significance when used in the Copyright Act." For evidence of Congress's intent from legislative history, the Vetter Plaintiffs cite House Report No. 94-1476, at 127 (1976), which states that "[u]nder the bill, termination means that ownership of the rights covered by the terminated grant reverts to everyone who owns termination interests on the date the notice of termination was served."

The district court correctly determined that Vetter is the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest. The district court's holding is supported by statutory text and context as well as statutory purpose.

i. Statutory Text and Context

The district court's holding is supported by the text of section 304(c)(6)(E). Section 304(c)(6)(E) states

that "[t]ermination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. § 304(c)(6)(E). On appeal, Resnik argues that the notice of termination under section 304(c) only affects domestic rights, not foreign rights. However, this interpretation is unpersuasive. According to Merriam Webster, "arise" means "to originate from a source."[4] Black's Law Dictionary similarly defines "arise" as "[t]o originate; to stem (from)."[5] Based on the plain language of "arise under this title," termination covers copyrights that were granted under Title 17 of the U.S. Code, which includes the U.S. Copyright Act, and excludes copyrights that were granted under "any other Federal, State, or foreign laws." In other words, because termination affects rights that "arise under" the U.S. Copyright Act, and because Vetter's rights arose under the U.S. Copyright Act, the plain language of section 304(c)(6)(E) dictates that his termination would be effective as to all of his rights—including his copyright to the extent that it extends internationally. There is no explicit geographical limitation in section 304(c)(6)(E) that restricts the exploitation of Vetter's rights to uses within the United States. Therefore, based on the plain language of the statute, the district court's holding is correct.

While Resnik argues that the district court ignored the legal definition of "arise under," this

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[4] *Arise*, *Merriam Webster*, https://www.merriam-webster.com/dictionary/arise.

[5] *Arise*, *Black's Law Dictionary* (12th ed. 2024).

argument fails as well. He cites a test under *T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 824 (2d Cir. 1964):

> [A]n action "arises under" the Copyright Act if and only if the complaint is for a remedy expressly granted by the Act . . . or asserts a claim requiring construct[ion] of the Act, . . . or, at the very least and perhaps more doubtfully, presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim.

Goodman v. Lee, 815 F.2d 1030, 1031 (5th Cir. 1987) (citation modified) (quoting *T.B. Harms Co.*, 339 F.2d at 828). As the Vetter Plaintiffs observe, even under this test, this case "arises under" the Copyright Act because it involves "a claim requiring construct[ion] of the Act,"—namely, the ownership claim that requires the interpretation of section 304(c). *Id.* The Vetter Plaintiffs are also correct that "termination rights—and the second chance to control and benefit from a work provided by those rights— undoubtedly reflect a 'distinctive policy' of the Copyright Act that requires domestic principles to control the determination of [Double Shot's] ownership."

Even if the meaning of "arise under this title" is ambiguous, the district court still did not err. On appeal, Vetter argues that the phrase "under this title" is ambiguous, so its meaning should be determined from context. The Supreme Court "has acknowledged that the word 'under' is a 'chameleon' that 'must draw its meaning from its context.'" *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 124 (2018) (quoting *Kucana v. Holder*, 558 U.S. 233, 245 (2010)

(internal quotation marks omitted)). Moreover, "[i]t is necessary and required that an interpretation of a phrase of uncertain reach is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning." *Maracich v. Spears*, 570 U.S. 48, 65 (2013) (citing *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993)). "Within a statute, 'the same term usually has the same meaning.'" *Matter of Durand-Day*, 134 F.4th at 852 (quoting *Pulsifer v. United States*, 601 U.S. 124, 149 (2024)). As such, this court may consult other sections of the Copyright Act of 1976 with the same or similar terms to interpret section 304(c)(6)(E).

The Supreme Court's interpretation of section 109(a) of the Copyright Act of 1976 in *Kirtsaeng* is helpful for understanding whether section 304(c)(6)(E) affects domestic and foreign rights. *Kirtsaeng* involved a lawsuit brought by John Wiley & Sons, Inc. ("Wiley"), a textbook publisher. *Id.* at 525. Wiley sued Kirtsaeng, a citizen of Thailand studying in the United States, for copyright infringement because Kirtsaeng imported and resold textbooks from Thailand without Wiley's permission. *Id.* at 527. Kirtsaeng argued that the "first sale" doctrine, which enables owners of a particular copy of a work to resell it without permission from the copyright holder, permitted him to resell the textbooks without permission from Wiley. *Id.*; 17 U.S.C. § 109(a). The Court considered whether the phrase "lawfully made under this title" in section 109(a) of the Copyright Act of 1976 restricts the geographical scope of the "first sale" doctrine. 568 U.S. at 528. It ultimately held that "[section] 109(a)'s language, its context, and the common-law history of the 'first sale' doctrine, taken

together, favor a *non*-geographical interpretation." *Id.* at 530. It reasoned that section 109(a) "favors Kirtsaeng's nongeographical interpretation, namely, that 'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act." *Id.* It also noted that section 109(a) "says nothing about geography." *Id.* The Court concluded that "the nongeographical reading is simple, it promotes a traditional copyright objective (combatting piracy), and it makes word-by-word linguistic sense." *Id.*

Because "arise under this title" in section 304(c)(6)(E) contains some of the same terms as "lawfully made under this title" in section 109(a), the former phrase likely also means "in accordance with" or "in compliance with" the Copyright Act. *See Matter of Durand-Day*, 134 F.4th at 852 (quoting *Pulsifer*, 601 U.S. at 149). Therefore, the termination provision applies to copyrights that were granted in accordance with the Copyright Act of 1976 and excludes copyrights that were granted in accordance with "any other Federal, State, or foreign laws." That the Court in *Kirtsaeng* also adopted a nongeographical interpretation suggests that the district court did not err in similarly adopting a nongeographical reading of section 304(c)(6)(E). For these reasons, we conclude that the district court's holding that Vetter is the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest is supported by statutory text and context.

ii. Statutory Purpose

The district court's holding is also consistent with the purpose of the Copyright Act of 1976. The Copyright Act of 1976 enables authors and artists to

recapture their copyrights in works they may have assigned or transferred through its termination provision. 17 U.S.C. § 203.[6] Congress has explained that "[t]he provisions of section 203 are based on the premise that the reversionary provisions of the present section on copyright renewal [17 U.S.C. § 24] should be eliminated, and that the proposed law should substitute for them a provision safeguarding authors against unremunerative transfers." H.R. Rep. No. 94-1476, at 124 (1976). Congress continued:

> A provision of this sort is needed because of the unequal bargaining position of authors, resulting from the impossibility of determining a work's value until it has been exploited. Section 203 reflects a practical compromise that will further the objectives of the copyright law while recognizing the problems and legitimate needs of all interests involved.

H.R. Rep. No. 94-1476, at 124 (1976).

The district court's holding that Vetter is the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest conforms with this purpose. Interpreting section 304(c)(6)(E) as enabling Vetter to recapture the exclusive rights to Double Shot throughout the world that he transferred to Windsong in the 1963 Assignment would safeguard against an

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[6] Section 203 outlines the conditions for and effect of terminations of transfers in general. Section 304(c) provides for the termination of transfers covering an extended renewal period. *See* 17 U.S.C. §§ 203, 304(c).

unremunerative transfer and help correct for the unequal bargaining power between Vetter and Windsong. Resnik's interpretation of the statute would deprive Vetter of the full set of rights he originally conveyed to Windsong, which is counter to the purpose of the statute. As the Artists Rights Institute observes, "[d]enying terminating authors the full return of a worldwide grant leaves them with only half of the apple—the opposite of [c]ongressional intent."

Authors and artists' rights organizations illustrate how the district court's nongeographical interpretation of section 304(c)(6)(E) is consistent with statutory purpose as well as public policy and industry norms. *Amici curiae* explain that "a return of *all* rights is common in contractual reversions," that the music publishing industry routinely manages the contractual transfer of foreign rights due to statutory termination, and that the district court's decision is consistent with industry norms. That contractual reversions of all rights are common practice in the music industry suggests that Congress did not intend for statutory reversions under section 304(c)(6)(E) to apply only to U.S. rights. Moreover, they note that "[t]he industry's adaptability over U.S. terminations is already evident domestically and, clearly, it has not destroyed the music industry." For these reasons, the district court's holding is supported by statutory purpose as well as public policy and industry norms.

B. Existing Case Law

On appeal, Resnik argues that the district court's interpretation of the statute contradicts case law on the statutory termination of foreign rights. He cites

Siegel v. Warner Bros. Entertainment, Inc. ("*Siegel*"), 542 F. Supp. 2d 1098 (C.D. Cal. 2008), *rev'd in part on other grounds*, 504 F. App'x 586 (9th Cir. 2013), *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998), and *Clancy v. Jack Ryan Enterprises, Ltd.*, No. 17-CV-3371, 2021 WL 488683 (D. Md. Feb. 10, 2021), for the proposition that termination under section 304(c) only recaptures *domestic* rights in a work. However, we decline to follow these cases.

First, Resnik cites *Siegel*. In *Siegel*, the widow and daughter of Jerome Siegel sought a declaration from the court that they had terminated Siegel's and Joseph Shuster's 1938 copyright grant in the comic book superhero "Superman" under 17 U.S.C. § 304(c). 542 F. Supp. 2d at 1102. Siegel and Shuster had previously executed an assignment agreement in which they assigned the exclusive, worldwide rights to Superman to Detective Comics. *Id.* at 1107. Siegel's widow and daughter later served a termination notice under section 304(c) to recapture Siegel's rights. *Id.* at 1114. The district court considered the issue of which rights were recaptured through the termination notice, "namely, . . . whether plaintiffs have a right to defendants' post-termination foreign profits from the exploitation of the Superman copyright." *Id.* at 1116. The court ultimately held that the termination notice only affected the domestic part of the original assignment. *Id.* at 1142. It reasoned that

> Congress expressly limited the reach of what was *gained* by the terminating party through exercise of the termination right; specifically, the terminating party only recaptured the

> *domestic* rights (that is, the rights arising under title 17 to the United States Code) of the grant to the copyright in question. Left expressly intact and undisturbed were any of the rights the original grantee or its successors in interest had gained over the years from the copyright through other sources of law, notably the right to exploit the work abroad that would be governed by the copyright laws of foreign nations. Thus, the statute explains that termination "in no way affects rights" the grantee or its successors gained "under foreign laws."

Id. at 1140.

Siegel is an out-of-circuit case that relies heavily on secondary treatises, which are nonbinding. The district court in *Siegel* cites Professor David Nimmer's treatise: "A grant of copyright 'throughout the world' is terminable only with respect to uses within the geographic limits of the United States. Because copyright has no extraterritorial operation, American law arguably is precluded from causing the termination of rights based on foreign copyright laws." 3 *Nimmer on Copyright* § 11.02[B][2] (2025). To support his view, Nimmer cites another section of his treatise, which discusses the territorial limitations of the U.S. Copyright Act. *See* 3 Nimmer, *supra*, § 11.02[B][2] (citing 5 Nimmer on Copyright § 17.02[A]). It states that "[f]or the most part, acts of infringement that occur outside of the jurisdiction of the United States are not actionable under the United States Copyright Act. This [is] for the reason that copyright laws do not have any extraterritorial

operation." 5 Nimmer, *supra*, § 17.02[A] (citing cases). The remainder of this section primarily discusses the presumption against extraterritoriality in the context of copyright and patent infringement. However, this section does not discuss copyright ownership, assignment, and termination, which are at issue in this case. Additionally, the termination of rights in this case was based on the U.S. Copyright Act rather than foreign copyright laws. Further, even Professor Nimmer admits that "a different conclusion is possible." 3 Nimmer, *supra*, § 11.02[B][2] (providing an example). Indeed, we hold that Professor Nimmer's view is contrary to statutory text, context, and purpose.

The district court in *Siegel* also references Professor William Patry's treatise:

> One provision is quite clear, however: termination only affects U.S. rights. Sections 203(b)(5) and 304(c)(6)(E) both state, in relevant part, that termination "in no way affects rights under . . . foreign laws." Accordingly, where a U.S. author conveys worldwide rights and terminates under either section, grants in all other countries remain valid according to their terms or provisions in other countries' laws.

7 *Patry on Copyright* § 25:74 (2025). Notably, Professor Patry omits key language from the statute: "any other Federal, State, or foreign laws." 17 U.S.C. § 304(c)(6)(E). His interpretation can be reconciled with the district court's holding because the grant of worldwide rights at issue in this case arose under U.S. copyright law rather than "other . . . foreign laws." As

such, the district court did not err in declining to follow *Siegel* and its reliance on Professor Nimmer and Professor Patry's treatises because these authorities are nonbinding and contradict the plain text and purpose of section 304(c)(6)(E).

Second, Resnik references *Clancy v. Jack Ryan Enterprises, Ltd.*, 2021 WL 488683. There, the surviving spouse of author Tom Clancy, Jr. filed a declaratory judgment action to resolve questions of ownership of her husband's character Jack Ryan. *Clancy*, 2021 WL 488683, at *1. The surviving spouse and her daughter filed a termination notice to recapture rights to one of Clancy's literary works. *Id.* at *45. The district court ultimately held that the termination notice could only apply to the domestic copyright in the literary work, explaining that "the worldwide grant of copyright is only subject to termination insofar as its U.S. component is concerned, but not subject to termination in the rest of the world." *Id.* at *46 (citing *Siegel*, 542 F. Supp. 2d at 1142). In its unpublished decision, the district court primarily relied on *Siegel* and Professor Nimmer's treatise, which are both flawed as discussed above.

Third, Resnik discusses *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17. He relies on this case for the proposition that the Second Circuit "recognized that the statutory termination of rights in a musical composition used in the film *Sleepless in Seattle* only resulted in the recapture of the 'domestic rights in the [s]ong.'" In that case, the Second Circuit considered the question of "whether the author or the publisher has the authority to license new uses of a pre-termination derivative work after termination."

Fred Ahlert Music Corp., 155 F.3d at 23. However, it did not consider the precise question of the geographical scope of termination under section 304(c)(6)(E). It only noted that "domestic rights" reverted to heirs when they served a termination notice, citing 17 U.S.C. § 304(c)(6) with no further support. *Id.* at 20. Therefore, this case also provides shaky support for Resnik's argument that termination under section 304 only enables Vetter to exploit Double Shot within the United States.

For these reasons, existing case law provides weak support for Resnik's argument, and this court declines to follow it.

C. International Treaty Principles

Resnik asserts that the district court's holding conflicts with the principles of national treatment and territoriality under two international treaties: the Berne Convention and the Universal Copyright Convention. Resnik explains that the principle of territoriality would be violated under the district court's interpretation "[b]ecause the foreign rights in [Double Shot] do not arise under Title 17 of the U.S. Code, but under the domestic laws of each member country," so "the termination of U.S. rights under [s]ection 304 'in no way affects' those foreign rights." He asserts that the principle of national treatment would be violated because "it would grant U.S. authors *greater* rights than the authors of other Berne and [Universal Copyright Convention] members are entitled to receive under U.S. law." Resnik's arguments are premised on the following theory: "[T]he U.S. Copyright Act, together with the implementing legislation of each other member

country, creates multiple and separate copyright interests in each country, rather than a single overarching international master copyright that each country is required to honor."

The Vetter Plaintiffs respond that Resnik "continue[s] to overstate the effect of the presumption against extraterritoriality in relation to United States copyright law." They argue that this case is about "*ownership* of an intangible property asset" rather than copyright infringement, so "it is reasonable to conclude that, to the extent that the presumption plays a role in this appeal, it does not carry the same weight as it would in a case involving the application of domestic law to foreign parties engaged in foreign conduct." They further contend that courts generally resolve cases about copyright ownership with a choice-of-law analysis, citing *Itar-Tass Russian News Agency v. Russian Kurier, Inc.* ("*Itar-Tass Russian News Agency*"), 153 F.3d 82, 90 (2d Cir. 1998). Finally, the Vetter Plaintiffs argue that the district court's decision does not violate international treaties.

Resnik does not provide sufficient support for his theory, and the district court's interpretation of section 304(c) may be reconciled with the principles of national treatment and territoriality.

The Supreme Court has observed that "[t]he Berne Convention for the Protection of Literary and Artistic Works . . ., which took effect in 1886, is the principal accord governing international copyright relations." *Golan v. Holder*, 565 U.S. 302, 306-07 (2012). "Members of the Berne Union agree to treat authors from other member countries as well as they treat their own." *Id.* at 308 (citing Berne Convention

for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, arts. 1, 5(1), 828 U.N.T.S. 221, 225, 231-33). Therefore, "[n]ationals of a member country, as well as any author who publishes in one of Berne's 164 member states . . . enjoy copyright protection in nations across the globe." *Id.* (citing Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, arts. 2(6), 3, 828 U.N.T.S. 221).

Both the Berne Convention and Universal Copyright Convention subscribe to the principle of national treatment. Under the Berne Convention, the principle of national treatment states that "when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors." Berne Convention for the Protection of Literary and Artistic Works, art. 5(3) (Paris Text 1971). The Universal Copyright Convention has a similar provision. *See* Universal Copyright Convention, as revised at Paris on July 24, 1971, art. II. The Southern District of New York has recognized that "[i]n view of the United States' accession to the Berne Convention and the Universal Copyright Convention . . . a foreign national [of a treaty member state] may seek copyright protection under the Copyright Act although the source of its rights lies abroad." *Bridgeman Art Libr., Ltd. v. Corel Corp.*, 25 F. Supp. 2d 421, 425 (S.D.N.Y. 1998) (footnote omitted).

The Southern District of New York's understanding of these treaties is consistent with the

notion that a copyright may be granted under the laws of one country and still be recognized by other member countries to the Berne Convention and Universal Copyright Convention. This reading contradicts Resnik's theory that there are "multiple and separate copyright interests in each country, rather than a single overarching international copyright that each country is required to honor." For support, Resnik only cites 17 U.S.C. § 104(c), which states that "[n]o right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto." 17 U.S.C. § 104(c). Given the statutory text, context, and purpose of section 304(c) as well as the public policy and industry norms discussed *supra*, it is more likely that a copyright is better understood as being granted under the U.S. Copyright Act and recognized by member countries pursuant to the Berne Convention and Universal Copyright Convention.

In this case, Vetter transferred his exclusive rights to Double Shot throughout the world to Windsong in the 1963 Assignment. Copyright protection for these rights was granted under the U.S. Copyright Act and, in accordance with the Berne Convention and Universal Copyright Convention, was to be recognized by other member countries across the globe. Therefore, these rights would continue to be recognized across the globe consistent with the principle of national treatment when Vetter recaptured them upon termination.

Resnik further argues that the district court's decision conflicts with the principle of territoriality.

According to this principle, copyright protections do not have extraterritorial effect. *See Impression Prods., Inc. v. Lexmark Intern, Inc.*, 581 U.S. 360, 379 (2017). This court has observed that "[t]he Copyright Act does not express its limit on territorial reach. That limit arises from the background presumption that legislation reaches only domestic conduct." *Geophysical Serv., Inc. v. TGS-NOPEC Geophysical Co.*, 850 F.3d 785, 791 (5th Cir. 2017) (citing *Subafilms, Ltd. v. MGM-Pathe Commc'ns Co.*, 24 F.3d 1088, 1095-96 (9th Cir. 1994)). Courts have applied the presumption against extraterritoriality in the context of copyright and patent infringement. *See, e.g.*, *id.* at 789 ("[T]he inapplicability of the Copyright Act to extraterritorial conduct bars a contributory infringement claim based on the domestic authorization of entirely extraterritorial conduct."); *Subafilms, Ltd.*, 24 F.3d at 1098 ("[W]e reaffirm that the United States copyright laws do not reach acts of infringement that take place entirely abroad.").

The Vetter Plaintiffs' argument that Resnik overstates the role of the presumption against extraterritoriality is persuasive. They are correct that this case is about ownership rather than infringement. The National Society of Entertainment & Arts Lawyers points out that both *Impression Products, Inc.*, 581 U.S. 360 and *Geophysical Serv., Inc.*, 850 F.3d 785, concern patent infringement rather than ownership, so they provide minimal support for Resnik's argument. Additionally, Professor Nimmer's discussion of the presumption against extraterritoriality centers on cases of copyright and patent infringement, which are not at issue in this case. 5 Nimmer, *supra*, § 17.02[A] (citing cases).

Because Resnik has not shown that the presumption against extraterritoriality should be applied in the context of ownership, assignment, and termination, we hold that the district court did not err.

The Vetter Plaintiffs' argument that this court should apply a choice-of-law analysis under *Itar-Tass Russian News Agency* rather than the presumption against extraterritoriality is unpersuasive. While Resnik may have overstated the role of the presumption against extraterritoriality in this case, he is correct that *Itar-Tass Russian News Agency* is inapposite. There, the Second Circuit considered the choice of law in copyright ownership and infringement cases. 153 F.3d at 84. The threshold issue was the choice of law for resolving the copyright infringement dispute. *Id.* at 88. The Second Circuit held that "[s]ince the works at issue were created by Russian nationals and first published in Russia, Russian law [was] the appropriate source of law to determine issues of ownership of rights." *Id.* at 90. It reasoned that "[c]opyright is a form of property, and the usual rule is that the interests of the parties in property are determined by the law of the state with 'the most significant relationship' to the property and the parties." *Id.* at 90. However, it qualified its analysis, writing: "In deciding that the law of the country of origin determines the ownership of copyright, we consider only initial ownership, and have no occasion to consider choice of law issues concerning assignments of rights." 153 F.3d at 91 n.11. Therefore, *Itar-Tass Russian News Agency* is inapplicable here because this case involves the assignment of rights.

In sum, the district court did not err by holding that Vetter is the sole owner of Double Shot's copyright throughout the world in Vetter's Recaptured Copyright Interest based on statutory text, context, and purpose. We decline to follow the nonbinding cases Resnik cites. Moreover, the district court's holding is reconcilable with the principles of national treatment and territoriality. Therefore, Vetter is entitled to judgment as a matter of law. *See Sanders*, 970 F.3d at 561 (quoting Fed. R. Civ. P. 56(a)).

IV

On appeal, Resnik argues that the district court erred by declaring Vetter Communications Corporation to be the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest. First, he asserts that the district court's holding cannot be reconciled with the plain text of section 24 of the Copyright Act of 1909. Second, he presses that the district court expanded *Stewart v. Abend* ("*Stewart*"), 495 U.S. 207 (1990), which he asserts limits the recapture of copyright rights to U.S. rights. And third, he maintains that the district court's reading of Stewart would violate the principles of territoriality and national treatment. We address each argument in turn.

A. Statutory Interpretation

Under the Copyright Act of 1909, copyright ownership comprised an original term and a renewal term. *Stewart*, 495 U.S. at 217. The Copyright Act of 1909 provided authors with copyright protection for an original term of twenty-eight years. *Id.* at 212 (citing 35 Stat. 1075, 17 U.S.C. § 1 *et seq.* (1976 ed.)). At the end of the original term, authors could then renew

their copyright for an additional twenty-eight years. *Id.* "[W]hen an author dies before the renewal period arrives, his executor is entitled to the renewal rights, even though the author previously assigned his renewal rights to another party." *Id.* at 219 (citing *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 374-75 (1960)). The Supreme Court has observed that "[t]he renewal term permits the author, originally in a poor bargaining position, to renegotiate the terms of the grant once the value of the work has been tested." *Id.* at 218-19. The renewal provision of the Copyright Act of 1909 states:

> [T]he copyright secured by this title shall endure for twenty-eight years from the date of first publication . . . the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright.

17 U.S.C. § 24 (1909).

Resnik argues that the district court's holding cannot be reconciled with the plain language of the Copyright Act of 1909. He asserts that the language "renewal and extension of the copyright . . . for a

further term of twenty-eight years" only refers to the U.S. copyright because only the United States had this renewal term. The Vetter Plaintiffs contend that the district court correctly determined that VCC's Renewal Copyright Interest "represents a completely new estate clear of *any rights* that [Smith] granted to Windsong during the original copyright term." They point to the plain language of the renewal provision, observing that "[t]he right to obtain a renewal copyright is absolute and unrestricted in the text of the [Copyright Act of 1909]." We agree.

The text and purpose of the renewal provision in the Copyright Act of 1909 support the district court's holding. As discussed *supra*, this court starts with the text of the statute. *Matter of Durand-Day*, 134 F.4th at 851 (citing *Matter of Imperial Petroleum Recovery Corp.*, 84 F.4th at 271). "If the text of the statute is clear and unambiguous, [the] inquiry ends, and [this court] give[s] effect to the plain language." *Id.* (citing *Carpenters Dist. Council of New Orleans & Vicinity*, 15 F.3d at 1282-83). Here, the renewal provision makes no mention of geographical limitations to the scope of renewal rights, and the provision itself does not contain any ambiguity. Therefore, the district court did not err based on the plain language of the provision.

Moreover, the Supreme Court has described the purpose of the Copyright Act of 1909, which was "to give the author a second chance to obtain fair remuneration for his creative efforts and to provide the author's family a 'new estate' if the author died before the renewal period arrived." *Stewart*, 495 U.S. at 220. This purpose is consistent with the Vetter

Plaintiff's argument and the district court's holding that Vetter Communications Corporation is the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest. Only by recapturing the exclusive rights to Double Shot throughout the world rather than recapturing U.S. rights alone would Vetter Communications Corporation receive fair remuneration consistent with the purpose of the Copyright Act of 1909. Thus, the district court did not err based on the statutory text and purpose.

Writing in support of Resnik, the Motion Picture Association cites Professor Nimmer's treatise for the proposition that only U.S. renewal rights revert to the author's heirs when the author dies before the rights have vested. Professor Nimmer considers the example of an American author who grants an American publisher "worldwide" rights in his work for both the original and renewal terms and dies before the renewal term begins. 5 Nimmer, *supra*, § 17.10[B][2]. He asks whether the publisher has "the right to exploit the work outside of the United States," answering that

> the issue here under consideration arises not under contract law, but instead as a matter of legal rights under copyright. In the U.S., the publisher's rights lapsed not because the contract so provided; after all, that contract itself purported to grant renewal rights. Rather, the publisher's rights ceased by operation of the copyright law in that the author, by not surviving to renewal vesting, possessed no copyright in the renewal term that he was able to grant by contract. Given

> that copyright laws exert no extraterritorial impact, it is no more appropriate to apply the renewal aspect of U.S. copyright law in other jurisdictions than it is to apply any other aspect of U.S. law abroad.

5 Nimmer, *supra*, § 17.10[B][2]. For support, Professor Nimmer again cites to another section of his treatise on the territorial limitations of the U.S. Copyright Act. See 3 Nimmer, *supra*, § 17.10[B][2] (citing 5 Nimmer, *supra*, § 17.02). This section discusses the presumption against extraterritoriality in the context of copyright and patent infringement rather than copyright ownership and renewal. Additionally, Professor Nimmer acknowledges that "there is dearth of foreign authority on this issue, such that it remains possible for a foreign court to construe its own domestic copyright law as defeasing the publisher's rights when the U.S. renewal period commences." 5 Nimmer, *supra*, § 17.10[B][2]. He further admits that "several eminent authorities support that view, opposed by equally imminent authorities." 5 Nimmer, *supra*, § 17.10[B][2]. Overall, Professor Nimmer's reading is inconsistent with the plain text and purpose of the statute, so it provides shaky support for Resnik's argument that the district court's holding cannot be reconciled with the plain text of the Copyright Act of 1909.

The district court ultimately did not err by holding that Vetter Communications Corporation is the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest.

B. Existing Case Law

Resnik also argues that the district court expanded Stewart by holding that Smith's heirs gained worldwide copyright rights during the renewal term of the copyright. He maintains that only U.S. renewal rights revert under *Stewart*. He explains:

> As to the U.S. renewal term, however—and only as to the U.S. renewal term—Stewart holds that it is only a grant of an unfulfilled expectancy. As to all other rights conveyed by the author, i.e., foreign rights in countries without a bifurcated copyright term, the effect of the grant remains unchanged, because the foreign rights granted are not mere expectancies but valid full-term rights under the copyright laws of other countries, fully vested in the author for their entire duration ab initio.

Citing *Rohauer v. Killiam Shows, Inc.* ("*Rohauer*"), 379 F. Supp. 723 (S.D.N.Y. 1974), Resnik concludes that "as to these non-U.S. rights . . . the author has more than 'only an expectancy to assign' at the time the assignment is made, and the result of *Stewart* will not extend beyond the 'contingent' U.S. renewal rights." The Vetter Plaintiffs respond that *Stewart* does not support Resnik's argument that the renewal of the copyright did not affect foreign rights. Moreover, they assert that *Rohauer* is inapposite because, among other reasons, Resnik relies on dicta. We agree.

While case law on the geographical scope of the Copyright Act of 1909's renewal provision is scant, *Stewart* contains a similar fact pattern in the context of derivative works. In *Stewart*, an author assigned

the rights to make movies of his stories to a film production company and agreed to renew the copyright. 495 U.S. at 212. However, the author died before he could obtain the renewal rights for the petitioners. *Id.* The executor of the author's trust renewed the copyright in the story and assigned the rights to the respondent. *Id.* After the movie was broadcast on ABC, the respondent notified the petitioners that he owned renewal rights in the copyright and that their distribution of the movie violated his copyright. *Id.* Subsequently, the respondent sued, alleging that the re-release of the movie "infringe[d] his copyright in the story because petitioners' right to use the story during the renewal term lapsed when [the author] died before he could register for the renewal term and transfer his renewal rights to them." *Id.* at 213.

Citing *Miller Music Corp.*, 362 U.S. 373, the Court explained that

> if the author dies before the commencement of the renewal period, the assignee holds nothing. If the assignee of all of the renewal rights holds nothing upon the death of the assignor before arrival of the renewal period, then, a fortiori, the assignee of a portion of the renewal rights, e.g., the right to produce a derivative work, must also hold nothing.

Id. at 220-21. "Therefore, if the author dies before the renewal period, then the assignee may continue to use the original work only if the author's successor transfers the renewal rights to the assignee." *Id.* at 221. The Court concluded that because the author died

before the start of the renewal period, the petitioners "[held] only an unfulfilled expectancy." *Id.*

Resnik argues that the recapture of renewal rights is limited to U.S. rights under *Stewart*, but his argument fails. The *Stewart* Court did not discuss the geographical scope of renewal rights. While the Court explained that the transfer of renewal rights is contingent on the author's survival during the renewal period, the Court did not distinguish between U.S. rights and foreign rights. *See id.* at 219-20. Rather, the Court was silent on that issue.

Resnik also cites *Rohauer* for the proposition that "foreign rights do not revert to the author's estate under the principle articulated in *Stewart*," but *Rohauer* provides minimal support. In *Rohauer*, a British citizen wrote a novel that was published in the United States and registered by the U.S. Copyright Office. 379 F. Supp. at 725. The author assigned the movie rights to the novel and agreed to obtain the renewal of the copyright prior to its expiration; the author then assigned the movie rights for the renewal term to Moskowitz. *Id.* After the author died, the author's heir renewed the copyright in 1952 and assigned the rights to Rohauer in 1965. *Id.* A movie based on the novel was released, and Rohauer brought a copyright infringement lawsuit. *Id.* at 726. Discussing the assignment of the renewal rights in 1965, the district court wrote that at the moment of the assignment, Rohauer was "vested only with rights to the work in the United States; in other countries, the motion picture rights would not have reverted to [the author's heir] for at least three more years." *Id.* at 735. Resnik relies on this statement in his brief, but it

is not as instructive as he claims. Contrary to Resnik's argument, the district court was not saying that the motion picture rights could never revert to the author's heir. And like *Stewart*, *Rohauer* does not discuss the geographical scope of renewal rights under the Copyright Act of 1909.

Therefore, the district court did not err by holding that Vetter Communications Corporation is the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest.

C. International Treaty Principles

Resnik further contends that the district court's interpretation of *Stewart* conflicts with the principle of territoriality because "it would impose the downstream effects of the U.S. renewal system on every country in the world—requiring that foreign publishers surrender their rights in a U.S. work simply because the author happened to die too soon." Resnik presses that the district court's interpretation of *Stewart* violates the principle of national treatment because "U.S. authors would have an opportunity to recapture their rights worldwide after year twenty-eight, but the authors in other countries would not be given that opportunity, either in the U.S. or elsewhere, because the laws of their countries do not create a contingent 'new estate' partway through the copyright term."

The Vetter Plaintiffs respond that the presumption against extraterritoriality is arguably inapplicable to the renewal provision. *See EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). Even if the principle of territoriality applies, they argue that "the district court's [j]udgment in favor of [them]

reflects a permissible domestic application of the renewal provisions in the [Copyright Act of 1909]."

While Resnik maintains that the district court's decision regarding VCC's Renewal Copyright Interest would violate the principles of territoriality and national treatment, he does not provide sufficient support for his argument. As discussed *supra*, his argument is premised on the theory that there are "multiple and separate copyright interests in each country, rather than a single overarching international master copyright that each country is required to honor." However, he does not cite sufficient support in his analysis of this issue. For example, he does not articulate the "downstream effects" he describes as a result of the district court's decision. The Vetter Plaintiffs' argument that the renewal provisions are "inherently non-geographical" is more persuasive given the statutory text and purpose of the renewal provision. Therefore, the Vetter Plaintiffs have the stronger argument on this issue as well.

Overall, the district court did not err by holding that Vetter Communications Corporation is the sole owner of Double Shot's copyright throughout the world in VCC's Renewal Copyright Interest. This holding is supported by statutory text and purpose.

V

For the foregoing reasons, we AFFIRM the district court's judgment in full.

Appendix B

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

No. 23-CV-01369

CYRIL E. VETTER; VETTER COMMUNICATIONS CORP.,
Plaintiffs,
v.
ROBERT RESNIK; RESNIK MUSIC GROUP,
Defendants.

Filed: Jan. 29, 2025

RULING

This matter is before the Court on the Motion for Summary Judgment[1] filed by Plaintiffs Cyril E. Vetter Communications Corporation (collectively, "Plaintiffs"). Defendant Robert Resnik, individually and d/b/a Resnik Music Group ("Defendant"), filed an Opposition,[2] to which Plaintiffs filed a Reply.[3] For the reasons that follow, the Motion will be granted.

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[1] Rec. Doc. 30.

[2] Rec. Doc. 48.

[3] Rec. Doc. 49.

I. Background

The following underlying facts of this copyright case are undisputed. In 1962, Plaintiff Cyril E. Vetter ("Vetter") and his friend Don Smith ("Smith") co-authored a song entitled "Double Shot (Of My Baby's Love)" (the "Song").[4] In 1963, Vetter and Smith assigned all of their interests in the Song to Windsong Music Publishers, Inc. ("Windsong").[5] In exchange for the agreed-upon price of one dollar, Windsong purchased exclusive rights to the Song throughout the world for the full term of copyright protection, as well as a "contingent assignment of all renewal period rights" under the Copyright Act of 1909.[6] This transfer of rights to Windsong will be referred to throughout this Ruling as the "Initial Assignment."

In 1966, Windsong obtained a U.S. copyright registration for the Song (the "Original Copyright").[7] The registration, secured under the Copyright Act of 1909, was to subsist for twenty-eight years with a possible renewal term for an additional period of the same length.[8]

Smith died in 1972.[9] In 1994 (after the twenty-eight-year term of Windsong's Original Copyright ended), Smith's heirs and Vetter obtained a renewal

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[4] Rec. Doc. 1, ¶¶ 51-53. *See also* Rec. Doc. 48-1, p. 1.

[5] Rec. Doc. 32-4, p. 2; Rec. Doc. 48-1, p. 2.

[6] *Id. See also* Rec. Doc. 1-2.

[7] Rec. Doc. 1, ¶ 63. *See also* Rec. Doc. 48-1, p. 2.

[8] *Id.* at ¶ 64.

[9] Rec. Doc. 32-4, p. 2; Rec. Doc. 48-1, p. 1. *See also* Rec. Doc. 32-1, ¶ 4.

copyright in the Song (the "Renewal Copyright").[10] However, as mentioned above, Smith and Vetter both transferred their renewal interests to Windsong in the Initial Assignment in 1963.[11] The parties agree that such a renewal interest assignment is only enforceable against an author if he is living when those rights vest; in other words, an author's grant of the renewal interest is "contingent" upon the author being alive at the commencement of the renewal period.[12] Accordingly, Plaintiffs concede that Vetter's promise of his Renewal Copyright interest to Windsong in the Initial Assignment was enforceable because Vetter was alive at the time the renewal rights vested.[13] Therefore, Vetter's share of the Renewal Copyright went to Windsong.[14] Conversely, because Smith was not alive at the time the renewal rights vested, the parties agree that the transfer of Smith's renewal rights to Windsong in the Initial Assignment was unenforceable, and Smith's heirs retained those renewal rights.[15] Later, Plaintiff Vetter

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[10] *Id.* A "renewal copyright" under the Copyright Act of 1909 is essentially a new term of copyright protection that can be obtained after the term of the original copyright expires.

[11] Rec. Doc. 17, pp. 2-3.

[12] *See Stewart v. Abend,* 495 U.S. 207, 220 (1990) ("if the author dies before the commencement of the renewal period, the assignee holds nothing."). *See also* Rec Doc. 1, ¶ 108; Rec. Doc. 12-1, p. 14.

[13] Rec. Doc. 1, ¶ 74. *See Fred Fisher Music* Co. *v. M. Whitmark* & Sons, 318 U.S. 643 (1943); *Stewart v. Abend,* 495 U.S. 207 (1990).

[14] Rec. Doc. 32-4, p. 2.

[15] Rec. Doc. 1 ¶¶ 108, 109. *See also* Rec. Doc. 12-1, pp. 12-13.

Communications Corporation ("Vetter Communications") purchased Smith's heirs' Renewal Copyright interest (hereinafter referred to as "Vetter Communications' Renewal Copyright Interest").[16]

In 2019, Vetter transmitted a termination notice to Windsong pursuant to Section 304 of the Copyright Act of 1976 (the "Notice of Termination").[17] According to the Notice of Termination, Vetter sought to terminate all rights in the Song that he had granted Windsong through the Initial Assignment, and those rights would be "recaptured" by Vetter (hereinafter referred to as "Vetter's Recaptured Interest"). Also in 2019, Windsong sold its assets to Defendant.[18] The Notice of Termination became effective on May 3, 2022.[19] Later in 2022, Plaintiffs allege they were approached by American Broadcasting Companies, Inc. ("ABC") regarding possible use of the Song on an episode of a television show to be broadcast worldwide.[20] After Plaintiffs provided ABC with a quote, ABC informed Plaintiffs that Defendant, notwithstanding the Notice of Termination, was claiming a twenty-five percent ownership interest in the Song.[21]

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[16] Rec. Doc. 32-4, p. 3; Rec. Doc. 48-1, p. 1. *See also* Rec. Doc. 32-1, ¶¶ 6-7.

[17] *Id. See also* Rec. Docs. 1-6, 1-8.

[18] Rec. Doc. 1, ¶ 89.

[19] Rec. Doc. 32-4, p. 3; Rec. Doc. 48-1, p. 1. *See also* Rec. Doc. 1-8.

[20] Rec. Doc. 1, ¶¶ 93-94.

[21] *Id.* at ¶¶ 95-96.

Plaintiffs later filed this lawsuit seeking a declaratory judgment of sole copyright ownership of the Song throughout the world.[22] Defendant moved to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[23] In that Motion, Defendant argued that Plaintiffs have no rights to the Song outside of the United States as a matter of law because copyright terminations and renewals have no effect in other countries.[24] In opposing the Motion, Plaintiffs argued Vetter Communications' Renewal Copyright Interest (which it purchased from Smith's heirs) and Vetter's Recaptured Interest (through the Notice of Termination) include both domestic and foreign rights to the Song.[25] Therefore, Plaintiffs argued that all of Defendant's rights to the Song have been cut off.[26]

The Court denied Defendant's Motion to Dismiss, finding that Defendant's legal theories were not established by binding authority and Plaintiffs' arguments were sufficiently plausible to survive dismissal.[27] The Ruling on that Motion outlines at length the parties' arguments, applicable law, and the Court's analysis.[28]

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[22] Rec. Doc. 1. The Court provided a detailed overview of the factual background in its prior Ruling on Defendant's Motion to Dismiss *(see* Rec. Doc. 28).

[23] Rec. Doc. 12.

[24] *Id. See also* Rec. Doc. 12-1 .

[25] Rec. Doc. 17.

[26] *Id.*

[27] Rec. Doc. 28.

[28] *Id.*

Plaintiffs filed the instant Motion for Summary Judgment shortly after the Court ruled on Defendant's Motion to Dismiss.[29] Plaintiffs maintain the material facts are undisputed and that the disagreement with Defendant is solely a legal issue regarding the geographic scope of copyright renewals and terminations.[30] Plaintiffs assert the Court has already resolved the legal issues in Plaintiffs' favor in ruling on the Motion to Dismiss and, therefore, summary judgment is warranted.[31]

The day after Plaintiffs moved for summary judgment, Defendant filed a Motion requesting that the Court, pursuant to 28 U.S.C. § 1292(b), amend its Ruling on Defendant's Motion to Dismiss to certify it for interlocutory appellate review.[32] In support of this Motion, Defendant rehashed at length its legal arguments previously asserted in support of its Motion to Dismiss.[33] The Court denied the Motion, reasoning that interlocutory appeal would not "materially advance the ultimate termination of the litigation," which is one of the requirements for certification under § 1292(b).[34]

Defendant also filed a Request for Continuance in Opposition to Plaintiffs' Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure

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[29] Rec. Doc. 30.

[30] *Id. See also* Rec. Doc. 30-1, pp. 2-3.

[31] *Id.*

[32] Rec. Doc. 33.

[33] Rec. Doc. 33-1.

[34] Rec. Doc. 43.

56(d).[35] Defendant sought extra time to respond to the Motion for Summary Judgment so that it could obtain "expert discovery" as to "fundamental issues of international law."[36] The Court denied Defendant's request because continuances under Rule 56(d) are meant for parties who lack adequate facts, and Defendant's proposed expert discovery would advance purely legal arguments on issues the Court had already analyzed in denying Defendant's Motion to Dismiss.[37]

Defendant later filed its substantive Opposition to the Motion for Summary Judgment,[38] and Plaintiffs subsequently filed a Reply.[39]

II. Law and Analysis

In reviewing a party's motion for summary judgment, the Court will grant the motion if (1) there is no genuine issue of material fact, and (2) the mover is entitled to judgment as a matter of law.[40] This determination is made "in the light most favorable to the opposing party."[41] "When seeking summary judgment, the movant bears the initial responsibility of demonstrating the absence of a genuine issue of material fact with respect to those issues on which the

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[35] Rec. Doc. 37.

[36] *Id.* at p. 5.

[37] Rec. Doc. 44.

[38] Rec. Doc. 48.

[39] Rec. Doc. 49.

[40] Fed. R. Civ. P. 56(a).

[41] *Adickes v. S. H. Kress* & Co., 398 U.S. 144, 157 (1970) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)); 6 V. Moore, Federal Practice 56.15(3) (2d ed. 1966)).

movant bears the burden of proof at trial."[42] If the moving party satisfies its burden, "the non-movant must respond to the motion for summary judgment by setting forth particular facts indicating that there is a genuine issue for trial."[43] However, the non-moving party's burden "is not satisfied with some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence."[44]

Notably, "[a] genuine issue of material fact exists, 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"[45] All reasonable factual inferences are drawn in favor of the nonmoving party.[46] However, "[t]he Court has no duty to search the record for material fact issues. Rather, the party opposing the summary judgment is required to identify specific evidence in the record and to articulate precisely how this evidence supports his

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[42] *Transamerica Ins.* Co. *v. Avenell*, 66 F.3d 715, 718 (5th Cir. 1995) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 333-34 (1986)).

[43] *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986)).

[44] *Willis v. Roche Biomedical Lab., Inc.*, 61 F.3d 313, 315 (5th Cir. 1995) (quoting *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994)).

[45] *Pylant v. Hartford Life and Accident Insurance Company,* 497 F.3d 536, 538 (5th Cir. 2007) (quoting *Anderson,* 477 U.S. at 248).

[46] *Galindo v. Precision American Corp.,* 754 F.2d 1212, 1216 (5th Cir. 1985) (internal citation omitted).

claim."[47] "Conclusory allegations unsupported by specific facts ... will not prevent the award of summary judgment."[48]

In opposing Plaintiffs' Motion for Summary Judgment, Defendant does not argue that there are disputed points of material fact. Rather, Defendant only argues the Motion should be denied "[b]ased upon the reasons and authorities set forth" in Defendant's prior briefs on its own Motion to Dismiss and Motion to Amend Order Pursuant to 28 U.S.C. § 1292(b).[49] In other words, Defendant contends the instant Motion for Summary Judgment should be denied solely on legal grounds.

The Court finds that Plaintiffs are entitled to summary judgment based on the undisputed facts in the record and the applicable law. Defendant has not pointed to any factual dispute or evidence which would preclude summary judgment. The Court adopts by reference in full the explanation and legal analysis of this dispute as set forth in its prior Ruling denying Defendant's Motion to Dismiss, as it represents the Court's conclusion on the application of the law to the facts of this case.[50] Defendant's reassertion of the same legal arguments the Court has rejected is insufficient to defeat Plaintiffs' Motion for Summary Judgment.

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[47] *RSR Corp. v. Int'l Ins. Co.*, 612 F.3d 851, 857 (5th Cir. 2010) (internal citation omitted).

[48] *Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.,* 40 F.3d 698, 713 (5th Cir. 1994).

[49] Rec. Doc. 48, p. 3

[50] Rec. Doc. 28.

III. Conclusion

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment[51] is GRANTED. Plaintiff Cyril E. Vetter is hereby declared to be the sole owner of all right, title, and interest throughout the world in Vetter's Recaptured Interest, and Plaintiff Vetter Communications Corporation is hereby declared to be the sole owner of all right, title, and interest throughout the world in Vetter Communications' Renewal Copyright Interest. Plaintiffs are collectively the sole and exclusive owners of the Song. Judgment shall be entered accordingly.

IT IS SO ORDERED.

Baton Rouge, Louisiana, this [handwritten: 29] day of [handwritten: January], 2025.

[handwritten: signature]
Shelly D. Dick
Chief District Judge
Middle District of Louisiana

[51] Rec. Doc. 30.

Appendix C

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

No. 23-CV-01369

CYRIL E. VETTER; VETTER COMMUNICATIONS CORP.,
Plaintiffs,
v.
ROBERT RESNIK; RESNIK MUSIC GROUP,
Defendants.

Filed: July 12, 2024

RULING

This matter is before the Court on the *Motion to Dismiss*[1] filed by Defendant, Robert Resnik, individually and d/b/a Resnik Music Group ("Defendant"). Plaintiffs, Cyril E. Vetter and Vetter Communications Corporation (collectively, "Plaintiffs"), filed an *Opposition*,[2] to which Defendant filed a *Reply*.[3] Plaintiffs then filed a *Sur-Reply*.[4] For the following reasons, the motion will be denied.

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[1] Rec. Doc. 12.

[2] Rec. Doc. 17.

[3] Rec. Doc. 23.

[4] Rec. Doc. 27.

I. Background

A. Facts

This case arises from a disagreement regarding the rights to the foreign exploitation of a musical work co-written by Plaintiff, Cyril E. Vetter ("Vetter"). Plaintiffs' lawsuit alleges the following facts. In 1962, Vetter and his friend Don Smith ("Smith") coauthored a song entitled "Double Shot (Of My Baby's Love)" (the "Song").[5] In 1963, Vetter and Smith assigned all of their interests in the Song to Windsong Music Publishers, Inc. ("Windsong").[6] In exchange for the agreed-upon price of one dollar, Windsong purchased exclusive rights to the Song throughout the world for the full term of copyright protection, as well as a "contingent assignment of all renewal period rights" under the Copyright Act of 1909.[7] This transfer of rights to Windsong will be referred to throughout this ruling as the "Initial Assignment."

In 1966, after the Song gained some popularity, Windsong obtained a U.S. copyright registration for the Song (the "Original Copyright").[8] The registration, secured under the Copyright Act of 1909, was to

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[5] Rec. Doc. 1, ¶¶ 51-53.

[6] *Id.* at ¶ 57. The signed agreement effecting this transfer is attached to the Complaint (*see* Rec. Doc. 6-1).

[7] *Id.* at ¶¶ 58, 59. For context, a "renewal copyright" under the Copyright Act of 1909 is essentially a new term of copyright protection that can be obtained after the term of the original copyright expires. Renewal copyrights will be explained in more detail below.

[8] *Id.* at ¶ 63.

subsist for twenty-eight years with a possible renewal term for an additional period of the same length.[9]

Smith died in 1972.[10] In 1994 (after the twenty-eight-year term of Windsong's Original Copyright ended), Smith's heirs and Vetter obtained a renewal copyright in the Song (the "Renewal Copyright").[11] However, as mentioned above, Smith and Vetter both transferred their renewal interests to Windsong in the Initial Assignment in 1963.[12] Under Supreme Court precedent, the parties agree that such a renewal interest assignment is only enforceable against an author if he is living when those rights vest; in other words, an author's grant of the renewal interest is "contingent" upon the author being alive at the commencement of the renewal period.[13] Accordingly, Plaintiffs concede that Vetter's promise of his Renewal Copyright interest to Windsong in the Initial Assignment was enforceable because Vetter was alive at the time the renewal rights vested.[14] Conversely, because Smith was not alive at the time the renewal rights vested, the parties agree that the transfer of Smith's renewal rights to Windsong in the Initial Assignment was unenforceable; as a result, those

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[9] *Id.* at ¶ 64.

[10] *Id.* at ¶ 65.

[11] *Id.* at ¶ 73. The renewal certificate is attached to the Complaint (*see* Rec. Doc. 6-2).

[12] Rec. Doc. 17, pp. 2-3.

[13] *See Stewart v. Abend*, 495 U.S. 207, 220 (1990) ("if the author dies before the commencement of the renewal period, the assignee holds nothing."). *See also* Rec Doc. 1, ¶ 108; Rec. Doc. 12-1, p. 14.

[14] Rec. Doc. 1, ¶ 74.

rights "vested in Mr. Smith's heirs clear of all rights, interests, or licenses granted under the Original Copyright."[15] Therefore, although Vetter's interest in the Renewal Copyright had been validly transferred to Windsong,[16] Smith's renewal interest vested in Smith's heirs clear of all rights granted to Windsong through the Initial Assignment.

Accordingly, as of 1994, Windsong held a fifty percent interest in the Renewal Copyright (by way of the Initial Assignment of Vetter's renewal interest), and Smith's heirs held the other fifty percent (because of Smith's death before the renewal interest vested). In 1996, Plaintiff Vetter Communications Corporation ("Vetter Communications") purchased Smith's heirs' renewal copyright interest.[17] Later that year, Windsong transferred fifty percent of its renewal interest in the Song to another company, Lyresong

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[15] *Id.* at ¶¶ 108, 109. *See also* Rec. Doc. 12-1, pp. 12-13, where Defendant acknowledges the correctness of this part of the Complaint.

[16] Evidently, in 1996, Windsong executed a document (attached to the Complaint at Rec. Doc. 6-3) purporting to "reduce to writing" the transfer of Vetter's renewal interest to Windsong. *See* Rec. Doc. 1, ¶¶ 77-79; Rec. Doc. 12-1, p. 3. Plaintiffs contend there was "no legitimate basis" for this 1996 assignment because the transfer of Vetter's renewal interest had already been accomplished by the Initial Assignment and Vetter's survival of the term of the Original Copyright. The Court finds it unnecessary to address Plaintiff's contention because, whether or not the 1996 document is valid, the parties appear to agree upon the ultimate fact that Vetter's renewal interest went to Windsong.

[17] Rec. Doc. 1, ¶ 76.

Music, Inc. ("Lyresong").[18] Thus, as of 1996, interest in the Renewal Copyright was held by Vetter Communications (50%), Windsong (25%), and Lyresong (25%). Throughout this ruling, these interests will be referred to as a given party's "Renewal Copyright Interest."

In 2019, Vetter transmitted a termination notice to Windsong and Lyresong pursuant to Section 304 of the Copyright Act of 1976 (the "Notice of Termination").[19] As will be discussed, this is a statutory mechanism that allows the termination and recapture of rights in a copyrighted work that were previously alienated. According to the Notice of Termination, Vetter sought to terminate all rights in the Song that he had granted Windsong through the Initial Assignment, and those rights would be "recaptured" by Vetter (hereinafter referred to as "Vetter's Recaptured Interest").[20] The effective date of the Notice of Termination was to be May 3, 2022.[21]

Later in 2019, Windsong informed Plaintiffs that Windsong had sold its assets to Defendant herein, Robert Resnik and/or Resnik Music Group.[22] Accordingly, Renewal Copyright Interests were held

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[18] *Id.* at ¶ 80. This document is attached to the Complaint (*see* Rec. Doc. 6-4).

[19] *Id.* at ¶ 84. Documents indicating Windsong and Lyresong's receipt of the Notice of Termination are attached to the Complaint (*see* Rec. Docs. 6-5, 6-6), as well as the certificate of recordation of the Notice of Termination (*see* Rec. Doc. 6-7).

[20] *Id.* at ¶ 85.

[21] *Id.*

[22] *Id.* at ¶ 89.

at that point by Vetter Communications (50%), Defendant (25%), and Lyresong (25%).

Plaintiffs allege that on the effective date of the Notice of Termination (May 3, 2022), Vetter "retook ownership of his authorship share" of the Song (i.e., Vetter's Recaptured Interest).[23] Later in 2022, Plaintiffs were approached by American Broadcasting Companies, Inc. ("ABC") regarding possible use of the Song on an episode of a television show to be broadcast worldwide.[24] After Plaintiffs provided ABC with a quote, ABC informed Plaintiffs that Defendant, notwithstanding the Notice of Termination, was claiming a twenty-five percent ownership interest in the Song.[25]

B. The Parties' Dispute

The parties disagree on the geographical scope of both Vetter Communications' Renewal Copyright Interest (which it purchased from Smith's heirs) and Vetter's Recaptured Interest (through the Notice of Termination). Count One of Plaintiffs' Complaint seeks a declaration from this Court that Vetter Communications is the sole owner *throughout the world* of its Renewal Copyright Interest that it acquired from Smith's heirs.[26] In short, Plaintiffs contend that all of Windsong's rights, both domestic and foreign, in the Original Copyright derived from Smith through the Initial Assignment were cut off when Smith's Renewal Copyright Interest vested in

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[23] *Id.* at ¶ 92.

[24] *Id.* at ¶¶ 93-94.

[25] *Id.* at ¶¶ 95-96.

[26] *Id.* at ¶ 113.

Smith's heirs.[27] Plaintiffs argue this gave Smith's heirs a completely new property interest, which was later purchased by Vetter Communications.[28] As a result, Plaintiffs assert that Vetter Communications is the sole owner of this Renewal Copyright Interest, and that this right extends worldwide.[29]

Count Two of the Complaint seeks a declaration that Vetter is the sole owner *throughout the world* of Vetter's Recaptured Interest resulting from his Notice of Termination.[30] Plaintiffs allege that the Notice of Termination cut off all of Defendant's rights, both domestic and foreign, in the Renewal Copyright Interest derived from Vetter's transfer of same through the Initial Assignment to Windsong.[31] As a result, Plaintiffs contend Vetter's Recaptured Interest includes both domestic and foreign rights to exploit the Song.[32]

In sum, Plaintiffs' Complaint for declaratory judgment asks this Court to find the following:

- That Vetter Communications is the sole owner of all rights and interests throughout the world in its Renewal Copyright Interest that it acquired from Smith's heirs;[33]

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[27] *Id.* at ¶¶ 108-113.

[28] *Id.*

[29] *Id.*

[30] *Id.* at ¶ 122.

[31] *Id.* at ¶ 116-119.

[32] *Id.* at ¶ 119-122.

[33] *Id.* at ¶ 124(i).

- That Vetter is the sole owner of all rights and interests throughout the world in Vetter's Recaptured Interest which he acquired through the Notice of Termination;[34] and
- That Defendant has no right to exploit the Song anywhere in the world.[35]

Defendant filed this *Motion to Dismiss*[36] pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant argues that under the applicable statutes and interpreting jurisprudence, neither Vetter Communications' Renewal Interest nor Vetter's Recaptured Copyright Interest have any effect outside of the United States.[37] In other words, Defendant contends that the Notice of Termination only resulted in Vetter's recapture of domestic rights in the Song, and that Vetter Communications' Renewal Interest that it purchased from Smith's heirs is also limited to domestic rights.

In opposing Defendant's motion, Plaintiffs rely on the history, development, and purposes of United States copyright law to assert an admittedly "novel theory of recovery."[38] Defendant argues that a straightforward reading of the applicable statutory provisions and case law requires dismissal of Plaintiffs' claims.

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[34] *Id.* at ¶ 124(ii).

[35] *Id.* at ¶ 124(iii). Plaintiffs also seek to enjoin Defendant from such exploitation.

[36] Rec. Doc. 12.

[37] Rec. Doc. 1-1, pp. 1-2.

[38] Rec. Doc. 17, p. 6.

II. Law and Analysis

A. Motion to Dismiss Under Rule 12(b)(6)

When deciding a Rule 12(b)(6) motion to dismiss, "[t]he 'court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.'"[39] The Court may consider "the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."[40] "To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'"[41]

In *Bell Atlantic Corp. v. Twombly*, the United States Supreme Court set forth the basic criteria necessary for a complaint to survive a Rule 12(b)(6) motion to dismiss: "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[42] A complaint is also insufficient if it merely "tenders 'naked assertion[s]' devoid of 'further factual

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[39] *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin v. Eby Constr. Co. v. Dallas Area Rapid Transit,* 369 F.3d 464, 467 (5th Cir. 2004)).

[40] *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (internal citations omitted).

[41] *In re Katrina Canal Breaches Litigation*, 495 F.3d at 205 (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007)).

[42] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and brackets omitted).

enhancement.'"[43] However, "[a] claim has facial plausibility when the plaintiff pleads the factual content that allows the court to draw the reasonable inference" that the Plaintiff is entitled to relief.[44] In order to satisfy the plausibility standard, the plaintiff must show "more than a sheer possibility" of entitlement to relief.[45] "Furthermore, while the court must accept well-pleaded facts as true, it will not 'strain to find inferences favorable to the plaintiff.'"[46] On a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation."[47]

On a Rule 12(b)(6) motion, a court is authorized "to dismiss a claim on the basis of a dispositive issue of law."[48] As the Supreme Court explains, dismissal is warranted whenever a claim is based on an invalid legal theory:

> Nothing in Rule 12(b)(6) confines its sweep to claims of law which are obviously insupportable. On the contrary, if as a matter of law 'it is clear that no relief could be granted under any set of facts that could be

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[43] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted).

[44] *Id.*

[45] *Id.*

[46] *Taha v. William Marsh Rice Univ.*, 2012 WL 1576099, at *2 (S.D. Tex. 2012) (quoting *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 361 (5th Cir. 2004)).

[47] *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

[48] *Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (citations omitted).

> proved consistent with the allegations,' ... a claim must be dismissed, without regard to whether it is based on an outlandish legal theory, or on a close but ultimately unavailing one.[49]

When a complaint fails to satisfy these principles, "this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court."[50]

B. Copyright Law in General

The dispute in this case results in large part from the parties' differing understandings of the broader concept of how a United States copyright operates with respect to foreign countries. This section is intended to summarize the parties' positions on this overarching issue, which provides needed context to the arguments under Count One and Count Two.

i. United States Copyright Law

Two mechanisms under different versions of the United States Copyright Act are at issue: renewals under the 1909 Act and terminations under the 1976 Act. The 1909 Copyright Act provides for two distinct ownership terms: the initial term and the "renewal term."[51] After the initial term ends, a renewal term can be effected and claimed by the author, if living, or

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[49] *Id.* at 327 (internal citation omitted).

[50] *Cuvillier v. Sullivan,* 503 F.3d 397, 401 (5th Cir.2007) (quoting *Twombly,* 550 U.S. at 558).

[51] *Stewart v. Abend*, 495 U.S. 207, 217 (1990).

by the author's heirs.[52] The renewal provision of the 1909 Act states:

> [T]he author of [a copyrighted] work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright.[53]

By establishing this right of renewal, "Congress attempted to give the author a second chance to control and benefit from his work. Congress also intended to secure to the author's family the opportunity to exploit the work if the author died before he could register for the renewal term."[54] Put another way, "[t]he renewal term permits the author, originally in a poor bargaining position, to renegotiate the terms of the grant once the value of the work has been tested."[55]

The 1976 Act became effective on January 1, 1978. For works (like the Song in this case) that were still in

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[52] *Id.*

[53] *Id.* (quoting 17 U.S.C. § 24 (1976 ed.)). This provision was originally found at § 23 of the 1909 Act.

[54] *Id.* at 218.

[55] *Id.* at 218-219.

their original copyright term as of the effective date, the 1976 Act preserved the renewal right. For such works, the original copyright would "endure for 28 years from the date it was originally secured."[56] With respect to the renewal copyright, the 1976 Act provides that "the widow, widower, or children of the author, if the author is not living … shall be entitled to a renewal and extension of the copyright in such work for a further term of 67 years."[57]

However, for works created *after* the effective date of the 1976 Act, the "dual term" system (i.e., the division between the original term and renewal term) of the 1909 Act was abolished in favor of a unitary term based on the life of the author plus fifty (later increased to seventy) years. Unlike the 1909 Act, the 1976 Act provides authors the ability to terminate grants of rights to third parties in a copyright fifty-six years after the original copyright was secured.[58] This termination right was created to replace the renewal right as the author's "second chance" at benefitting from his work.[59] According to the legislative history of the 1976 Act, "[rights of termination] are based on the premise that the reversionary provisions of the present section on copyright renewal [in the 1909 Act] should be eliminated, and that the proposed law should substitute for them a provision safeguarding

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[56] 17 U.S.C. § 304(a)(1)(A).

[57] 17 U.S.C. § 304(a)(1)(C).

[58] 17 U.S.C. § 304(c)(3).

[59] *Peretti v. Authentic Brands Grp. LLC*, 33 F.4th 131, 134 (2d Cir. 2022).

authors against unremunerative transfers."[60] Pertinent to this case, Section 304(c) of the 1976 Act provides that, "[i]n the case of any copyright subsisting in either its first or renewal term on January 1, 1978, … the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, … is subject to termination."[61] The reversion of rights that results from the termination is subject to several limitations in the statute, one of which is as follows:

> Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.[62]

The dispute in this case calls for a consideration of whether renewals under the 1909 Act and terminations under the 1976 Act have effect outside of the United States.

ii. The "Principle of Territoriality"

Both parties discuss a concept of general copyright law known as the "principle of territoriality." This principle recognizes that, "with limited exception, the 'copyright laws generally do not have extraterritorial application.'"[63] Defendant takes this principle to mean that "copyright protection in

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[60] H.R. Rep. No. 94-1476, 124, 1976 U.S.C.C.A.N. 5659, 5740.

[61] 17 U.S.C. § 304(c).

[62] 17 U.S.C. § 304(c)(6)(E).

[63] *Jaso v. Coca Cola Co.*, 537 F. App'x 557, 560 (5th Cir. 2013) (quoting *Update Art, Inc. v. Modiin Publ'g, Ltd.,* 843 F.2d 67, 73 (2d Cir.1988)).

one country does not extend to or affect protection in any other country,"[64] and that "U.S. copyright law [has] no reach outside U.S. borders."[65] This, Defendant argues, supports dismissal of Plaintiffs' claims to foreign rights to the Song because the mechanisms by which Plaintiffs' interests were purportedly obtained (i.e., Notice of Termination and renewal) are functions of United States copyright law and cannot affect foreign rights that Plaintiffs previously granted away.[66]

Plaintiffs caution against "leaning too heavily" on the principle of territoriality.[67] Plaintiffs acknowledge that "[i]n copyright jurisprudence, this principle has been used to refuse application of the Copyright Act to acts of purely extraterritorial *infringement*."[68] Thus, Plaintiffs concede that United States copyright law cannot provide a remedy for an infringement occurring in a different country.[69] However, Plaintiffs explain that this case is not about *conduct* (i.e., infringement); rather, this case concerns *rights* (i.e., ownership) in the Song.[70] Plaintiffs argue that questions of ownership are treated differently than questions of infringement, with ownership questions

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[64] Rec. Doc. 12-1, pp. 6-7.

[65] *Id.* at p. 15.

[66] *Id.* at pp. 1-2, 6-7, 14-16.

[67] Rec. Doc. 17, p. 8.

[68] *Id.* (citing *Geophysical Serv., Inc. v. TGS-NOPEC Geophysical Co.*, 850 F.3d 785, 791 (5th Cir. 2017) (emphasis added).

[69] *Id.* at 9.

[70] *Id.*

being answered by the law of the country where the work was created (here, the United States).[71] Thus, Plaintiffs state that, "to the extent the defendant argues that the principle of territoriality prevents ownership events occurring in one country (*e.g.*, renewal or reversion) from having any effect or consequence in another country, that argument relies on a vast overstatement of the principle [of territoriality]."[72]

iii. Copyright Interests Across Multiple Countries

Based on their differing interpretations of the principle of territoriality, the parties diverge on a related issue heavily influences the outcome of this dispute. Defendant believes "the U.S. Copyright Act, together with the implementing legislation of each other member country, creates multiple and separate copyright interests in each country, rather than a single overarching international master copyright that each country is required to honor."[73] Under Defendant's reasoning, this means that Vetter Communications' Renewal Copyright Interest and Vetter's Recaptured Interest only encompass domestic rights in the Song; in other countries, the copyright interests are "separate" and thus unaffected by the termination and the renewal.[74]

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[71] *Id.* (citing *Edmark Indus. SDN. BHD. v. S. Asia Int'l (H.K.) Ltd.*, 89 F. Supp. 2d 840, 843 (E.D. Tex. 2000)).

[72] *Id.* at 10.

[73] Rec. Doc. 12-1, p. 8.

[74] *Id.* at pp. 1-2, 6-7, 14-16.

Plaintiffs acknowledge that there is no "international copyright."[75] Instead, according to Plaintiffs, domestic protections are extended to works of foreign origin by way of obligations from membership in treaties or conventions such as the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention"). The Supreme Court has stated that the Berne Convention "is the principal accord governing international copyright relations."[76] Highlighting some of the main features of the Berne Convention, the Court further stated:

> Members of the Berne Union agree to treat authors from other member countries as well as they treat their own. Nationals of a member country, as well as any author who publishes in one of Berne's 164 member states, thus enjoy copyright protection in nations across the globe. Each country, moreover, must afford at least the minimum level of protection specified by Berne.[77]

Continuing, Plaintiffs argue that there is only a single copyright interest in a given work, granted by the issuing country (here, the United States) and then conventionally "recognized" and protected by other countries pursuant to the Berne Convention.[78]

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[75] Rec. Doc. 17, p. 6.

[76] *Golan v. Holder*, 565 U.S. 302, 306-07 (2012).

[77] *Id.* at 308 (citing Berne Convention, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, Arts. 1, 5(1), 2(6), 3, 5(2) (hereinafter "Berne Convention")).

[78] Rec. Doc. 17, pp. 10-13, 18.

Accordingly, under Plaintiffs' reasoning, "the plaintiffs' recapture of that one copyright [through renewal or termination] leaves the defendant with nothing. In that instance, the plaintiffs' domestic rights yield to them the right to exploit [the Song] *everywhere* without interference from its former owner."[79]

With these overarching principles in mind, the Court turns to the arguments on the specific claims in the Complaint.

C. Analysis of Count One: Vetter Communications' Renewal Copyright Interest

Count One of the Complaint calls for a determination of whether Vetter Communications' Renewal Copyright Interest, which it purchased from Smith's heirs, includes rights to exploit the Song in foreign countries. Plaintiffs say that it does, and Defendant says that it does not.

Under the 1976 Act (for works created prior to its enactment) and the 1909 Act, if the author died before the end of the initial copyright term, the author's heirs could obtain the renewal copyright. The renewal copyright was understood to "provide the author's family a 'new estate' if the author died before the renewal period arrived."[80] Plaintiffs assert that the renewal right is not geographically limited to the United States and, therefore, the right encompasses the exploitation of the Song in foreign countries.

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[79] *Id.* at 13.

[80] *Stewart*, 495 U.S. at 220.

Two Supreme Court cases provide further background context to the issue in Count One. In *Fred Fisher Music Co. v. M. Whitmark & Sons*, the Supreme Court held that authors could assign away their renewal interests under the 1909 Act.[81] Later, in *Stewart v. Abend*, the Court expressed that "if the author dies before the commencement of the renewal period, the assignee holds nothing."[82] Put another way, an author's assignment of his renewal interest is "contingent" on the author's survival at the start of the renewal period.

Based on *Fred Fisher* and *Stewart*, it is not disputed in this case that Smith's Initial Assignment to Windsong of his Renewal Copyright Interest was a facially valid transfer. It is also undisputed that this transfer to Windsong was dependent upon Smith's survival of the commencement of the renewal period; that Smith died before this time; and that, as a result, Smith's promise of his renewal interest was unenforceable by Windsong. Smith's Renewal Copyright Interest instead vested in Smith's heirs and was later purchased by Vetter Communications. The disagreement arises where Plaintiffs assert that Vetter Communications' Renewal Interest includes both domestic and foreign rights to the Song. Defendant argues he retained the foreign rights notwithstanding Vetter Communications' Renewal Copyright Interest.

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[81] 318 U.S. 643, 657 (1943).

[82] 495 U.S. at 220 (citing *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960)).

The primary case Defendant relies on in moving to dismiss Count One is *Stewart v. Abend.*[83] Defendant claims that in *Stewart*, "the Supreme Court held that the heirs of a deceased author recapture *only* the unvested, contingent renewal-term rights that such author may have granted before dying prior to the vesting of those rights."[84] Defendant further argues that, unlike the domestic renewal rights, foreign rights assigned by the author are *vested* and *non*contingent.[85]

The issue in *Stewart* involved the rights of the owner of a derivative work against the rights of the successor owner (following the death of the author) of the pre-existing work during the renewal period of the pre-existing work.[86] The Court, citing its prior decision in *Miller Music Corporation v. Charles N. Daniels, Inc.*,[87] held that the successor to the pre-existing work (i.e., the author's heir or executor) had superior rights in the renewal period; in other words, the successor's renewal copyright trumped the rights of the assignee:

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[83] 495 U.S. 207 (1990).

[84] Rec. Doc. 12-1, p. 2 (emphasis in original).

[85] Defendant argues that: "As to the U.S. renewal term, however—and *only* as to the U.S. renewal term—*Stewart* holds that it is only a grant of an unfulfilled expectancy. As to all other rights conveyed by the author, *i.e.,* foreign rights, the effect of the grant should remain unchanged, because the foreign rights granted are *not mere expectancies* but valid full-term rights under the copyright laws of other countries, fully vested in the author for their entire duration *ab initio." Id.* at 15.

[86] *Stewart*, 495 U.S. at 211.

[87] 362 U.S. 373 (1960).

> After *Miller Music,* if the author dies before the commencement of the renewal period, the assignee holds nothing. If the assignee of all of the renewal rights holds nothing upon the death of the assignor before arrival of the renewal period, then, *a fortiori,* the assignee of a portion of the renewal rights, *e.g.,* the right to produce a derivative work, must also hold nothing.[88]

The Court pauses to note here that a literal reading of the quoted is contrary to Defendant's position. Nonetheless, Defendant says the case favors his position. Defendant points out that in *Stewart*, the Supreme Court explained that "the heirs' ownership after the author's death is not the result of the author's grant being voided, set aside, or superseded in any way, but simply the result of the contingent nature of the rights held by the author during the first term."[89] The *Stewart* Court, quoting legislative history of the 1909 Act, did make clear that "[t]he right of renewal is contingent."[90] But the decision did not indicate, as Defendant argues, that "only" the grant of U.S. rights are contingent upon the author's survival, or that "only" the U.S. rights revert to the successor unencumbered in the event of the author's death. Defendant's focus on the contingent nature of the renewal right does not confront the more central question: whether foreign exploitation rights are

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[88] *Stewart*, 495 U.S. at 220-221.

[89] Rec. Doc. 12-1, p. 13 (citing *Stewart*, 495 U.S. at 219).

[90] *Stewart*, 495 U.S. at 219 (quoting 5 Legislative History of the 1909 Copyright Act, Part K, p. 77 (E. Brylawski & A. Goldman eds. 1976) (statement of Mr. Hale)).

encompassed within that contingent renewal right. Indeed, as Plaintiffs point out, the *Stewart* decision says nothing at all about the geographical scope of a renewal copyright interest, which is the issue faced in Count One.[91] In the Court's view, Defendant stretches the holding of *Stewart* and overstates the extent to which it aids his position.

Plaintiffs argue that much of *Stewart* supports their position. The Supreme Court was explicit in conveying that when an author dies before the renewal period commences, the author's successors "obtain the renewal copyright *free of any claim* founded upon an assignment made by the author,"[92] the renewal right "creates a *new estate … clear of all rights, interests or licenses* granted under the original copyright,"[93] and an assignee of those rights prior to the author's death "holds *nothing*."[94] Plaintiffs read this language to mean that:

> Applied here, given that the defendant's "claim" to foreign exploitation rights is indisputably "founded upon" the worldwide grant in the 1963 [Initial] Assignment made by Mr. Smith "during his lifetime," *Stewart* suggests that Windsong's (and thus, the defendant's) rights in Mr. Smith's interest in Double Shot were extinguished *in their*

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[91] Rec. Doc. 17, p. 17.

[92] *Stewart*, 495 U.S. at 219 (quoting *Miller Music*, 362 U.S. at 375) (emphasis added).

[93] *Id.* at 218 (quoting *G. Ricordi & Co. v. Paramount Pictures, Inc.*, 189 F.2d 469, 471 (2d Cir. 1951)) (emphasis added).

[94] *Id.* at 220 (emphasis added).

entirety when his heirs were vested with the Renewal Copyright Interest.[95]

The *Stewart* Court relied on the legislative history of the 1909 Act which provides: "If [the author] is alive at the time of renewal, then the original contract may pass it, but his widow or children or other persons entitled *would not be bound by that contract*."[96] The Court explained that "the renewal provisions [of the 1909 Act] were intended to give the author a second chance to obtain fair remuneration for his creative efforts and to provide the author's family a 'new estate' if the author died before the renewal period arrived."[97] Plaintiffs argue the legislative intent and the Supreme Court's interpretation are best served if all rights, domestic and foreign, revert back upon the renewal.

Stewart does not hold or suggest that an inherited renewal is limited to domestic rights only. The Court is persuaded that *Stewart*, fairly read, supports the Plaintiffs' legal theory.

Defendant also relies on *Rohauer v. Killiam Shows, Inc.*,[98] a case from the Southern District of New York. Defendant says that the case "clearly contemplates that foreign rights do not revert to the author's estate under the principle articulated in

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[95] Rec. Doc. 17, p. 18.

[96] *Stewart*, 495 U.S. at 220 (quoting 5 Legislative History of the 1909 Copyright Act, Part K, p. 77 (E. Brylawski & A. Goldman eds. 1976) (statement of Mr. Hale)) (emphasis added).

[97] *Id.*

[98] 379 F. Supp. 723 (S.D.N.Y. 1974), *rev'd on other grounds*, 551 F.2d 484 (2d Cir. 1977).

Stewart."[99] In *Rohauer*, a British author assigned worldwide rights to make a motion picture of his novel to Moskowitz.[100] The author died, and her heir later obtained a United States renewal copyright in the novel.[101] The heir subsequently transferred her interest in the renewal copyright to the plaintiff, Rohauer.[102] Later, Moskowitz's motion picture version of the novel was broadcast on television without a license from Rohauer, and Rohauer sued for copyright infringement.[103] Rohauer argued that the author's death and the heir's subsequent attainment of the renewal copyright extinguished all of Moskowitz's rights that the author had previously assigned.[104]

Defendant relies on dicta in *Rohauer* that "Rohauer was at that moment vested only with rights to the work in the United States."[105] However, Defendant fails to provide context. The court was considering an affirmative defense asserted by Moskowitz based on the language of the agreement assigning the author's heir's renewal rights to Rohauer.[106] Specifically, the author's heir's

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[99] Rec. Doc. 12-1, p. 14.

[100] *Rohauer*, 379 F. Supp. at 725.

[101] *Id.*

[102] *Id.*

[103] *Id.* at 726.

[104] *Id.* at 727.

[105] Rec. Doc. 12-1, p. 14 (quoting *Rohauer*, 379 F. Supp. at 735).

[106] *Rohauer*, 379 F. Supp. at 734. The Court notes that the particulars of the agreement whereby Vetter Communications purchased Smith's heirs' Renewal Copyright Interest is not a direct point of contention in this case. Accordingly, the Court does

assignment to Rohauer, by its language, conveyed "all the undersigned's right, title and interest (if any) in and to the motion picture and television rights," with a parenthetical stating, "the world motion picture rights in such literary property having been sold by [the author] in December 1925 to Joseph H. Moskowitz."[107] Moskowitz argued that inclusion of the parenthetical phrase which acknowledged the prior assignment made clear that the agreement did not convey to Rohauer the world motion picture rights that were previously assigned to Moskowitz.[108] The court disagreed, finding that the argument "ignores the principle that assignments of rights made during the original term of the copyright do not bind those who succeed to the renewal rights."[109] The court further explained that the motion picture rights in some countries would not have reverted to the heir until three years after the heir's assignment to Rohauer according to the law of those countries, and thus, "Rohauer was at that moment vested only with rights to the work in the United States; in other countries, the motion picture rights would not have reverted to [the author's heir] for at least three more years."[110]

The Court does not read *Rohauer* for the broad proposition that "foreign rights do not revert to the

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not find this piece of *Rohauer* highly pertinent to the facts of the instant dispute.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.* at 735.

author's estate under the principle articulated in *Stewart*,"[111] as argued by Defendant. *Rohauer* provides no analysis of the geographical scope of renewal rights themselves. In fact, the court only suggested that the rights in certain countries had not *yet* reverted back to the heir based on the laws of those countries. The court did not suggest that an heir could *never* obtain those rights. To the contrary, the court recognized that when the successor of a deceased author obtains a renewal, he receives "a new and independent right in the copyright, free and clear of any rights, interests, or licenses attached to the copyright for the initial term,"[112] and that successors to the renewal rights "'are not bound by any assignment executed by the author (or by any assigning member of a prior renewal class) so that the assignee takes nothing.'"[113] The *Rohauer* court did not restrict these principles to domestic rights. Plaintiffs also point out that *Rohauer* is factually distinguishable because the author was British, and the United States was not the novel's country of origin.[114] This, Plaintiffs argue, makes it unsurprising that "any renewal right afforded to this British work under United States law would properly be viewed as having no effect elsewhere," as the *Rohauer* court found.[115] In sum, Defendant's two-sentence presentation of *Rohauer* is a significant

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[111] Rec. Doc. 12-1, p. 14.

[112] *Rohauer*, 379 F. Supp at 727 (citations omitted).

[113] *Id.* (quoting Nimmer on Copyright, § 117.3).

[114] Rec. Doc. 17, p. 21.

[115] *Id.*

oversimplification and does not provide persuasive authority for his position.

Defendant urges that *Stewart*, *Rohauer*, and the principle of territoriality "require the conclusion that the reversion of U.S. renewal-term rights to the author's estate under *Stewart* does not affect a transferee's continued ownership of foreign rights."[116] As noted before, Defendant's central point in support of this position is that, unlike domestic rights, foreign rights are *vested* and *noncontingent*; as such, "[o]nly the U.S. renewal rights are 'expectancies' and they are therefore the only rights that fall under the reasoning of *Stewart*, by the terms of *Stewart* itself."[117]

Plaintiffs counter that Defendant's "fully vested foreign rights" theory is unsupported by the cases Defendant cites, and that it wrongly assumes that there are multiple and separate copyright interests in a single work in each given country throughout the world.[118] As explained before, Plaintiffs posit that "there is only one copyright, afforded in the work's country of origin and then recognized by the international community pursuant to treaty obligations."[119] In other words, the United States copyright carries with it the availability of protection in Berne Convention member countries. Plaintiffs contend this defeats Defendant's argument that foreign rights are vested and noncontingent because "[f]oreign recognition of the United States renewal

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[116] Rec. Doc. 12-1, p. 14.

[117] *Id.* at 15.

[118] Rec. Doc. 17, p. 18.

[119] *Id.*

copyright would belong to the owner thereof, meaning that foreign rights are no less an 'expectancy' than the potential second term itself."[120] To support this theory, Plaintiffs rely on *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, where the Second Circuit explained that "[c]opyright is a form of property, and the usual rule is that the interests of the parties in property are determined by the law of the state with 'the most significant relationship' to the property and the parties."[121] The Second Circuit acknowledged that in a case of *infringement*, the law of the country where the infringement occurred would govern, but stated that "the *nature of a copyright interest* is an issue distinct from the issue of whether the copyright has been *infringed*."[122] Since the work's country of origin in that case was Russia, the ownership question was determined by Russian law.[123] As succintly stated by the Eastern District of Texas, "ownership is determined by the law of the country in which the work is created but infringement is governed by the law where the infringement took place."[124]

Applying *Itar-Tass*, Plaintiffs argue that Defendant "consistently conflates the law applicable to the scope of protection afforded pursuant to the

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[120] *Id.* at pp. 18-19.

[121] 153 F.3d 82, 90 (2d Cir. 1998) (quoting Restatement (Second) of Conflict of Laws § 222).

[122] *Id.* at 91 (citing *Kregos v. Associated Press,* 937 F.2d 700, 709-10 (2d Cir.1991)) (emphasis added).

[123] *Id.*

[124] *Edmark Indus. SDN. BHD.*, 89 F. Supp. 2d at 843 (citing *Itar-Tass*, 153 F.3d 82).

principle of national treatment,[125] and the determination of *who* is entitled to receive and enforce that protection."[126] Plaintiffs argue the instant dispute concerns ownership and thus should be decided by the law of the United States, the Song's country of origin. Thus, Plaintiffs contend that by holding the United States renewal copyright, Vetter Communications is the party entitled to copyright ownership in the Song, and this singular right of ownership encompasses worldwide exploitation and protection pursuant to the Berne Convention.

Defendant counters that *Itar-Tass* is inapplicable because that case is about *initial* copyright ownership, whereas this case concerns *transfers* of ownership.[127] Indeed, the *Itar-Tass* court expressly stated in a footnote: "In deciding that the law of the country of origin determines the ownership of copyright, we consider only initial ownership, and have no occasion to consider choice of law issues concerning assignments of rights."[128] Plaintiffs acknowledge this fact but point to other cases that do address ownership through assignment, including *Creazioni Artistiche Musicali, S.r.l. v. Carlin Am., Inc.*[129] That case

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[125] The "principle of national treatment" under the Berne Convention "simply assures that if the law of the country of infringement applies to the scope of substantive copyright protection, that law will be applied uniformly to foreign and domestic authors." *Itar-Tass*, 153 F.3d at 89.

[126] Rec. Doc. 17, p. 23.

[127] Rec. Doc. 23, p. 4.

[128] *Itar-Tass*, 153 F.3d at 91 n.11.

[129] 2016 WL 7507757 (S.D.N.Y. Dec. 30, 2016). *See also* Rec. Doc. 27, p. 4.

involved an assignment of all rights to certain musical works throughout the world.[130] The New York district court, citing *Itar-Tass*, stated that, "[a]s a general matter, the law of the jurisdiction where an artistic work is 'created' and 'first published' governs issues concerning copyright *ownership*."[131] While noting that jurisprudence regarding *assignment* of copyright is not well developed, the court reasoned that issues of assignment are more analogous to ownership than to infringement.[132] Accordingly, the court concluded that Italian law applied to the dispute because Italy had the most significant relationship to the parties' interests.[133]

In the Court's view, the parties' arguments all lead back to the overarching integral issue of the nature of a United States copyright in a work that is exploited abroad. As discussed, Defendant believes there are "multiple and separate copyright interests in each country."[134] Plaintiffs disagree and assert that "there is only one copyright in [the Song], which copyright is respected throughout the Berne Convention."[135] The answer to this question is largely determinative because it dictates whether the renewal copyright can legally be said to encompass rights to exploit the Song in other countries.

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[130] *Id.* at *1.

[131] *Id.* at *3 (emphasis in original).

[132] *Id.*

[133] *Id.* at *4.

[134] Rec. Doc. 12-1, p. 8.

[135] Rec. Doc. 17, p. 13.

The Plaintiffs' theory is plausible. Defendant points to no authority, and the Court has found none, that directly supports the theory that the Berne Convention creates separate copyrights in each of the member countries. The Ninth Circuit describes this country's membership in the Berne Convention as follows: "[B]ecause the United States joined the Berne Convention, it is required *to afford foreign copyright holders the same protection* as holders of domestic copyrights."[136] From this language it is more plausible that protection in member countries is attendant to the U.S. copyright rather than the conclusion that each member country grants an entirely separate and new copyright by virtue of the Berne Convention. The Plaintiffs plausibly argue that the ownership question is different than the question of protection from infringement. "In cases where a foreign work is allegedly infringed in the United States, the first element of a copyright claim (whether copyright ownership exists at all) is determined by the law of the country which has the closest relationship to the work."[137] Here, it is not in dispute that the United States has the closest relationship to the Song. The ownership of the renewal copyright should therefore be determined by the United States Copyright Act, which created the renewal right to provide the author or his heirs a completely new estate, clear of any rights that the author granted away during the original

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[136] *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 52 F.4th 1054, 1078 (9th Cir. 2022) (cleaned up) (citation omitted) (emphasis added).

[137] *Cong v. Zhao*, No. 2:21-CV-01703-TL, 2024 WL 3091187, at *3 (W.D. Wash. June 21, 2024) (citation omitted).

copyright term.[138] The Court sees no compelling reason why these principles should not apply abroad where the author granted away worldwide rights to begin with; this gives the author's heirs a new estate clear of all rights that were granted away, as evidently intended by the legislature and as articulated by the Supreme Court in *Stewart*. Once the preliminary ownership question is answered by the country of origin, foreign law would apply to an infringement or other conduct relating to the work occurring in that foreign country.

Furthermore, Plaintiffs point out that unlike the Berne Convention, the Paris Convention (applicable to patents and trademarks) makes it express that there are multiple and separate interests in patents and trademarks in different countries. With respect to patents, the Paris Convention states: "Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not."[139] The Paris Convention contains similar express language regarding trademarks: "A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin."[140] Additionally, Plaintiffs note that patent legislation also directly conveys this concept: "Every

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[138] *See Stewart*, 495 U.S. at 218-221.

[139] Paris Convention for the Protection of Industrial Property, July 14, 1967, 21 U.S.T. 1583, T.I.A.S. No. 6923, Art. 4*bis*(1).

[140] *Id.* at Art. 6(3).

patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention *throughout the United States*…"[141] The Court agrees with Plaintiffs' observation that this clarity regarding territorial reach is absent in the Berne Convention and copyright legislation; as the Fifth Circuit has observed, "[t]he Copyright Act does not express its limit on territorial reach."[142]

If the Defendant's "multiple and separate copyrights" theory fails, the related theory that foreign rights assigned by an author are "noncontingent" and "vested" in the assignee such that an author's early death does not result in the reversion of foreign rights to the author's successors likewise fails. At the outset, the Court notes that Defendant failed to cite any legal authority directly supporting this theory, which is the crux of his argument. Once a United States work receives a United States copyright, that work "automatically 'enjoy[s] copyright protection in nations across the globe' pursuant to the Berne Convention."[143] Thus, the renewal of that United States copyright is contingent,[144] and that United States copyright automatically carries with it the ability to be recognized by other Berne Convention signatories. It reasonably follows that those rights of

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[141] 35 U.S.C. § 154(a)(1) (emphasis added).

[142] *Geophysical*, 850 F.3d at 791.

[143] *Lexmark Int'l, Inc. v. Impression Prod., Inc.*, 816 F.3d 721, 762 (Fed. Cir. 2016), *rev'd on other grounds*, 581 U.S. 360 (2017) (quoting *Golan*, 565 U.S. at 309).

[144] *Stewart*, 495 U.S. at 219.

foreign recognition are no less "contingent" than the domestic rights during the renewal period.

This result is in accordance with the *Stewart* Court's view that the renewal copyright term is "completely separate" from the original term and that the renewal term creates a "new estate" clear of any rights granted under the original copyright.[145] It also bears mentioning again that the Supreme Court, without making any mention of geographic reservations, unequivocally stated that "the assignee of all of the renewal rights holds **nothing** upon the death of the assignor before arrival of the renewal period."[146] Defendant has failed to submit sufficient authority to persuade the Court that the words "holds nothing" should be interpreted to mean "holds exclusive rights in all countries other than the United States." Accordingly, the Court finds the Plaintiffs have demonstrated more than a sheer possibility of entitlement to relief. The Plaintiffs legal theory that foreign exploitation of the Song is included in Vetter Communications' Renewal Copyright Interest is plausible. The *Motion to Dismiss* is DENIED as to Count One.

D. Analysis of Count Two: Vetter's Recaptured Interest through the Notice of Termination

Count Two presents the following question: Does a Notice of Termination under Section 304 of the Copyright Act of 1976 result in the author's recapture of both domestic and foreign rights to a work?

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[145] *Id.* at 218 (citing *G. Ricordi & Co.*, 189 F.2d at 471).

[146] *Id.* at 220.

17 U.S.C. § 304(c) provides for the termination of previous grants of rights in a renewal copyright as follows:

> In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination. …

Unlike the renewal right, the termination right is inalienable and can be effected "notwithstanding any agreement to the contrary."[147]

Pertinent to this dispute, Subsection (c)(6)(E) provides the following limitation on this right of termination:

> Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

Defendant contends that 17 U.S.C. § 304(c)(6)(E) unambiguously means that Vetter's Notice of Termination and resultant Recaptured Interest is limited to domestic rights in the Song and does not encompass the right to exploit it in foreign

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[147] 17 U.S.C. § 304(c)(5).

countries.[148] Again, Defendant posits that there are multiple and separate copyright interests in a work in each given country where the work is exploited, as opposed to a single overarching copyright that each country is required to honor or recognize.[149] Thus, Defendant argues that "[c]opyright protection arises from the domestic law of each country in which protection is claimed."[150] Accordingly, Defendant reads Subsection (c)(6)(E) to mean that a termination only affects domestic rights (i.e., "rights covered by the grant that arise under this title"), and does not result in termination of the assignee's rights to exploit the work in other countries (i.e., "in no way affects rights arising under any other Federal, State, or foreign laws.").

Defendant primarily relies on a case from the Central District of California, *Siegel v. Warner Bros. Entertainment, Inc.*[151] The case involved an author's worldwide grant in ownership rights to his creative work.[152] The author later died. Years later, the heirs of the deceased author served notices of termination upon the assignees of the author's prior grant, made defendants in the action.[153] The defendants raised several challenges to the scope of the termination notices. One of those challenges required the court to consider "[t]he parameters of what was recaptured

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[148] Rec. Doc. 12-1, p. 2.

[149] *Id.* at p. 8.

[150] *Id.*

[151] 542 F. Supp. 2d 1098 (C.D. Cal. 2008).

[152] *Id.* at 1107.

[153] *Id.* at 1114.

(and the rights flowing therefrom) through the termination notices, namely, [] whether plaintiffs have a right to defendants' post-termination foreign profits from the exploitation of the [] copyright."[154]

The *Siegel* court noted that it could not find a single case that had addressed the issue of whether a notice of termination resulted in the recapture of rights to foreign profits.[155] Nonetheless, the court decided that under Section 304(c)(6)(E),

> the statutory text could not be any clearer on this subject. Through this section, Congress expressly limited the reach of what was *gained* by the terminating party through exercise of the termination right; specifically, the terminating party only recaptured the *domestic* rights (that is, the rights arising under title 17 to the United States Code) of the grant to the copyright in question. Left expressly intact and undisturbed were any of the rights the original grantee or its successors in interest had gained over the years from the copyright through other sources of law, notably the right to exploit the work abroad that would be governed by the copyright laws of foreign nations.

Thus, the statute explains that termination "in no way affects rights" the grantee or its successors gained "under foreign laws."[156]

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[154] *Id.* at 1116.

[155] *Id.* at 1140.

[156] *Id.*

Thus, the *Siegel* court found that rights that "arise under this title" as stated in Section 304 means "domestic rights." The court found support for this conclusion from scholarly work by Professor David Nimmer, a leading commentator on copyright law, quoting him as follows:

> A grant of copyright "throughout the world" is terminable only with respect to uses within the geographic limits of the United States. Because copyright has no extraterritorial operation, arguably American law is precluded from causing the termination of rights based upon foreign copyright laws. … The conclusive answer to this problem lies in the text of the termination provisions of the Copyright Act, which expressly provide that statutory termination "in no way affects rights arising under ... foreign laws"—that is, under foreign copyright (not contract) laws. Thus, even if the conflicts rule of a foreign nation were to call for application of the American termination rule as a rule of contract law, that rule by its own terms excepts from termination the grant of those rights arising under foreign copyright laws.[157]

Siegel also quoted another commentator who stated: "Accordingly, where a U.S. author conveys worldwide rights and terminates under either section, grants in

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[157] *Id.* at 1140-1141 (quoting 3 Nimmer on Copyright § 11.02[B][2] at 11-19).

all other countries remain valid according to their terms or provisions in other countries' laws."[158]

In addition to *Siegel*, Defendant cites two other cases where courts indicated that a Section 304 termination does not terminate an assignee's rights to foreign exploitation of a copyrighted work. In *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*,[159] although it was not the issue being directly considered, the Second Circuit indicated that when the author's heirs executed a Section 304 termination, the prior assignee's "domestic rights in the song" reverted to the author's heirs, but the assignee retained the foreign rights.[160] Defendant also cites *Clancy v. Jack Ryan Enterprises, Ltd.*, where the District of Maryland relied almost exclusively on *Siegel* to determine that "the worldwide grant of copyright is only subject to termination insofar as its U.S. component is concerned, but not subject to termination in the rest of the world."[161]

Plaintiffs acknowledge that "the few courts to consider the geographical scope of termination rights have ruled contrary to the plaintiffs' position."[162] Nonetheless, Plaintiffs argue Defendant's reasoning, and that of the cases he cites, is flawed.[163] Summarily, Plaintiffs' argument is that: "Foreign protection for

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[158] *Id.* at 1141 (quoting Patry on Copyright § 25:74).

[159] 155 F.3d 17 (2d Cir. 1998).

[160] *Id.* at 20.

[161] No. CV ELH-17-3371, 2021 WL 488683, at *46 (D. Md. Feb. 10, 2021).

[162] Rec. Doc. 27, p. 2.

[163] Rec. Doc. 17, pp. 32-35.

United States works 'arises' not from a multiplicity of foreign copyrights around the world, but rather when treaty partners agree to recognize copyrights that 'arise' in accordance with the Copyright Act."[164] Thus, Plaintiffs conclude that under Section 304(c)(6)(E), the termination results in the recapture of foreign rights because they, like domestic rights, "arise under" the United States Copyright Act.

Plaintiffs note that the *Siegel* court cited no judicial authority for its decision on the termination issue, apparently considering the question as a matter of first impression.[165] Plaintiffs caution that the job of statutory interpretation should not be outsourced to scholars such as Professors Nimmer and Patry and note the minimal analysis of the *Siegel* court apart from citing the scholars' opinions.[166] Furthermore, while the *Siegel* court cited "the longstanding rule 'that the copyright laws [of this country] have no application beyond the U.S. border,'"[167] Plaintiffs argue this rule should not have been controlling on the ownership question under the reasoning of the Second Circuit in *Itar-Tass*, discussed *supra.*

Turning to the statute itself, Plaintiffs contend the language of Section 304(c)(6)(E) is not free from ambiguity on this issue. Specifically, Plaintiffs assert that the phrase "under this title" in the Copyright Act has been deemed ambiguous and lacking geographic

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[164] Rec. Doc. 1, ¶ 33.

[165] Rec. Doc. 17, p. 33.

[166] *Id.*

[167] *Siegel*, 542 F. Supp. 2d at 1141 (quoting *Los Angeles News Serv. v. Reuters Tv. Intern.,* 340 F.3d 926, 931 (9th Cir. 2003)).

significance.[168] In this regard, Plaintiffs rely on the Supreme Court's opinion in *Kirtsaeng v. John Wiley & Sons, Inc.*,[169] which was decided after *Siegel*. The Supreme Court considered the meaning of the words "lawfully made under this title" in the context of the "first sale doctrine," located at Section 109(a) of the Copyright Act.[170] The first sale doctrine allows the owner of a copy of a work "lawfully made under this title" (i.e., the Copyright Act) to resell that copy without the authority of the copyright owner.[171] The Court specifically considered whether the words "under this title" restricted the first sale doctrine geographically.[172] The Court decided that the phrase "lawfully made under this title" did not restrict the first sale doctrine geographically; instead, the Court found that "'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act. The language of § 109(a) says nothing about geography."[173] Thus, the Court concluded that the doctrine applies to copies manufactured abroad and brought into the United States. The Court reasoned that "the nongeographical reading is simple, it promotes a traditional copyright objective (combatting piracy), and it makes word-byword linguistic sense."[174] Additionally, the Court suggested

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[168] Rec. Doc. 17, p. 29.

[169] 568 U.S. 519 (2013).

[170] *Id.* at 528.

[171] 17 U.S.C. § 109(a).

[172] *Kirtsaeng*, 568 U.S. at 529.

[173] *Id.* at 530.

[174] *Id.*

that "the principle that 'copyright laws do not have any extraterritorial operation' 'requires some qualification.'"[175]

Plaintiffs urge that the Court's reasoning in *Kirtsaeng* should be applied in this case to require that a Section 304(c) termination results in the recapture of both domestic and foreign rights. Plaintiffs argue, "given that identical words used in different parts of the same statute are generally regarded to have the same meaning, *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932), following *Kirtsaeng*, one must assume that 'rights that arise *under this title*' as used in Section 304(c)(6)(E) lacks any geographical implications."[176]

Defendant argues that *Kirtsaeng* is inapplicable because the case only addressed the first sale doctrine (an affirmative defense to infringement) and did not address initial ownership or transfers of ownership of copyrights.[177] Defendant continues, "as Plaintiffs themselves point out (Pl. Opp. at 9), conduct and ownership are two very different things. *Kirtsaeng* deals with conduct, *i.e.* the manufacturing of physical copies of a book, not with ownership, and with the applicability of an affirmative defense, not the scope of a limitation on the termination of transfers of ownership."[178]

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[175] *Id.* at 532 (quoting 4 M. Nimmer & D. Nimmer, Copyright § 17.02, pp. 17-18, 17-19 (2012)).

[176] Rec. Doc. 17, p. 36.

[177] Rec. Doc. 23, p. 4.

[178] *Id.* at 5.

Although acknowledging that the facts of *Kirtsaeng* are not "on all fours," Plaintiffs reiterate the relevance of the case because "there is a presumption that a given term is used to mean the same thing throughout a statute."[179] Since the Supreme Court directly addressed the meaning of "under this title" under the Copyright Act, albeit in a different section, Plaintiffs say the case is applicable with respect to the meaning of the phrase in Section 304.[180] Plaintiffs conclude that,

> following *Kirtsaeng*, it is impossible to presume, as the *Siegel* court did, that the phrase "rights that arise under this title" in Section 304(c)(E) imposes an inherent geographical limitation on the scope of rights returned to the author following termination. To the contrary, following *Kirtsaeng*, there is a presumption that "under this title" *lacks* geographical significance when used in the Copyright Act.[181]

For this reason, Plaintiffs say that the holding of *Siegel* is "called into serious doubt" by *Kirtsaeng*.[182]

In conjunction with *Kirtsaeng*, Plaintiffs offer four overarching reasons why their reading of Section 304(c)(6)(E) is correct: 1) it is simple; 2) it supports a traditional copyright objective; 3) it makes linguistic sense; and 4) it narrowly construes a limitation of a

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[179] Rec. Doc. 27, p. 2 (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)).

[180] *Id.*

[181] *Id.* at pp. 2-3.

[182] Rec. Doc. 17, p. 41.

broader right.[183] Plaintiffs argue their view is simple because it means that all rights under copyright law that the assignee received must be returned, and there is "no need to look to the laws of other countries to determine the scope of the reversion and whether they would honor the same."[184]

Plaintiffs argue their view accomplishes one of the important goals of termination rights, evidenced by the legislative history of the 1976 Act: to give authors a second chance to benefit from their creative labor in order to ameliorate the effect of unremunerative transfers.[185] Plaintiffs explain, "[i]f the goal of Section 304(c) is to ameliorate the effect of unremunerative transfers, and the right returns to the author the ability to exploit the reverted work in only *one* of the 181 countries in the Berne Convention, [Defendant's view of] Section 304(c) simply does not achieve that goal."[186] Plaintiffs also state that their view would enhance predictability and certainty of copyright ownership, another goal of Congress in creating the 1976 Act.[187]

Plaintiffs continue that their reading of Section 304(c)(6)(E) makes word-by-word linguistic sense, giving meaning to every word in the sentence.[188] For

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[183] *Id.* at p. 36.

[184] *Id.*

[185] *Id.* at p. 37 (quoting H.R. Rep. No. 94-1476, 124, 1976 U.S.C.C.A.N. 5659, 5740).

[186] *Id.*

[187] *Id.* (citing *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 749 (1989)).

[188] *Id.*

ease of reference, the sentence in that section is repeated here:

> Termination of a grant under this subsection affects only those rights covered by the grant that *arise under this title*, and in no way affects rights *arising under any other* Federal, State, or *foreign laws*.[189]

Plaintiffs note that the phrase "rights that arise under this title" is qualified by the subsequent phrase "other Federal, State, or foreign rights."[190] Plaintiffs read this qualification to indicate that "rights that arise under this title" encompasses more than just the specific rights enumerated in the United States Copyright Act; otherwise, there would be no need for the qualifying phrase.[191] The Defendant's contrary reading, according to Plaintiffs, renders the latter phrase superfluous, which is disfavored in statutory interpretation.[192] Plaintiffs further assert that Defendant and *Siegel* ignored the word "other" in the qualifying phrase, "other Federal, State, or foreign rights."[193] Plaintiffs argue that the qualifying phrase beginning with the word "other" is a "distinction between categories of 'rights' rather than territories."[194] Based on their reading, giving meaning to the word "other," Plaintiffs conclude:

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[189] 17 U.S.C. § 304(c)(6)(E) (emphasis added).

[190] Rec. Doc. 17, pp. 37-38.

[191] *Id.*

[192] *Id.* (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992)).

[193] *Id.*

[194] *Id.*

> [T]he limitation makes clear that termination rights are not intended to extinguish *all* of the grantee's rights under an assignment agreement, rather only those related to a perpetual copyright assignment. Section 304(c)(6)(E) ensures that any of Mr. Vetter's obligations, representations, warranties, or covenants made in the [Initial] Assignment that do not pertain to copyright ownership remain intact. Conversely, Mr. Vetter's agreement to assign the Double Shot copyright interest in perpetuity is unenforceable and is subject to termination.[195]

Fourth, Plaintiffs cite case law for the proposition that a limitation of a broadly applicable termination right such as Section 304(c)(6)(E) should be construed narrowly in a way that does not frustrate the purpose of the right.[196] Since the goal of the termination right is to "relieve authors of the consequences of ill-advised and unremunerative grants that had been made before the author had a fair opportunity to appreciate the true value of his work product," Plaintiffs assert that it should not be given the broad geographic interpretation urged by Defendant.[197]

After a careful review of applicable law, the Court finds that Plaintiffs' argument that foreign rights to the Song in this case "arise under" the United States

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[195] *Id* at 38-39.

[196] *Id.* at 39.

[197] *Id.* (quoting *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 172 (1985)).

Copyright Act, as opposed to the domestic laws of each individual country where the Song may be exploited, is plausible. This Court respectfully declines to follow the reasoning of the California district court in *Siegel*. The legislative history of the Copyright Act indicates that when an author exercises his right of termination, "ownership of the rights *covered by the terminated grant* reverts to everyone who owns termination interests on the date the notice of termination was served."[198] In this case, the "terminated grant" was the Initial Assignment of *worldwide* rights from Vetter to Windsong. It plausibly and logically follows that a termination of a worldwide grant results in the recapture of worldwide rights; in other words, worldwide rights were covered by the terminated grant, so worldwide rights revert upon termination. Furthermore, as with Count One, this result effectuates the Congressional intent to provide the author a second chance to enjoy the benefits of his work and to mitigate the effects of early unremunerative transfers.

The Court also finds support for the Plaintiffs' legal theory in the statutory text. The Court acknowledges Plaintiffs' reliance on *Kirtsaeng* but further notes that the *Kirtsaeng* Court did not have occasion to address the meaning of "*arise* under this title" under Section 304(c)(6)(E); the section of the statute at issue in *Kirtsaeng* addressed works "*lawfully made* under this title." One of the dictionary definitions of "arise" is "to originate from a source."[199]

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[198] H.R. REP. 94-1476, 127, 1976 U.S.C.C.A.N. 5659, 5742.

[199] *Arise*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/arise (last visited July 1, 2024).

Applied here, in the Court's view, both domestic and foreign rights to exploit the Song originated from the United States Copyright Act; once the United States copyright was obtained, the owner of that copyright had the ability to exploit the Song abroad. Although, as the court in *Siegel* explained, foreign exploitation "*would be governed by* the copyright laws of foreign nations,"[200] the Court is unconvinced that the *claim* to such foreign rights "arises under" or "originates from" foreign law because the acquisition of the United States copyright already gives the owner the ability to exploit the work in other Berne Convention countries.

Like in Count One, the Court's conclusion here is that it is entirely plausible that there is only one copyright in the Song which is recognized by other countries pursuant to the Berne Convention. The Southern District of New York reasoned that: "In view of the United States' accession to the Berne Convention and the Universal Copyright Convention, a foreign national [of a treaty member state] may seek copyright protection under the Copyright Act *although the source of its rights lies abroad*."[201] "The Berne Convention 'provides that the law of the country where protection is claimed defines what rights are protected, the scope of the protection, and the available remedies; the treaty does not supply a choice of law rule for determining ownership.'"[202]

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[200] *Siegel*, 542 F. Supp. 2d at 1140 (emphasis added).

[201] *Bridgeman Art Libr., Ltd. v. Corel Corp.,* 25 F. Supp. 2d 421, 425 (S.D.N.Y. 1998) (emphasis added).

[202] *Itar-Tass*, 153 F.3d at 91 (quoting Jane C. Ginsburg, *Ownership of Electronic Rights and the Private International*

The Plaintiffs plausibly argue that the following Berne Convention text recognizes that the "existence" of protection in the work's country of origin is separate from the "enjoyment" of the availability of protection in other member countries:

> The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.[203]

Defendant quotes the following text of the Copyright Act which addresses the Berne Convention: "No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto."[204] Without significant explanation or analysis, Defendant posits that this supports his "multiple and separate copyright interests in each country" view, and it defeats Plaintiffs' entitlement to foreign rights. The Court disagrees. Plaintiffs do not claim an interest in foreign rights "by virtue of" the Berne

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Law of Copyright, 22 Colum.-VLA J.L. & Arts 165, 167-68 (1998)).

[203] Berne Convention, Art. 5(2) (Paris Text 1971).

[204] 17 U.S.C. § 104(c).

Convention; rather, they argue that those foreign exploitation rights flow from the United States copyright. The Berne Convention alleviates the burden of seeking separate copyrights in other countries. [205] The Court finds that Plaintiffs have stated a plausible claim that their rights arise "by virtue of" the Copyright Act, rights which the members of the Berne Convention agree to recognize. Accordingly, Section 104(c) does not defeat Plaintiffs' position.

In further asserting that "[c]opyright protection arises from the domestic law of each country in which protection is claimed," Defendant quotes the following Berne Convention text: "It is understood that, at the time a country becomes bound by this Convention, it will be in a position *under its domestic law* to give effect to the provisions of this Convention."[206] However, the Court finds that this argument conflates the scope of protection with the question of who is entitled to receive that protection. This case concerns the latter. Plaintiffs tenably reason that the copyright

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[205] As the District of Delaware has explained: "The overarching purpose of the Berne Convention is to provide protection to authors whose works will be published in many countries … Berne's proscription of mandatory formalities is a rational response to the difficulty of complying (and maintaining compliance) with differently administered formalities that may have been, absent the Convention, imposed in dozens of national systems, some with registries, some without, and none of which shares information." *Moberg v. 33T LLC*, 666 F. Supp. 2d 415, 422 (D. Del. 2009) (quoting Christopher Sprigman, *Reform(aliz)ing Copyright*, 57 Stan. L. Rev. 485, 544 (2004)).

[206] Rec. Doc. 12-1, p. 8 (quoting Berne Convention, Art. 36) (Paris Text 1971)).

owner is the party entitled to the protection, and the question of who owns the copyright is answered by the law of the country of origin (here, the United States). The copyright owner then enjoys the availability of protection abroad pursuant to the Berne Convention under each country's domestic law.

For the foregoing reasons, Plaintiffs have advanced a legally plausible claim that the right to exploit the Song in foreign countries does not "arise under" the domestic law of each individual country where the work may be exploited, but instead "arises under" the Copyright Act, which is recognized and protected by the domestic law of other countries pursuant to the Berne Convention. Plaintiffs plausibly support the legal theory that Vetter's Recaptured Interest includes both domestic and foreign rights. The *Motion to Dismiss* is DENIED as to Count Two.

III. Conclusion

For the reasons set forth above, the Court finds that Plaintiffs have stated a plausible claim for relief. Accordingly, Defendant's *Motion to Dismiss* is DENIED.

IT IS SO ORDERED.

Baton Rouge, Louisiana, this 12th day of July, 2024.

[handwritten: signature]
Shelly D. Dick
Chief District Judge
Middle District of Louisiana

Appendix D

RELEVANT STATUTORY PROVISIONS

17 U.S.C. §203. Termination of transfers and licenses granted by the author

(a) Conditions for Termination.--In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of

the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the

number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) Effect of Termination.--Upon the effective date of termination, all rights under this title that were covered by the terminated grants revert to the author, authors, and other persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after

its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a

further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grants that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.

17 U.S.C. §304. Duration of copyright: Subsisting copyrights

(a) Copyrights in Their First Term on January 1, 1978.--(1)(A) Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of--

(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or

(ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire,

the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of 67 years.

(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work--

(i) the author of such work, if the author is still living,

(ii) the widow, widower, or children of the author, if the author is not living,

(iii) the author's executors, if such author, widow, widower, or children are not living, or

(iv) the author's next of kin, in the absence of a will of the author,

shall be entitled to a renewal and extension of the copyright in such work for a further term of 67 years.

(2)(A) At the expiration of the original term of copyright in a work specified in paragraph (1)(B) of this subsection, the copyright shall endure for a renewed and extended further term of 67 years, which--

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in the proprietor of the

copyright who is entitled to claim the renewal of copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in the person or entity that was the proprietor of the copyright as of the last day of the original term of copyright.

(B) At the expiration of the original term of copyright in a work specified in paragraph (1)(C) of this subsection, the copyright shall endure for a renewed and extended further term of 67 years, which--

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in any person who is entitled under paragraph (1)(C) to the renewal and extension of the copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in any person entitled under paragraph (1)(C), as of the last day of the original term of copyright, to the renewal and extension of the copyright.

(3)(A) An application to register a claim to the renewed and extended term of copyright in a work may be made to the Copyright Office--

(i) within 1 year before the expiration of the original term of copyright by any person entitled under paragraph (1)(B) or (C) to such further term of 67 years; and

(ii) at any time during the renewed and extended term by any person in whom such further term vested, under paragraph (2)(A) or (B), or by any successor or assign of such person, if the application is made in the name of such person.

(B) Such an application is not a condition of the renewal and extension of the copyright in a work for a further term of 67 years.

(4)(A) If an application to register a claim to the renewed and extended term of copyright in a work is not made within 1 year before the expiration of the original term of copyright in a work, or if the claim pursuant to such application is not registered, then a derivative work prepared under authority of a grant of a transfer or license of the copyright that is made before the expiration of the original term of copyright may continue to be used under the terms of the grant during the renewed and extended term of copyright without infringing the copyright, except that such use does not extend to the preparation during such renewed and extended term of

other derivative works based upon the copyrighted work covered by such grant.

(B) If an application to register a claim to the renewed and extended term of copyright in a work is made within 1 year before its expiration, and the claim is registered, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificates of a registration of a renewed and extended term of copyright made after the end of that 1-year period shall be within the discretion of the court.

(b) Copyrights in their renewal term at the time of the effective date of the Sonny Bono Copyright Term Extension Act.--Any copyright still in its renewal term at the time that the Sonny Bono Copyright Term Extension Act becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.

(c) Termination of Transfers and Licenses Covering Extended Renewal Term.--In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

> **(A)** The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.
>
> **(B)** The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.
>
> **(C)** The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the

children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, or, in the case of a termination under subsection (d), within the five-year

period specified by subsection (d)(2), and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to all of those entitled to terminate the grant under clause (1) of this subsection. In the case of a grant executed by one or more of the authors of the work, all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to that author or, if that author is dead, to the persons owning his or her termination interest under clause (2) of this subsection, including those owners who did not join in signing the notice of termination under clause (4) of this subsection. In all cases the reversion of rights is subject to the following limitations:

(A) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(B) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of this subsection.

(C) Where the author's rights revert to two or more persons under clause (2) of this subsection, they shall vest in those persons in the proportionate shares provided by that clause. In such a case, and subject to the provisions of subclause (D) of this clause, a further grant, or agreement to make a further grant, of a particular author's share with respect to any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under this clause, as are required to terminate the grant under clause (2) of this subsection. Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under this subclause, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's

legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons provided by the first sentence of clause (6) of this subsection, or between the persons provided by subclause (C) of this clause, and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.

(E) Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(F) Unless and until termination is effected under this subsection, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

(d) Termination rights provided in subsection (c) which have expired on or before the effective date of the Sonny Bono Copyright Term Extension Act.--In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Sonny Bono Copyright Term Extension Act for which the termination right provided in subsection (c) has expired by such date,

where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

(1) The conditions specified in subsections (c)(1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.