No. 25-1391

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

BRIEF OF INTERNATIONAL FEDERATION OF THE PHONOGRAPHIC INDUSTRY, INTERNATIONAL CONFEDERATION OF MUSIC PUBLISHERS, INTERNATIONAL FEDERATION OF FILM PRODUCERS' ASSOCIATIONS, AND INTERNATIONAL VIDEO FEDERATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

The International Federation of the Phonographic Industry (IFPI) is the international trade association for the recording industry worldwide. The membership across IFPI and its National Group and Local Association network comprises some 8,000 major and independent record companies and affiliate industry associations in over 70 countries. IFPI demonstrates recorded music's economic value in creating growth, jobs and investment, and recorded music's cultural value to society and in people's lives. IFPI works to make sure that the rights of its members—who create, produce, and invest in music—are properly protected and enforced, and works to help its members license and generate commercial value for music through every available channel across the world.

The International Confederation of Music Publishers (ICMP) is the global trade association for the music publishing community. ICMP's membership spans thousands of independent music publishers ("Indies"), the 3 "Majors", the International Production Music Group, and 80 different national trade associations across six continents. Consequently, ICMP represents the rights underpinning approximately 90% of the world's commercially released music, which today spans more

[1] Counsel of record for all parties received timely advance notice of intent to file. S. Ct. Rule 37.2. No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

than 5,000 genres. ICMP demonstrates the economic value of music publishing in sustaining commercial growth, innovation, employment and licensing markets built on property rights, as well as supporting the cultural value in supporting the dissemination of musical works to audiences worldwide via every format, from streaming to hard copy, audiovisual to the concert stage, gaming to emerging technologies. It works to recognize and protect the rights of its members who invest in, administer, license and protect musical works, and to help members and their songwriters generate commercial value from their catalogues through lawful licensing and efficient copyright infrastructure in markets around the world.

FIAPF—the International Federation of Film Producers' Associations—is the international trade association for film and TV producers. FIAPF's members are 38 film and TV producers' organizations from 31 countries on five continents. The activities of the producers represented by FIAPF's membership include the development and production of films and audiovisual works which are distributed offline and online via all forms of authorized and legal online distribution channels.

IVF—the International Video Federation—is the international trade association for publishers of films and audiovisual works across all home entertainment formats online and offline. The members of the IVF are associations representing businesses active in all segments of the film and TV sector. These businesses are thus involved in the development, production, marketing, and distribution of all types of film and TV works, ranging from feature-length films to short films, documentaries, television dramas and other audiovisual works. They are involved in the publication of such works on digital media (DVD, Blu-ray, etc.) and through all online channels, including transactional, subscription, and advertisement-based distribution models.

FIAPF and IVF demonstrate the economic value of film and TV production and its publication across all home entertainment formats in creating economic growth, jobs, creativity, and investments in the film and TV sector, as well as cultural value to society and the lives of private individuals. FIAPF and IVF work to ensure that their members' rights in the works they produce or publish are properly protected and enforced.

Amici all work closely with other trade associations in the music and wider content industries and are accredited observers at the World Intellectual Property Organization (WIPO). Collectively, Amici are international organizations with expertise in the practice of international copyright law and extensive experience with how national and regional copyright laws are implemented around the world. Amici have a vested interest in the resolution of the question presented because the decision below, if left undisturbed, threatens to upend the territorial licensing and property rights framework upon which the global music and the film and TV industries rely to generate industry revenues. Amici draw upon their particular expertise to illustrate the disruption wrought by the Fifth Circuit's decision. The consequences cannot be cabined to the music industry. Absent review, the decision will threaten the film and TV industries and indeed the wider United States copyright-based sectors.[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

The question presented is of paramount importance to the music industry, film and TV industries and broader content sectors, as well as to the integrity of the international copyright system. Whether a termination notice under sections 203 and 304(c) of the Copyright Act of 1976 can recapture foreign copyright rights conveyed in a worldwide assignment is not an isolated issue with only parochial import. Rather, it has sweeping legal, commercial and international dimensions.

This Court's review is urgently needed because the Fifth Circuit's erroneous "one copyright" theory: (I) disrupts settled industry reliance upon which decades of global licensing practice have been built; (II) departs from established legal authority in a way that undermines foundational principles of copyright; and (III) creates serious conflict-of-laws and enforcement issues. Statutory termination rights in the United States are settled law. But those rights have always been understood to recapture U.S. rights only, leaving foreign rights to the laws of the countries that created and govern them. This is a settled principle upon which contracts and transactions have long been concluded and continue to be concluded. Without authoritative resolution, the decision

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[2] *See, e.g.,* Brief of Motion Picture Association, Inc. as Amicus Curiae in Support of Appellants, *Vetter v. Resnik*, 163 F.4th 951 (5th Cir. 2026) (No. 25-30108).

threatens severe market disruption, industry revenues, multi-jurisdictional litigation, conflicting U.S. and foreign court rulings on copyright ownership of the same work in the same territory, denial of foreign authors' longstanding rights and erosion of the global leadership that U.S. content industries have long maintained.

This case is not about abstract deference to international obligations nor the philosophical underpinnings of copyright. Rather, international considerations matter here because they illustrate the practical and real-world impact of leaving the Fifth Circuit's decision undisturbed: harm to U.S. authors, the music, film and TV industries and the broader content sector; conflicts with foreign copyright laws; and invitations to foreign courts to decline recognition or enforcement of the Fifth Circuit's (erroneous) interpretation of U.S. law. International copyright norms simply confirm the upheaval created by the Fifth Circuit's departure from fundamental U.S. legal principles of territoriality, reliance, and administrability.

Amici agree with Petitioners that Congress struck a careful bargain in the Copyright Act: U.S. law provides a non-waivable U.S. recapture right, while foreign jurisdictions remain free to decide on their own approaches. The Fifth Circuit's decision vitiates that balance, casts decades of settled practice into disarray and creates conflicts around the world. Review is urgently needed.

ARGUMENT

I. The Decision Below Disrupts Settled Industry Reliance.

A brief overview of music copyright and licensing illustrates why the Fifth Circuit's decision threatens settled industry reliance across the music and wider content sectors such as the film and TV sector. Music licensing depends on a complex allocation of rights among multiple rights holders and intermediaries across territories. Catalogue acquisitions, financing arrangements, and securitization structures have been built on the settled understanding that U.S. termination affects only U.S. rights. By upending that understanding, the Fifth Circuit's decision unsettles catalogue valuation, financing, royalty administration, and national and international licensing norms. It also creates the risk of competing ownership claims in different jurisdictions. A brief overview of some aspects of music copyright demonstrates that the industry's licensing architecture rests on a foundation of territorial ownership and administration—a foundation that has enabled U.S. content industries to achieve and maintain global preeminence, and one now imperiled by the Fifth Circuit's decision.

A. Musical Works

Copyright in musical works or compositions (i.e., music and any accompanying words) is typically assigned by songwriters or composers to music publishers for licensing, administration and exploitation in exchange for compensation from royalties.[3] In this case, Cyril E. Vetter and Donald Smith co-authored the musical work "Double Shot (Of My Baby's Love)" and initially assigned copyright in that musical work to Windsong Music Publishers, Inc. Pet. App. 2.

Music publishing centers on getting musical works utilized and managing the rights when utilized—most often via sound recordings of those works. Today, annual music publishing revenues exceed $6.21 billion in the U.S. Although the U.S. remains the largest music publishing market, international markets represent a significant and growing share of revenue for U.S. rights holders.[4] Indeed, U.S. companies and their international affiliates (including many of Amici's members) depend on foreign-market income that in turn requires a predictable territorial allocation of rights.[5]

Musical works generate several revenue streams, principally mechanical (for reproduction) and performance royalties (for public performance) as well as from synchronization licensing (for audiovisual uses).[6] Royalties can usually be administered on behalf of publishers by separate organizations. In the U.S.,

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[3] U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 802 (3d ed. 2021).

[4] ICMP, *The ICMP Music Publishing Markets Analysis 2025*, https://tinyurl.com/55n556h2.

[5] *See, e.g.,* Rod Yates, *Warner Music India Partners with SVF Entertainment, Grows Regional Footprint*, New Indus. Focus (June 17, 2026), https://tinyurl.com/4n77aybw; Rod Yates, *UMG Greater China Signs Catalog Acquisition Deal with Carrier Creative*, New Indus. Focus (June 9, 2026), https://tinyurl.com/2evny9ta.

[6] 17 U.S.C. § 106.

these are typically referred to as Performing Rights Organizations (PROs), while outside of the U.S. the term Collective Management Organization (CMO) is more common. Where mandated, PROs/CMOs can license both mechanical and performance rights to digital service providers and other distributors. Streaming exploitation technology is essentially deemed to implicate a combination of mechanical, performance and other royalties. Publishers also commonly enter into agreements with local subpublishers outside of the U.S. who work with a given country's licensees and, where mandated, CMOs to secure licensed local uses which generate reciprocal income for U.S. rights holders based on contractual agreements.[7]

The dispute itself illustrates the global nature of modern exploitation: American Broadcasting Companies, Inc. sought to use "Double Shot" in worldwide digital broadcasts and on-demand streams of a television episode. Pet. App. 4-5. Such intended use implicates multiple rights and royalty streams, all of which must be cleared and administered across territories.

B. Sound Recordings

Under U.S. law, musical works are a distinct category of copyright work from sound recordings (i.e., works resulting from the fixation of sound). Sound recordings may also be derivative works to the extent they rely upon an underlying musical work. Where a sound recording does incorporate a musical work, exploitation of the sound recording still

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[7] *See* Donald S. Passman, *All You Need to Know About the Music Business* ch. 16–17 (11th ed. 2023) (ebook).

requires rights in the underlying musical work. Put another way, copyright in the derivative work that is the sound recording does not confer rights in the separate, preexisting musical work.[8]

Although "Double Shot" predates federal protection for sound recordings, these principles are relevant to the wider issue of industry reliance because, in practice, exploitation of sound recordings frequently depends on rights in an underlying musical work.[9] Sound recordings are typically administered by record labels, which have a direct interest in publishing rights. Not only does the exploitation of recorded music often depend on underlying musical works, but in practice many labels also have affiliated publishing arms.[10] As detailed in IFPI's 2026 Global Music Report, "[g]lobal recorded music revenues reached an all-time high of US$31.7 billion in 2025" with the U.S. holding a 38.7% share of global revenues.[11]

C. Music Industry Norms

The foregoing background informs how the music industry has organized a complex licensing architecture—beginning with the transfer of

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[8] *See* 17 U.S.C. §§ 101–103, 106; *see also* U.S. Copyright Office, *Circular 56: Copyright Registration for Sound Recordings* 2 (revised Mar. 2021). Outside of the U.S., sound recordings may be protected under neighboring rights regimes.

[9] *See* Pet. App. 2; 17 U.S.C. § 1401(d); *see also* Passman, *supra*, ch. 19 (on right of termination).

[10] U.S. Copyright Office, *How Songwriters, Composers, and Performers Get Paid* 8 (July 2022), https://tinyurl.com/w46xdy5r.

[11] IFPI, *Global Music Report* 6, 28 (2026), https://tinyurl.com/42mrf8w6.

copyright from a songwriter or composer to a music publisher—around the settled understanding that U.S. termination recaptures U.S. rights only.

Worldwide grants of rights are common and have been for more than half a century. Indeed, the initial assignment of rights in "Double Shot" in 1963 was worldwide. Pet. App. 2. The introduction of the right of termination in the Copyright Act of 1976 did not change that practice. Nor did it make worldwide contractual reversions of all rights common, as the Fifth Circuit supposed. Pet. App. 14.[12] Such global reversions as implied by the Fifth Circuit would be unheard of in the music industry, and even more so for the film and TV sectors. Rather, parties price and administer rights on the established understanding that U.S. termination, in the instances where it is used, recaptures U.S. rights only.

Review is needed now to forestall the Fifth Circuit decision from wreaking havoc on foundational principles on which copyright-based industries have relied. Content industries have built their businesses around the understanding that U.S. termination recaptures only U.S. rights. As reported by WIPO earlier this year: "U.S. Copyright Office data reveals that music rights transfers increased 65% by 2020,

[12] This statement appears to rely upon the Brief of Artist Rights Institute, Abby North, Blake Morgan, & Angela Rose White as Amici Curiae in Support of Appellees at 7 n.11, *Vetter v. Resnik*, 163 F.4th 951 (5th Cir. 2026) (No. 25-30108) (citing Passman, but *cf.* Passman, *supra*, ch. 19). But even the counsel that represented Respondents in the Court of Appeals agrees that limiting termination interests to the United States "has been a common industry reading of the statute," albeit one they "don't agree with." Tim Kappel & Loren Wells, *Returning Music to Its Creator*, 5 Fla. Ent. & Sports L. Rev. 13, 16 (2026).

while the use of music rights as collateral in financial transactions nearly doubled since 2010."[13] Intellectual property relating to music, particularly "established song catalogues and older works," has developed into a global financial asset class.[14]

If left unreviewed, the Fifth Circuit's reasoning would unsettle the basis on which intellectual property is valued, exploited, licensed, financed and administered across global markets led by U.S. content industries, including music, film, television, radio and video games. The decision threatens to reopen innumerable historical assignments involving valuable and often iconic works and has already created uncertainty in license clearance, royalty administration and cross-border exploitation. That uncertainty will chill future investment across the global content sector and risks undermining the very framework that has enabled U.S. industries to lead global content markets.

D. Film and TV Production and Distribution

These concerns and reliance interests apply equally to the film and TV sector. The film and TV industries rely on territoriality of copyright to raise financing for the development and production of films and TV works, as well as for organizing their subsequent distribution and exploitation across all distribution channels, including theatrical exploitation, home entertainment formats (online and offline) and broadcasting. Motion pictures and

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[13] World Intell. Prop. Org., *New WIPO Reports Put Music Royalty Investment and IP Finance in Focus* (Mar. 3, 2026), https://tinyurl.com/52avrk36.

[14] *Id.*

television programs are typically financed through a combination of production investment, including international co-productions, and territorial licensing arrangements. Producers frequently assemble financing by pre-selling future distribution rights to publishers and distributors on a territory-by-territory basis, while retaining rights in other territories for later exploitation or financing purposes. Exploitation rights are licensed territorially to distributors, home entertainment publishers, broadcasters and streaming services around the world. Those transactions depend upon legal and commercial certainty as to ownership of copyright in each territory.

Such licenses, whether for theatrical release, streaming, broadcast or niche markets like airlines and hotels, are negotiated and priced against settled assumptions regarding territorial ownership and administration of copyright.

II. The Decision Below's Departure from Established Legal Authority Undermines Foundational Copyright Principles.

In a globalized world, the U.S. content sector maintains a leading position, relying upon the settled territorial allocation of rights in copyright works underpinned by international legal frameworks. Yet the Fifth Circuit abrogated that territorial foundation when it erroneously concluded that U.S. authors have a single copyright granted under the U.S. Copyright Act which is "recognized" by other countries pursuant to international agreements, rather than separate copyrights in each applicable jurisdiction. Pet. App. 21-22. Beyond threatening the complex global licensing system within which content industries operate, the decision below unsettles copyright more generally because it squarely conflicts with fundamental principles of copyright law, as well as case law and scholarly consensus, to the particular detriment of foreign rights holders as well.

A. Territoriality and National Treatment

The inherently territorial nature of copyright is a fundamental principle that underpins copyright laws worldwide. The Fifth Circuit roundly dismissed scholarly consensus on this point, *see, e.g.*, Pet. App. 16-17, but as succinctly explained in the preeminent treatise on international copyright:

> Despite over a century of international, regional, and bilateral harmonization, copyright law remains essentially national law …. International copyright law seeks to coordinate protection of authors and right holders between nation-states. The reasons for international protection press ever more urgently as markets for cultural goods expand globally, and the media that disseminate these literary and artistic works extend to all corners of the world.[15]

Copyright represents a bundle of exclusive rights "bounded by a nation's borders."[16] As such, no single international copyright automatically protects a work worldwide; rather, rights holders may have a bundle

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[15] Paul Goldstein & P. Bernt Hugenholtz, *International Copyright: Principles, Law and Practice* § 1.4 (4th ed. 2019).

[16] *Id.* § 4.1.2.

of national bundles of rights. As described by the Recording Industry Association of America, National Music Publishers' Association, and American Association of Independent Music in their brief for the lower court, this is "universally understood in the sound recording and music publishing industries—and by copyright scholars more generally."[17] This is why termination under U.S. law should simply have no effect on foreign rights, which are governed by foreign laws. A territorial termination rule is pro-author and pro-reliance: authors reclaim what U.S. law gives without rewriting foreign property rights.

An international framework has developed to address the interaction of national rights and to secure protection for authors' creative works in foreign countries regardless of their nationality. The most significant instrument in this framework is the Berne Convention for the Protection of Literary and Artistic Works, to which the United States is a signatory. Article 5 of the Convention enshrines the principle of national treatment.[18] Authors enjoy rights granted by the country where protection is

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[17] Brief of Recording Indus. Ass'n of Am., Nat'l Music Publishers' Ass'n & Am. Ass'n of Indep. Music as Amici Curiae in Support of Appellants at 6, *Vetter v. Resnik*, 163 F.4th 951 (5th Cir. 2026) (No. 25-30108).

[18] Article 5(1) reads: "Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention." Berne Convention for the Protection of Literary and Artistic Works art. 5(1), Sept. 9, 1886, as revised at Paris July 24, 1971 and amended Sept. 28, 1979, S. Treaty Doc. No. 99-27 (1986), 1161 U.N.T.S. 3.

claimed; the extent of protection and means of redress are governed exclusively by that country's laws. In other words, "national treatment is a rule of nondiscrimination, promising foreign creators who come within the treaty's protection that they will enjoy in the protecting country no less favorable treatment for their creations as the protecting country gives to its own nationals."[19] To grant U.S. authors the ability to recapture global rights would be in clear violation of the Berne Convention.

The Fifth Circuit's "one copyright" theory does not just throw a wrench into questions related to terminations, it contradicts the fundamental principles of territoriality and national treatment that underpin the Berne Convention and broader international copyright system—which has been critical to the maintenance of the leading position of the U.S. content sector worldwide. Territoriality and national treatment are not simply matters of doctrine but operational realities for rights holders. The international copyright system is a framework based on minimum harmonization; national laws can thus vary significantly. As a practical matter, licensing, royalty collection, collective management, catalogue valuation and enforcement operate territory by territory. In short, the Fifth Circuit's decision is a destabilizing ruling that undermines the architecture of international copyright law to the particular detriment of U.S. interests, while also harming foreign authors, other rights holders and markets.

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[19] Goldstein & Hugenholtz, *supra*, § 4.2.

B. Termination

The destabilizing effects of the Fifth Circuit's decision on termination questions are particularly dire. It has long been understood across jurisdictions that there will be situations like the one faced by Vetter and Smith in which an author sells his copyright outright to a publisher only to have the work in question then become successful.[20] This is in part due to the difficulty in valuing works early in their lifecycles. National laws have developed to handle this uncertainty differently. The Petition describes in detail the history leading to the introduction of termination rights in the Copyright Act of 1976 and their limitation so as not to affect rights arising under foreign laws. Pet. 6-8. Amici focus here on why the decision below, if left undisturbed, will damage and disrupt the U.S. and international music industries and wider content sectors.

As noted above, notwithstanding the territorial nature of copyright, worldwide grants are common due to the international nature of the business and interests of the U.S. content industries. Music publishers understand that the rights bundled within such licensing agreements arise from and are subject to multiple different national laws. Indeed, outside of the U.S., authors can often rely on more expansive national protections by virtue of the national treatment principle. However, these operate strictly within national legal systems and do not purport to

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[20] H.R. Rep. No. 60-2222, at 14 (1909), cited with approval in *Stewart v. Abend*, 495 U.S. 207, 218 (1990) (addressing renewal terms).

affect rights governed by foreign law. This reflects a consistent international practice: while exploitation is global, author protection remains territorial in scope.

For example, in the European Union, Chapter 3 of Title IV of Directive (EU) 2019/790 on Copyright in the Digital Single Market (the "Directive"), entitled "[f]air remuneration in exploitation contracts of authors and performers," establishes broad contractual protections for authors and performers.[21] The Directive requires E.U. Member States to ensure that authors and performers receive appropriate and proportionate remuneration when they license or transfer their exclusive rights. The Directive confers a right of revocation, which allows authors and performers to revoke in whole or in part their exclusive license or transfer of rights for lack of exploitation after a reasonable time following the conclusion of the license or the transfer of the rights.[22] Reversion rights can also be observed beyond Europe, including in Canada, Indonesia and Uganda.[23] Such

[21] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92 (EU).

[22] *Id.* art. 22.

[23] *See* Copyright Act, R.S.C. 1985, c. C-42, § 14(1) (Can.) (providing for an automatic reversion of copyright to the author's estate 25 years after the author's death notwithstanding agreements to the contrary entered into by the author); Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta [Law of the Republic of Indonesia Number 28 of 2014 on Copyright], art. 18 (Indon.) (providing that rights in *inter alia* musical works transferred under sale agreements revert to the author after 25 years); The Copyright and Neighbouring Rights

provisions clearly pursue similar objectives to the U.S. termination right.

Examples of protective measures for authors in the national laws of Europe also abound. French law affords specific protection to music composers whose music is used for films. Their license or transfer to the producers may not deprive the composers of the protections afforded by French law regarding exploitation in France.[24] Polish law confers a right of inspection on authors that they can exercise prior to the dissemination of the work.[25] The laws of several European countries require that transfers of rights be interpreted restrictively in favor of authors. For instance, under German law, authors are entitled to a separate equitable remuneration for each new use of the work that was unknown at the time of the transfer.[26]

These different foreign copyright regimes were expressly considered and addressed in the U.S. statute: "Termination of a grant under [these sections] affects only those rights covered by the grants that arise under this title, and in no way

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(Amendment) Bill, 2025, Bill No. 14, cl. 6, § 13A, Bills Supplement No. 6 to the Uganda Gazette No. 28, Vol. CXVIII (Apr. 4, 2025) (Uganda) (recently passed and providing for automatic reversion of assigned economic rights to the author after 20 years).

[24] Code de la propriété intellectuelle [Intellectual Prop. Code] art. L. 132-24 (Fr.) ("C. propr. intell.").

[25] Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych [Act of 4 February 1994 on Copyright and Related Rights], Dz.U. 1994 Nr 24, poz. 83, art. 60 (Pol.).

[26] Gesetz über Urheberrecht und verwandte Schutzrechte [Act on Copyright and Related Rights], §§ 31a, 32c (Ger.).

affects rights arising under any other Federal, State, or foreign laws."[27] These words are unambiguous, but the legislative history also makes clear that any right of recapture would be limited to U.S. copyright: "termination affects only those rights arising under the U.S. copyright statute and has no effect, for example, on foreign rights that may be covered by the same contract."[28] This state of affairs has been borne out in U.S. courts on several occasions and the resulting circuit split is addressed in more detail by the Petitioners. Pet. 22-23 (collecting cases). Amici note that those authorities reflect the baseline on which international commercial decisions have been made for decades.

Although the recapture of U.S. copyright is a limited exception to the freedom to contract, the Fifth Circuit has framed anything other than a reversion of all rights including foreign ones as "counter to the purpose of the statute." Pet. App. 14. To reach this conclusion, the Fifth Circuit references *Kirtsaeng v. John Wiley & Sons*, 568 U.S. 519 (2013), *see* Pet. App. 11-12, but as described by the Petitioners such

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[27] 17 U.S.C. §§ 203(b)(5), 304(c)(6)(E). There is an additional exception for derivative works under 17 U.S.C. § 203(b)(1), which could apply to sound recordings: "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." Regardless, proper functioning of the wider content sector depends on interpreting the termination provision consistently with its unambiguous text and foundational territoriality principles.

[28] U.S. Copyright Office, *Supplementary Register's Report on the General Revision of the U.S. Copyright Law* xiii, 75 (1965), cited with approval in *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 535 (2013).

analogy is inapposite, Pet. 26. The only way to reach a "one copyright" conclusion is to adopt a theory inconsistent with the inherent territorial nature of copyright described *supra* (and, in fact, *Kirtsaeng* repeatedly refers to "American copyright"). This has the potential for real harm to rights holders because "territoriality is a two-way street."[29]

C. Foreign Authors

The Fifth Circuit's decision will have particularly negative consequences for foreign authors and rights holders. Foreign songwriters like Paul McCartney and Duran Duran have invoked their termination rights under U.S. law.[30] The Second Circuit in particular has recognized a foreign author's right to recapture and reassign U.S. copyright even though he had previously granted a worldwide assignment to a foreign publisher.[31] The Fifth Circuit has now held—acknowledging conflict with other circuits—that a U.S. author's termination recaptures domestic *and* foreign rights.

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[29] Richard Arnold & Jane C. Ginsburg, *Foreign Contracts & U.S. Copyright Termination Rights: What Law Applies?,* 43 Colum. J.L. & Arts 437, 453 (2020).

[30] Complaint, *McCartney v. Sony/ATV Music Publ'g LLC*, No. 1:17-cv-00363 (S.D.N.Y. Jan. 18, 2017); *Gloucester Place Music Ltd. v. Le Bon* [2016] EWHC 3091 (Ch), [2017] F.S.R. 27 (Eng.).

[31] *Corcovado Music Corp. v. Hollis Music, Inc.*, 981 F.2d 679 (2d Cir. 1993); *see also Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998) (in which domestic rights reverted to heirs pursuant to a termination notice, while foreign rights were retained by a publisher).

On that reasoning, foreign authors risk losing access to the very U.S. termination rights long understood to protect their U.S. interests because their rights do not "arise" under U.S. copyright law. It is hard to imagine how this might work in practice, particularly if foreign authors continue to register their works with the U.S. Copyright Office. But if the Fifth Circuit's decision has the potential to deny a foreign author the ability to recapture their U.S. copyright, this would undermine the centuries-long balance achieved by reservation of this reversion right and the broader international copyright system upon which the U.S. copyright owners rely for the protection of their works abroad—just as foreign authors and other rights holders do in the U.S.

Indeed, the Fifth Circuit's interpretation raises questions about the scope of Congress's power under the Copyright Clause vis-à-vis foreign rights. This is a question of constitutional significance that reinforces the need for this Court's review.

III. The Decision Below Creates Serious Conflict-of-Laws and Enforcement Issues.

Even as the Fifth Circuit casts aside long-settled principles, the rest of the world continues to operate on the understanding that copyright is territorial, and—notwithstanding the decision below—that U.S. termination does not affect rights granted for other territories.[32] Other jurisdictions regulate assignment, termination, reversion and remuneration through their own copyright and conflict-of-laws rules. There are examples outside of the U.S. akin to termination

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[32] *See, e.g.,* William F. Patry, *Patry on Copyright* § 25:18 (2025).

that of course do not purport to affect worldwide rights. For example, the French law discussed *supra* in Section II.B states explicitly that authors' contractual rights only have effect for the exploitation in France and not in the world at large.[33] Foreign courts may therefore refuse to enforce U.S. terminations purporting to reassign copyrights in their jurisdictions, creating the real prospect of courts in different jurisdictions reaching irreconcilable conclusions about ownership of the same rights in the same territory.

The simplified fact pattern below illustrates such potential problems in the case of a domestic author:

U.S. Songwriter (the "Songwriter") writes a musical work (the "Song") and assigns worldwide copyright to U.S. Publisher (the "Publisher"). Publisher enters into an agreement with U.S. PRO in respect of public performances of the Song within the United States. Publisher also enters into an agreement with U.K. Subpublisher (the "Subpublisher") in respect of U.K. rights in the Song, and Subpublisher then enters into an agreement with U.K. PRO in respect of public performances of the Song within the United Kingdom. PROs enter into agreements with domestic licensees for public performances of Song in the U.S. and U.K. respectively. There is some variation depending on the type of royalties involved, but generally U.S. royalties will flow via U.S. PRO to Songwriter and Publisher; and U.K. royalties via U.S. PRO (by reciprocal arrangement with U.K. PRO) to

[33] C. propr. intell. art. L. 132-24.

Songwriter and via U.K. PRO to Subpublisher, and from Subpublisher to Publisher.

Songwriter then serves a notice of termination on Publisher under section 203. Prior to the Fifth Circuit's decision, the understanding would be that U.S. copyright reverts to Songwriter and all royalties from the U.S. PRO would then go to Songwriter. Songwriter would also be at liberty to enter into a new publishing agreement in respect of Song's *U.S.* copyright. Publisher would retain *inter alia* U.K. copyright. Therefore, the agreements with Subpublisher and U.K. PRO would stand and royalties stemming from exploitation in the U.K. would still go via U.K. PRO to Songwriter and Subpublisher (and Subpublisher to Publisher). In this scenario, if Songwriter sought to collect the subpublisher share of U.K. royalties directly from U.K. PRO, he would be ineligible for a direct claim. Moreover, if Songwriter chose to independently exploit the Song in the U.K. (e.g., for use in a film being produced there), this could be infringement of *Subpublisher's* rights under U.K. law.

Under the Fifth Circuit's reasoning, any continued exploitation of Song in the U.K. would constitute infringement of *Songwriter's* rights—but this is a claim Songwriter would almost certainly lose in the U.K. under its laws. As such, a U.S. court could say Songwriter owns the U.K. copyright, while a U.K. court could say Publisher or Subpublisher owns it. This inevitably affects downstream licensing and contracts, including between other industries, as any licensee risks inconsistent ownership claims.

Although this exact issue has yet to be tested, Lord Justice Arnold has indicated that:

> [T]he question whether, and to what extent, title to copyright is assignable depends on the law under which the relevant copyright was created (the *lex loci protectionis*, that is to say, the law of the country "where protection is claimed" in the words of Article 5(2) of the Berne Convention, which is properly interpreted as being the law, or laws, of the country, or countries, with respect to which protection is claimed).[34]

In other words, U.K. copyright would remain an issue of U.K. law.[35]

The fact pattern above is only the most basic of examples—it does not address the risk for foreign authors addressed above, *see supra* Section II.C, or the question of U.S. termination rights under contracts governed by foreign law. Indeed, U.S. termination rights and foreign contracts give rise to thorny conflict of laws questions that, to the knowledge of Amici, have not been squarely addressed in the U.S. courts.[36] However, scholarship

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[34] Arnold & Ginsburg, *supra*, at 448.

[35] *See, e.g.*, *Peer Int'l Corp. v. Termidor Music Publishers Ltd.* [2006] EWHC 2883 (Ch) [54] (Eng.) (finding that a non-U.K. law was previously held "to have been expropriatory without compensation and on that account such as not to have taken *effect* so far as concerned English copyright"); *see also* Pet. 28 (citing *Peer Int'l Corp. v. Termidor Music Publishers Ltd.* [2003] EWCA Civ 1156 (Eng.)).

[36] *See Gloucester Place*, [2016] EWHC 3091 (Ch) [17] (Eng.) ("If and to the extent that title is assignable under the *lex loci protectionis*, the question of whether, and to what extent, title has in fact been assigned by an agreement governed by English

on this topic indicates that a worldwide grant would not "incorporate *every* national law limitation on the scope of the grant" but likewise that section 203 cannot be overridden by a contract governed by foreign law.[37]

* * * * *

The decision below is an extreme outlier that contradicts the plain text of the statute; departs from first principles of copyright; and conflicts with decisions from the Second Circuit and other courts (including foreign courts). The decision flouts longstanding international obligations. It has the potential to create serious conflict-of-laws, contractual, licensing, administration, revenue, remuneration and enforcement issues and has already disrupted settled industry reliance upon which decades of global licensing practice in the content industries have been built.

The Fifth Circuit has created commercial and legal uncertainty that urgently requires authoritative resolution by this Court. If left undisturbed, that uncertainty will continue to undermine the global primacy of the U.S. content sector.

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law depends on the effect of the agreement applying English law, and in particular English principles of contractual interpretation.").

[37] Arnold & Ginsburg, *supra*, at 453 (considering, *inter alia*, *Ennio Morricone Music Inc. v. Bixio Music Group Ltd.*, 936 F.3d 69 (2d Cir. 2019)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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