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 A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF PARAMOUNT PICTURES CORPORATION AS AMICUS CURIAE SUPPORTING PETITIONERS

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INTEREST OF *AMICUS CURIAE*[*]

Paramount Pictures Corporation is one of the world's oldest and largest motion picture production and distribution companies. For more than a century, it has helped build the legacy of cinema and television, bringing films, shows, and franchises like *Mission: Impossible*, *The Godfather*, *Star Trek*, *Happy Days*, *The Twilight Zone*, *Forrest Gump*, *Cheers*, *Grease*, *I Love Lucy*, *NCIS*, and *Titanic* to the public. Paramount's movies and series are cornerstones of global popular culture.

Many of these successes began with a copyright assignment. Long before audiences fill a theater or turn on their television, the process of transforming a book, screenplay, or other written work into a motion picture or series often begins with an author assigning the right to make derivative works to a studio. The studio then invests countless hours of creative effort and millions of dollars to bring that story to the screen. Not every bet pays off, and it is the studio that bears the risk. But both the studio and the author of the underlying work benefit when the motion picture or series succeeds.

The Copyright Act carefully balances the rights of authors with those of assignees like Paramount. Congress authorized authors to terminate prior assignments of their rights and gave them the ability to renegotiate with their grantees in the wake of a work's success. But at the same time, Congress cabined the scope of the termination,

[*] Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part and that no person other than amicus or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Amicus provided notice of its intent to file this brief to counsel of record for both parties at least 10 days before the brief's due date. *See* Sup. Ct. R. 37.2.

which serves to protect assignees' investments—limiting the termination interest to only U.S. copyrights, not foreign copyrights. That regime gives both parties to the original deal an incentive to reach a new deal *together*. The decision below upends that careful balance, sows chaos, and discourages future risk-taking.

Paramount fully endorses the views set forth in the amicus brief of the Motion Picture Association, of which Paramount is a member. Paramount submits this brief to illustrate, with real-world examples drawn from Paramount's storied library, the grave problems created by the decision below.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Copyright Act allows artists to "secure a fair return" for their "creative labor," and in so doing, "stimulate[s] artistic creativity for the general public good." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 432 (1984) (quotation omitted). Copyright assignments are an essential part of this statutorily prescribed process.

When authors pen written works like books or scripts, the Copyright Act protects their rights both to reproduce the work and to prepare "derivative works" such as films or series. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 526 (2023). But authors typically lack the expertise, infrastructure, and resources for what happens next—the development and production of a motion picture, which often requires risking millions of dollars and injecting additional creative effort to transform the written work into one that audiences will enjoy on a big or small screen. Copyright law facilitates that hand-off by allowing authors to assign their motion picture rights in a work to studios like Paramount that are ready and able to make that investment and shoulder those risks. When a studio's risk-taking, creativity, and production expertise are combined with an author's underlying work to produce a blockbuster, authors naturally may want to renegotiate those deals down the line.

In Section 304 of the Copyright Act (and its companion, Section 203), Congress provided rules that facilitate that process. Section 304 allows authors to terminate their copyright assignments after a specified period of time, usually with the aim of re-granting the rights at a price that reflects the work's increased value. *See* 17 U.S.C. § 304(a), (c)(3); *id.* §§ 203(a)(3), 302(a). But Congress also imposed an essential limit: termination applies *only* to U.S. copyrights "arising under" Title 17, not foreign copyrights "arising under … foreign laws." *Id.* § 304(c)(6)(E); § 203(b)(5). As the petition explains, before this case, the effect of that provision was clear to virtually everyone: while authors may terminate previous assignments of their *U.S. copyright* in a work, foreign copyrights remain where they lie—including with studios or other assignees that previously paid and contracted for them. *See* Pet.18-23.

For decades, that textually mandated compromise regarding termination has played an essential role in making the entertainment industry function. It has facilitated continued collaboration between authors and studios, providing each with valuable bargaining leverage during the termination and re-grant process. It has provided the background legal certainty essential for assignment contracts writ large, benefiting authors and studios alike. And it has reinforced the United States' treaty obligations to foreign authors and promoted comity with foreign copyright laws.

Until the Fifth Circuit's decision, that is. Discarding decades of legal consensus, the court of appeals held that Section 304 does *not* actually impose any territorial limit on termination. Pet.App.9. And by so holding, the Fifth Circuit gutted Congress' carefully calibrated scheme, substituting a world of confusion for prior certainty in every corner of the industry—the legal version of a post-apocalyptic film.

The decision below is contrary to the statute's plain text and undermines the Act's incentive structure, seriously imperiling the industry. By limiting termination to *only* U.S. copyrights, the Act provides both authors and assignees an incentive to reach a new agreement—encouraging authors to re-grant copyrights to existing assignees and encouraging assignees to make a deal rather than lose the rights in the United States. That continuity protects studios' existing investments in franchises and ensures the continued viability of franchise projects like *The Godfather* and *Mission: Impossible*. And in turn, those franchises generate new derivative works, each a fresh opportunity for creative expression by the cast, crew, directors, and producers who are employed to bring those works to the screen.

That decision also poses an existential threat to the practice of creating derivative works, which is enabled by rights grants from authors. Contracts assigning rights in copyrighted works are an integral part of the creation of motion pictures and television series. Those contracts depend on a settled understanding of exactly what rights studios are purchasing and how to value those rights. As a result of the Fifth Circuit's decision, studios and authors now lack the information to bargain effectively over initial assignments or re-grants, because each side may approach the negotiation with different expectations. To make matters worse, the decision has massive international repercussions—threatening foreign copyright holders, robbing them of their copyright termination rights, and imperiling the United States' treaty obligations.

The decision below places studios and authors alike in an untenable position—and all because of a flagrant misreading of the Copyright Act. This Court's intervention is needed now to restore order and reinstate the balance that Congress struck between authors of underlying creative works and those (like Paramount) who invest to produce films, television shows, and other adaptations expanding on the authors' initial creations.

ARGUMENT

I. THE FIFTH CIRCUIT'S DECISION DECIMATES THE COPYRIGHT ACT'S BALANCE GOVERNING INVESTMENT IN CREATIVE WORKS

Section 304(c) (and its corollary, Section 203) balances the rights of underlying authors with those of new creators like Paramount. Paramount and other studios expand creators' works and bring those new copyrighted creations to the public. Through those efforts, they contribute substantial new expression—all the while devoting significant human capital and financial resources.

These achievements are made possible through the well-established practice of authors assigning film and television rights to their underlying works. The Fifth Circuit's decision destroys this carefully crafted system, with devastating consequences for *all* creators, original authors, and studios alike.

A. Assignments Facilitate Collaboration Between Authors and Studios' Creative Teams

Copyright assignments play an essential role in giving creative works more life—and in ways that make them more widely available to the public. When an author writes a book or a screenplay to be adapted for the screen, an assignment provides the financial incentive and security for studios like Paramount to invest substantial resources to bring that work to life through the creative efforts of screenwriters, directors, and crew.

In a typical assignment contract, a studio will pay an author a significant sum for the exclusive, worldwide right to adapt the author's original creation for the screen. But the cost of the assignment is just the beginning, as the studio invests substantial time, effort, and internal resources to develop the project, to say nothing of the out-of-pocket production costs, which can well exceed $100 million for a single feature film or season of television. And marketing and distribution efforts require significant additional human capital and add many millions more to the final tab. *See* Pamela McClintock, *Massive Film Marketing Spends are Back as Summer Tentpole Season Kicks Off*, The Hollywood Reporter (May 9, 2022), https://tinyurl.com/yh6vxev2.

Creators depend on studios' willingness to take those risks. Yet studios acquire and adapt original works with little to no guarantee that the investment will pay off.

Consider the unlikely success story of *Forrest Gump*. Paramount rescued the screenplay, based on the eponymous novel by Winston Groom, from the discard pile at another studio where it had languished for years. *See* Robert W. Welkos, *Forrest Gump almost wasn't*, L.A. Times (Aug. 12, 1994). The quixotic story of an intellectually disabled man whose good fortune puts him on the right side of the most significant events of late-20th century America was not an obvious box-office hit. Yet Paramount invested significant time and effort to produce the film—with a production budget alone of over $50 million—betting on the story when other studios had given up. *See Star, Director of 'Gump' Ran the Risk of Losing Pay*, Orlando Sentinel (Mar. 12, 1995), https://tinyurl.com/37uaxvtc.

The Godfather, too, landed in theaters after a studio's leap of faith. In 1967, Paramount optioned the rights to the novel—which was initially entitled *Mafia*—before Mario Puzo had even finished writing it. *See* Jenny M. Jones, *The Annotated* Godfather*: The Complete Screenplay* 10-11 (50th anniversary ed. 2021). Paramount hired an aspiring young director named Francis Ford Coppola to help the project, with the intention of making a low-budget "quickie." *Show Business: The Making of The Godfather*, Time (Mar. 13, 1972), https://tinyurl.com/ysasmnuv. Taking a flyer on a previously unknown author and a young director was a massive risk. But Paramount nonetheless took the plunge, tripling Coppola's budget on Paramount's bet that he could transform the novel into pure cinematic gold. *See* Jones, *The Annotated* Godfather, at 16-21.

That bet benefited everyone. The films became instant classics, reaping rewards for both Puzo and Paramount—a success that neither could have achieved without the other. The public, too, enjoyed the benefits of this collaboration: the sprawling story of the Corleone family sprang to life through the magic of filmmaking and endures today as a cultural landmark. But just as often, investments in countless adaptations fail to deliver, with the losses borne solely by studios. Authors depend on studios like Paramount to continue taking those risks—

making enormous investments to bring works to the public in ways that wouldn't otherwise be possible.

B. The Act's Termination Provisions Protect Studios' Investment and Incentivize Further Creative Collaboration

The Copyright Act's termination provisions in Sections 304 and 203 nurture this symbiotic relationship between authors and assignees. The decision below undermines that relationship, with potentially devastating consequences for the entire industry.

1. Consider first how the statute is supposed to work—and indeed, how it *has* worked for decades before the Fifth Circuit's decision. Section 304 gives authors a second chance to negotiate with assignees based on their work's increased value, "reap[ing] anew the profits from the copyright." *Brumley v. Albert E. Brumley & Sons, Inc.*, 822 F.3d 926, 927 (6th Cir. 2016); Pet.6-7 (citing 17 U.S.C. § 304(a), (c)(3); 17 U.S.C. §§ 203(a)(3), 302(a)). In fact, assignments can raise a work's value not just in the first instance, but also by compounding value over time. Puzo's *Godfather* novel, for example, has sold millions of copies in the decades following the release and distribution of the iconic films. Julie Bosman, *The Godfather, Before He Was*, N.Y. Times (May 4, 2011), https://tinyurl.com/2ax2enhw. It has also spawned the creation of numerous derivative works and adaptations, including both a recent Paramount-produced series, *The Offer*, which tells the story of the making of the original motion picture, as well as a new, forthcoming novel from the Puzo estate. Shannon Carlin, *The True Story Behind* The Offer, *a Series About the Making of* The Godfather, Time (Apr. 27, 2022), https://tinyurl.com/3dnvhknc; Carly Tagen-Dye, *New* Godfather *Novel on Connie Corleone*

Coming from Adriana Trigiani in 2027, People (May 13, 2026), https://tinyurl.com/5n73eeaw.

As relevant here, authors of successful adaptations have sometimes exercised their right to terminate, and then re-grant, a copyright assignment in a way that reflects the work's increased value. In just this way, the estate of Mario Puzo exercised its termination right in 2015, later negotiating a re-grant deal with Paramount that took effect last year. *See* Copyright Regrant Certificate of Recordation: *The Godfather*, executed Oct. 22, 2025, https://tinyurl.com/3y7pezdw.

But Section 304 does not give authors a windfall. By the time an author exercises his or her termination right, assignees like Paramount oftentimes have spent decades investing creative and financial resources into the franchise related to the author's work. And studios' stewardship of these copyrights—including the day-in, day-out defense of those works from infringement worldwide—builds and protects their value.

In aid of this symbiotic relationship, the Act's termination process offers two other forms of protection to assignees of an author's underlying rights. The first involves the negotiating process. Alongside the termination right, Congress required authors or their heirs to serve a termination notice on existing assignment-holders "not less than two … years" before the termination's effective date. *Id.* § 304(c)(4)(A), (c)(6)(D); *accord id.* § 203(a)(4)(A), (b)(4). As the petition explains (at 7), that provision serves a crucial function. Rather than making termination a free-for-all, the notification provision allows studios or other assignees an exclusive opportunity to negotiate a re-grant before the termination occurs.

But Congress also limited authors' termination right territorially—allowing termination *only* as to U.S. copyrights "arising under" Title 17, not foreign copyrights "arising under … foreign laws." *Id.* § 304(c)(6)(E); *accord id.* § 203(b)(5). That limitation is crucial to facilitating negotiations between authors and studios. Assignment contracts typically involve an exclusive, worldwide right to make derivative works. Against that backdrop, Congress' territorial limitation on termination does real work when a re-grant is up for discussion. By limiting termination to U.S. copyrights only, Section 304 gives authors an incentive to negotiate with the assignee that still holds a work's international rights. But by depriving studios of what is nearly always the most valuable copyright in the bunch (the U.S. copyright), the Act likewise encourages assignees to reach a new agreement that reflects the work's increased value.

2. The Fifth Circuit's decision scraps that framework. Rather than facilitating the give-and-take that the Act envisions, the decision below has exactly the opposite effect—with potentially devastating consequences for the movie-making industry writ large.

The decision poses a mortal threat to film and television franchises of all kinds. These franchises depend on continuity—from characters to music. Maintaining that continuity post-termination requires that both authors and assignees have an incentive to continue the relationship with a re-grant.

Mission: Impossible and its iconic theme song offer a good example. In 2013, the theme's composer, Lalo Schifrin, sought to terminate his grant of the U.S. copyright rights in the song, effective as of December 2022; this led to a negotiation over a re-grant. *See* Notice of Termination: *Mission: Impossible* Theme, recorded Feb. 4, 2013, https://tinyurl.com/32x4rtdh. Under the statute as written, both sides had ample reason to strike a deal—Schifrin held only the U.S. rights post-termination, and the studio had every reason to preserve the franchise's musical calling card in the market where it matters most. And that is precisely what happened, as the parties reached a new agreement regarding the domestic rights, and Paramount went on to produce and release additional motion pictures using the iconic theme song, including most recently *Mission: Impossible – Final Reckoning* in 2025.

The decision below undermines that stability. By writing the territorial limitation out of the statute, the decision removes authors' incentives to strike deals with original assignees. Instead, the decision encourages authors to seek extortionate prices from studios by threatening to sell *all* rights to make derivative works worldwide to the highest bidder. And worse, the decision encourages them to do so based on an increase in a work's value that, very often, never would have happened without the studio's investment, creative contributions, and corresponding financial risk. Some studios might be willing to go along in some instances. But in gross, the effect will be to discourage studios from up-front franchise-level investments, knowing that a future termination may just as easily transfer the franchise's value to another studio's pocket.

The Fifth Circuit's decision also threatens to destroy the collaboration needed to continue franchise projects into the future. Just think of *The Godfather*. Congress guaranteed that terminations do not impact derivative works "prepared … before [a grant's] termination." 17 U.S.C. § 304(c)(6)(A). Thus, a termination would not preclude Paramount from continuing to distribute the previously produced *Godfather* films. But that provision does not permit creation of *new* content introducing the franchise to countless younger fans—through new derivative works, including remakes, sequels, video games, podcasts, and interactive experiences.

By limiting termination to U.S. copyrights only, the Act provides authors an incentive to continue the collaborative relationship. That feature of the Act makes it harder for an interloping studio to cannibalize the original assignee's investment by acquiring the rights and producing sub-par content. But even more, by encouraging continued collaboration between authors and the original assignee, the Act helps ensure that any new shows or other content derived from the franchise possess the same ambience and feel that audiences love and that made the motion pictures mainstays of popular culture.

The Fifth Circuit's decision ignores all of that, not to mention the statute's clear text. And by doing so, it presents a major threat to the continued viability of franchises like *Mission: Impossible* or *The Godfather*—franchises that Paramount and other studios have spent countless hours and hundreds of millions of dollars to develop, grow, and protect. This Court should intervene to restore the regime Congress established.

The decision below injects profound confusion into the assignment system writ large. Only a decision by this Court can quell the chaos.

II. THE DECISION BELOW HAS GENERATED INTOLERABLE UNCERTAINTY IN THE GLOBAL COPYRIGHT ECOSYSTEM

A. The Decision Below Has Immediate, Harmful Effects on the U.S. Entertainment Industry

If left uncorrected, the decision below will present an existential threat to the predictability and legal certainty essential to the whole system of assignments and re-grants.

1. Legal clarity is the crucial ingredient that makes the creation of motion pictures possible. Creative expression—and intellectual property generally—are the essence of the industry. But protecting that intellectual property depends on contracts that give all parties certainty in the bargain. Authors need to know which rights they reclaim by invoking termination. And studios need to know which rights they are buying—both for original assignments and for re-grants negotiated during the termination process. The Fifth Circuit's decision destroys that certainty, crippling the process that, until now, had been a routine occurrence.

A recent effort to secure a re-grant demonstrates the point. In 2021, the heirs of Ira Levin, who penned the 1967 novel, *Rosemary's Baby*, on which Paramount's iconic horror film of the same name was based, sought to terminate the assignment of U.S. film rights. Notice of Termination: *Rosemary's Baby*, recorded Feb. 26, 2021, https://tinyurl.com/242c45en. But in 2022, Paramount successfully secured from the estate a re-grant of certain rights to the book. The result was the release of a new prequel film, *Apartment 7A*, to the benefit of the studio, the author's estate, and the public. Jack Dunn, *'Rosemary's Baby' Prequel 'Apartment 7A' Starring Julia Garner to Premiere on Paramount+ This Fall*, Variety (Apr. 26, 2024), https://tinyurl.com/3j87h4j2.

Under the decision below, that process faces massive hurdles. With no shared understanding as to the status of non-U.S. rights, authors and studios approach the re-grant process with dramatically divergent understandings of the value of any potential re-grant. That disconnect makes it exceptionally difficult to even begin to reach a deal. And in many instances, the disconnect will lead studios to pass over re-grant opportunities for works they otherwise would have paid to retain. Negotiating a *Rosemary's Baby* re-grant yielded benefits for Paramount, the author's estate, and the public. But that deal and many others like it would be difficult to accomplish absent this Court's correction of the decision below.

2. Even apart from direct negotiations over re-grants, the Fifth Circuit's decision places studios like Paramount in an impossible bind. Like other studios, Paramount regularly seeks out licenses from artists or publishers to feature popular songs and other copyrightable works in its productions—both in the United States and abroad. But given the uncertainty created by the decision below, studios like Paramount seeking to license a song post-termination have no assurance they are even negotiating with the proper party. Does the author now hold all the foreign copyrights? Or are they (still) held by a prior publisher or grantee? The result, again, is confusion with crippling effects throughout the creative world.

The problem also infects new agreements. As noted above, under the system as Congress designed it, authors have a strong incentive to negotiate with original grantees when invoking termination and seeking a re-grant. *Supra* pp. 9-12. But the uncertainty created by the decision below over the scope and legal effect of copyright assignments dissuades studios like Paramount from stepping into the fray at all, further undermining the creative ecosystem.

For example, if a new author approaches Paramount after terminating her assignment with another studio, Paramount faces massive risk. Will negotiating an assignment with the author *actually* provide Paramount the right to use that work worldwide? Or will the other studio sue, claiming the author had only U.S. rights to give? Again, the risks of spiraling costs and prolonged litigation are palpable. And faced with those risks, studios like Paramount will often have little choice but to pass over the opportunity altogether. That is not an outcome beneficial to authors, nor one that will serve "copyright's goal of enriching public knowledge." *Warhol*, 598 U.S. at 531 (quoting *Authors Guild v. Google*, 804 F.3d 202, 214 (2d Cir. 2015)). But it is the result the Fifth Circuit's decision would work if left to stand.

B. The "One Copyright" Theory Applied Below Destabilizes the International Copyright Order

The decision below also has global repercussions. By empowering authors to terminate copyright grants worldwide, the decision sets U.S. courts on a collision course with courts around the world and single-handedly reneges on the United States' longstanding treaty commitments. The result harms studios and original authors alike.

1. The Fifth Circuit's rule will inevitably result in conflicting judgments between U.S. and foreign courts.

One problem involves studios' using their international rights to license foreign-language versions of their motion pictures. Take an example: as discussed above, Paramount acquired the film rights to *Forrest Gump* through an assignment from author Winston Groom. Paramount later relied on its foreign rights in the work to license a foreign remake of *Forrest Gump* in India, entitled *Laal Singh Chaddha*, released in August 2022 by iconic Bollywood actor and filmmaker, Aamir Khan. *See Laal Singh Chaddha*, Official Trailer (2022), https://tinyurl.com/58m7uzy9. Groom terminated the assignment of his U.S. copyright, effective September 2022. Notice of Termination: *Forrest Gump*, recorded Aug. 8, 2021, https://tinyurl.com/4r7fc9d5.

Under the Fifth Circuit's decision, this would pose no problem only by happenstance of timing. But had Groom terminated the assignment of his U.S. copyright *before* the foreign remake was produced, Groom could have argued that Paramount's licensee did not have the right to do so. An American court might adjudicate that dispute, as occurred here. But Indian courts would have a say, too. And it is far from clear whether those foreign courts would treat a mechanism of American law as terminating the author's assignment of his copyright in India. *See, e.g.*, Pet.28-29 (explaining that "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").

The well-settled presumption against extraterritoriality is designed to avoid exactly this type of "international discord that can result when U.S. law is applied to conduct in foreign countries." *RJR Nabisco v. European Cmty.*, 579 U.S. 325, 335 (2016). Below, the Fifth Circuit held that the presumption against extraterritoriality did not apply "in the context of ownership, assignment, and termination." Pet.App.23-24. That conclusion is unmoored from the animating principle behind the presumption, which seeks to prevent, among other problems, "conflict with the laws of other nations." *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 174 (1993).

The only sure thing in the chaos generated by the Fifth Circuit's decision is that both assignees and authors will suffer. The decision discourages studios like Paramount from exercising their foreign rights in a work after a U.S. author's termination because doing so might open the door to multi-forum legal battles. The decision likewise discourages other studios from negotiating new deals with authors for their reclaimed rights, because the scope of the rights available for purchase is undefined. And authors—both at the original assignment and re-grant stages—will discover studios less willing to invest in new assignments for rights of uncertain value. Simply put, studios will be reluctant to invest significant resources into bringing a film or television show to audiences if there is uncertainty over the underlying rights.

2. The Fifth Circuit's decision also takes the United States out of compliance with its commitments under the Berne Convention for the Protection of Literary and Artistic Works—the "principal accord" that undergirds the international copyright regime. *Golan v. Holder*, 565 U.S. 302, 306 (2012). The Berne Convention embraces a central principle of national treatment, requiring member states "to 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).

The Fifth Circuit interpreted Section 304 to privilege American authors alone—leaving foreign authors of works first published abroad with no termination rights at all. Recall that Congress limited the termination right by providing that termination "affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other … foreign laws." 17 U.S.C. § 304(c)(6)(E). Rather than construe that provision to limit the territorial scope of the *effect* of an author's termination, the Fifth Circuit construed that language to limit the scope of the beneficiaries of the right. According to the Fifth Circuit, only copyrights granted in the United States under the U.S. Copyright Act "arise under" Title 17 and thus may be subject to termination. Pet.App.9-10.

The Fifth Circuit's rule blatantly discriminates against foreign authors. One example from Paramount's experience involves James Dearden, a British citizen, writer, and creator of the short film *Diversion* upon which the famous feature-length thriller *Fatal Attraction* was based. Dearden exercised his termination rights and later reached a deal with Paramount regarding a post-termination *Fatal Attraction* mini-series. *See Fatal Attraction: Official Teaser Trailer*, https://tinyurl.com/4zh5dmss. But under the Fifth Circuit's rule, the British origin of Dearden's work would complicate—perhaps even eliminate—his right to terminate the assignment to Paramount at all.

The bargaining power Section 304 gives to foreign authors benefits them even when they do not re-grant the right to make derivative works. In 2017, British author David Cornwell—better known by his pen name, John le Carré—terminated his assignment to Paramount to make derivative works based on his 1963 classic *The Spy Who Came In From The Cold. See* Notice of Termination: *The Spy Who Came In From The Cold*, recorded Oct. 6, 2017, https://tinyurl.com/mtj3h5kh. Left with no U.S. copyright assignment, but still holding the foreign rights, Paramount reached a deal. It conveyed the foreign rights to produce television series to Ink Factory, a London-based production studio run by le Carré's sons. That decision breathed new life into the work, with the foreign studio recently adapting the story for television. Geoffrey Macnab, *The Ink Factory heads talk juggling multiple John le Carré adaptations, international strategy and new Ang Lee project*, Screen Daily (Nov. 12, 2025), https://tinyurl.com/2nbhwnsf.

The Fifth Circuit's ruling threatens these kinds of deals—and with it, the opportunity for admired works by foreign authors to find new life in the creative collaborations between those authors and studios. The Fifth Circuit's aberrant reading of the Copyright Act is not just unfair to foreign authors. It is a plain violation of the United States' obligation under the Berne Convention to treat all authors, no matter their nationality, equally under U.S. law.

III. THE DECISION BELOW IS CONTRARY TO LAW

The decision below is also profoundly wrong. Text, context, history, and purpose all indicate that Congress intended to impose a territorial limit on the termination interest. This Court should not sit idly by while the Fifth Circuit's misreading of a statute destroys the system Congress so carefully built.

1. Start with the text. "It is well established that when the statute's language is plain, the sole function of courts … is to enforce it according to its terms." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (citation and internal quotation marks omitted). Here, the Act's text "could not be any clearer." *Siegel v. Warner Bros. Ent.*, 542 F. Supp. 2d 1098, 1140 (C.D. Cal. 2008), *rev'd on other grounds*, 504 F. App'x 586 (9th Cir. 2013). "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); *accord id.* § 203(b)(5). As courts and commentators have long noted, by its plain terms, that language limits the termination interest to *U.S. copyrights*, leaving foreign copyrights untouched. *See* Pet.19-23 (collecting sources).

Statutory context points in the same direction. As the petition ably explains (at 6-8), Congress created the termination interest in part to address problems that arose from the Copyright Act's two-term structure governing the creation and renewal of copyrights. Other foreign systems abandoned anything resembling that two-term system long before Congress enacted the termination provision. *See* Pet.8-9. But throughout Section 304, Congress repeatedly described the "termination interest" as an interest in the "remainder of the extended renewal term"—*i.e.*, the additional term of copyright protection provided by *U.S. law* for *U.S. copyrights* following a renewal. *See, e.g.*, 17 U.S.C. § 304(c)(6)(F). Here again, Congress was clear that the "termination interest" covered by the Act is an interest in the U.S. copyright, not an interest in all foreign copyrights everywhere in the world.

The court below ignored all of this, concluding instead that even foreign copyrights "arise under" Title 17, ostensibly because "[t]here is no explicit geographical limitation in section 304(c)(6)(E)." Pet.App.9. But that conclusion ignores the text of Section 304, which explicitly establishes that termination "in no way affects rights arising under any … foreign laws." 17 U.S.C. § 304(c)(6)(E); *accord id.* § 203(b)(5).

Nor does it make sense to reason that an author's single U.S. copyright "extends internationally" via the Berne Convention. Pet.App.9. As the petition explains (at 26), that theory depends on the erroneous idea that works are protected abroad by a single "international copyright." But the Berne Convention doesn't recognize a multi-national copyright originating in U.S. law (or anywhere else for that matter). Instead, "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.'" Pet.10 (quoting Jane C. Ginsburg, *Global Use/Territorial Rights: Private International Law Questions of the*

Global Information Infrastructure, 42 J. Copyright Soc'y USA 318, 330 (1995)). Here again, the court's textual arguments run aground.

2. The purpose and history of the termination provision likewise indicate beyond doubt that Congress limited the termination interest to U.S. copyrights.

As already explained, Section 304's termination provision operates alongside the Act's two-year notice requirement to facilitate bargaining over a re-grant between an author and an original assignee—a scheme that falls apart without the Act's territorial limitation on termination. As in other contexts, "the design and structure of the statute" provides an important clue as to Congress' purpose. *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013). Those considerations likewise indicate that the termination interest applies only to U.S. copyrights, not foreign ones.

Contemporaneous interpretation of the termination provision accords. As the petition explains (at 20-21), Congress took the language of the Act's termination provisions directly from the Copyright Office. And in explaining the provision's effect, the Office made clear that, under its proposed language, "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." Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law at xiii, 75 (1965). Here again, the Fifth Circuit's reasoning defies settled understanding.

Focusing on a snippet of legislative history, the court below reasoned that leaving authors with only U.S. termination rights was equivalent to granting them only "half of the apple." Pet.App.13-14 (quotation omitted). But respectfully, that is exactly what the text of the Act does—and with good reason. As Congress crafted it, the termination provision of the Act reflects the important role that *both* authors and assignees like Paramount play in producing creative works for the public. This Court should restore that balance and restore the Act's clear textual commands, which protect and benefit authors and studios alike.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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