No. 25-1391

In the Supreme Court of the United States

BMG RIGHTS MANAGEMENT (US) LLC, PETITIONER

v.

CYRIL E. VETTER ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* RECORDING INDUSTRY ASSOCIATION OF AMERICA, NATIONAL MUSIC PUBLISHERS' ASSOCIATION, AND AMERICAN ASSOCIATION OF INDEPENDENT MUSIC IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[*]

The Recording Industry Association of America ("RIAA") is a nonprofit trade organization that supports and promotes the creative and financial vitality of recorded music and the people and companies that create it in the United States. RIAA's several-hundred members—ranging from major American music groups with global reach to artist-owned labels and small businesses—make up the world's most vibrant and innovative music community. RIAA members create, manufacture, and/or distribute the majority of all legitimate music produced and sold in the United States. They also are the copyright owners of, or owners of exclusive rights with respect to, sound recordings embodying the performances of some of the most popular and successful recording artists of all time. In support of its members, RIAA works to protect the intellectual property rights of artists and record labels, and monitors and reviews state and federal laws, regulations, policies, and judicial decisions impacting those rights and regulations.

The National Music Publishers' Association ("NMPA") is the principal trade association representing the U.S. music publishing and songwriting industry. Over the last one hundred years, NMPA has

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[*] Counsel of record for all parties received timely notice of *amici*'s intent to file this brief. No counsel for any party authored this brief in whole or in part, and no such counsel nor any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than *amici* or its counsel made a monetary contribution intended to fund the brief's preparation or submission. Certain petitioners are members (or affiliates of members) of *amicus* National Music Publishers' Association, which also represents the interests of hundreds of other companies in the music industry.

served as the leading voice representing American music publishers before Congress, in the courts, within the music, entertainment, and technology industries, and to the public. NMPA's membership includes "major" music publishers affiliated with large entertainment companies as well as independently owned and operated music publishers of all sizes representing musical works of all genres. Taken together, compositions owned or controlled by NMPA's hundreds of members account for the vast majority of music compositions licensed for commercial use in the United States.

The American Association of Independent Music ("A2IM") is a not-for-profit organization that exists to support and strengthen the independent recorded music sector and the value of recorded music copyrights. Membership currently includes a broad coalition of hundreds of independently owned American music labels. A2IM represents these small and medium-sized enterprises' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. In doing so, it supports a key segment of America's creative class that represents America's diverse musical and cultural heritage. *Billboard Magazine* identified the independent music label sector as over 40% of the music industry's global recorded music revenue in 2020 based on copyright ownership.

The question presented in this case is critical to *amici* and their members. The music industry relies on settled norms and expectations regarding the property rights associated with the use, distribution, transfer, and licensing of sound recordings and musical compositions throughout the world. Here, the Fifth Circuit's decision unsettles the bedrock understanding of foreign exploitation rights, which undergirds hundreds of thousands of agreements respecting recorded-music and music-publishing copyrights that have been drafted, negotiated, and executed over decades. And it undermines the divisibility and alienability of copyright interests, thereby depriving copyright owners of essential (and, until now, unquestioned) power to control how works are commercially exploited around the globe. The ability to license, assign, or otherwise transfer foreign exploitation rights—separate from U.S. copyright rights—is valuable from a creative and financial perspective. The Fifth Circuit's single-copyright theory, however, undermines such divisibility and scrambles the settled norms and expectations by which the music industry has long operated. Indeed, the potential for termination of foreign exploitation rights through U.S. law suspends norms that form the basis of almost all economic copyright arrangements in the music industry. The petition should be granted to restore clarity on these important issues.

SUMMARY OF ARGUMENT

Sections 203 and 304 of the Copyright Act allow authors and certain successors to terminate prior grants of copyrights after a specified period of time. That power is carefully calibrated. It balances the interests of creators, who often transfer rights before their works' value is knowable, against the interests of those who purchase the rights and assume the risks in commercializing works. As part of that balance, Congress provided that termination "affects only those rights covered by the grants that arise under this title," and it "in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. § 203(b)(5); see also *id.* § 304(c)(6)(E). The music industry and the broader copyright community have long understood that language to mean what it says: when termination is otherwise appropriate, U.S. law allows creators to recapture U.S. copyright rights, while recapture of foreign rights remains the province of foreign law.

The Fifth Circuit rejected that settled understanding for a novel rule of worldwide recapture. In its view, a U.S. work is not protected by discrete copyright protections under the laws of the United States, France, Mexico, Japan, and other countries. Instead, a U.S. work carries a single U.S. copyright "to the extent that it extends internationally." *Vetter* v. *Resnik*, 163 F.4th 951, 957 (5th Cir. 2026). Thus, when a creator assigns "worldwide" rights, the creator conveys not a bundle of national copyrights, but a single U.S. copyright with global reach. And when that grant is properly terminated under U.S. law, the termination does not stop at U.S. rights; it recaptures foreign rights too. That conclusion is dangerously wrong. See Pet. 23–30. And it threatens longstanding industry practice, disregards international copyright law's territorial structure, and warrants this Court's correction now.

I. The practical consequences of the decision below on the market for copyrighted works are substantial.

The ability to license, assign, administer, and enforce a copyright with confidence impacts its commercial value. That is true regardless of the type of creative work, but especially in the music industry, where rights are routinely transferred by contract, administered over decades, and exploited globally. Copyrighted works often cannot be valued accurately before exploitation. Nor does exploitation set that value in stone; time and cultural changes may lift it, bury it, or remake it altogether. See, *e.g.*, World Cafe Words and Music Podcast: *Nearly 40 Years Later, 'Stranger Things' Boosts Kate Bush's Music Worldwide* (Spotify, Aug. 9, 2022, 10:44 A.M. E.T.). Thus, the market already operates with significant economic uncertainty. Legal uncertainty over the scope of terminated grants of copyright only layers on another problem.

Yet that is precisely the uncertainty the Fifth Circuit has unleashed. The copyright community, including the music industry, has long understood that termination under §§ 203 and 304 affects only U.S. rights in a work, while foreign rights remain the province of foreign law. The Fifth Circuit's novel and unprecedented decision rejected that understanding. And that rejection is already reverberating throughout the music industry. Recording artists and songwriters are invoking the decision to assert worldwide termination of copyrights transferred through deals struck under the prevailing understanding that termination could affect only U.S. rights. Left unchecked, the Fifth Circuit's decision will continue to disrupt the market and sow confusion over an issue that, until now, had been uniformly settled.

II. The decision below also invites serious international discord.

Courts avoid reading U.S. statutes to create international conflict when possible. Given their limited institutional capacity and the responsibility of the political branches to set foreign policy, courts do not lightly presume that statutes contravene international law or apply extraterritorially absent clear statutory direction.

The Fifth Circuit's single-copyright theory runs roughshod over those cautionary instructions. Although copyright has a transnational reach, it remains territorial. There is no freestanding "international copyright"; each country creates and controls its own copyright rules. The Berne Convention for the Protection of Literary and Artistic Works, the foundational treaty governing copyright, reflects that structure through national treatment: Foreign creators seeking protection in the United States receive the rights U.S. law gives to domestic authors. Likewise, U.S. creators seeking protection abroad receive the same rights that foreign countries give their creators. The Fifth Circuit's single-copyright theory threatens that principle. If U.S. creators can use §§ 203 and 304 to recapture foreign copyrights because those rights supposedly "arise under" U.S. law, then foreign authors may be unable to use U.S. termination law to recapture U.S. copyrights because their rights supposedly arise under foreign law. That result risks denying foreign creators the same rights U.S. authors enjoy and provoking retaliatory legal changes or conflicting judgments from other countries.

The Fifth Circuit's theory also extends U.S. copyright law beyond its territorial limits. U.S. law governs within our borders and does not purport to rule beyond them unless Congress clearly says otherwise. Congress confirmed that line by providing that termination affects only rights arising under Title 17 and "in no way affects" rights arising under foreign law. The Fifth Circuit crossed it. By allowing U.S. termination to purportedly recapture foreign copyrights, the decision turns a domestic right of recapture into a worldwide rule without regard to whether foreign countries' laws recognize a comparable (or other) right—an approach that likewise violates the Berne Convention's fundamental precepts.

ARGUMENT

I. The decision below threatens significant disruption to the music industry.

This Court often grants certiorari when a decision unsettles legal rules of practical importance to an entire sector of the economy or to the administration of a federal statute. See, *e.g.*, Stephen M. Shapiro et al., *Supreme Court Practice* § 4.13 (11th ed.), BL; *Nat'l Broiler Mktg. Ass'n* v. *United States*, 436 U.S. 816, 820 (1978) ("the importance of the issue for the agricultural community and for the administration of the antitrust laws"); *Comm'r* v. *Lincoln Sav. & Loan Ass'n*, 403 U.S. 345, 346–47 (1971) ("the importance of the issue for the savings and loan industry and for the Government"); *De Sylva* v. *Ballentine*, 351 U.S. 570, 572 (1956) ("the great importance of these questions in the administration of the Copyright Act").

Here, the music industry has long structured transactions around a stable understanding of what termination under §§ 203 and 304 does—and does not—reach. That sensible understanding is evident from the text: U.S. law allows termination of grants of U.S. copyrights and leaves foreign law to handle foreign copyrights. By replacing that understanding with a novel rule of worldwide recapture, the Fifth Circuit has introduced uncertainty into existing rights, future negotiations, and the market for some of the Nation's most valuable creative works.

A. The copyright marketplace depends on settled property rules.

Copyright—like other forms of property—functions through markets in which contracting parties value and transfer discrete rights. Those markets can operate only if those rights' boundaries are stable enough for parties to know what they own, what they may convey, and what they receive in return.

1. Property rights have long occupied a privileged place in our law; they can fulfill their function only when clear and stable. Intellectual property rights are no exception.

"The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom. As John Adams tersely put it, '[p]roperty must be secured, or liberty cannot exist.'" *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 147 (2021) (quoting *Discourses on Davila*, *in* 6 *The Works of John Adams* 280 (Charles Francis Adams ed., 1851)). And "the complexities of modern society … only reinforce the importance." *Id.* at 158; see also John Adams, *A Defense of the Constitutions of Government of the United States of America*, *in* 6 *The Works of John Adams*, *supra*, at 3, 8–9 ("The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.").

Consequently, certainty on the content and scope of property rights is critical. "[P]roperty ownership empowers persons to shape and to plan their own destiny," *Murr* v. *Wisconsin*, 582 U.S. 383, 394 (2017), and uncertainty over property rights necessarily inhibits that freedom. Thus, "[r]eliance interests" are at their zenith "in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions." *Citizens United* v. *FEC*, 558 U.S. 310, 365 (2010); cf. *Kaiser Aetna* v. *United States*, 444 U.S. 164, 179 (1979) (When parties act under settled legal understandings, "it can lead to the fruition of a number of expectancies embodied in the concept of 'property.'").

The same is true of intellectual property. This Court has long recognized that protecting intangible property is essential. See, *e.g.*, *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1003 (1984) (trade secret); *Lynch* v. *United States*, 292 U.S. 571, 579 (1934) (contract). For good reason: Like its tangible counterpart, intangible property is "the produc[t] of an individual's 'labour and invention.'" *Ruckelshaus*, 467 U.S. at 1003 (quoting 2 William Blackstone, *Commentaries* 405). Its protection "produce[s] utility" for society by "encourag[ing]" innovation and creation. *Graham* v. *John Deere Co. of Kansas City*, 383 U.S. 1, 8 n.2 (1966) (quoting Letter from Thomas Jefferson to Isaac McPherson (Aug. 1813), *in* VI *Writings of Thomas Jefferson* 180–81 (Washington ed.)). As a practical matter, intangible property, like tangible property, carries with it "a 'bundle of sticks'—a collection of individual rights," like use, exclusion, income, and alienation. *United States* v. *Craft*, 535 U.S. 274, 278 (2002).

Copyright epitomizes these points. Copyrighted materials embody authors' "labors." *Fox Film Corp.* v. *Doyal*, 286 U.S. 123, 127 (1932). "By establishing a marketable right to the use of one's expression," moreover, "copyright supplies the economic incentive to create and disseminate" works and ideas for the good of the public. *Harper & Row Publishers, Inc.* v. *Nation Enters.*, 471 U.S. 539, 549, 558 (1985); see also *Sony Corp. of Am.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984) (Copyright law "is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired."). And copyright functions as "a bundle of exclusive rights." *Andy Warhol Found. for the Visual Arts, Inc.* v. *Goldsmith*, 598 U.S. 508, 526 (2023) (quoting *Harper & Row*, 471 U.S. at 546).

These features of copyright were familiar to the Founding generation. In the early years of our Republic, luminaries like Thomas Paine and Noah Webster lobbied for legislation to protect copyrights. See Justin Hughes, *Copyright and Incomplete Historiographies: Of Piracy, Propertization, and Thomas Jefferson*, 79 S. Cal. L. Rev. 993, 1021 (2006). The Confederation Congress passed a resolution calling on the States to enact copyright protections, and all but one State obliged. See *Fred Fisher Music Co.* v. *M. Witmark & Sons*, 318 U.S. 643, 648–50 (1943). Indeed, so obvious was copyright's importance that James Madison wrote in The Federalist Papers that "[t]he utility" of Congress's copyright power "will scarcely be questioned." The Federalist No. 43, at 274 (Modern Library 2001).

2. Settled property rules are particularly important for copyright. Because copyrighted works are difficult to value before they are exploited and even once exploited, and their value can change with cultural preferences, the marketplace already bears substantial uncertainty. Congress and this Court thus have recognized the importance of clear and stable rules, lest legal uncertainty compound the uncertainty inherent in the market.

Although copyrights resemble tangible property in many respects, they differ in one key way relevant here: the difficulty in ascertaining the value of copyrighted works. "[U]nlike real property and other forms of personal property, [a copyright] is by its very nature incapable of accurate monetary evaluation prior to its exploitation." *Stewart* v. *Abend*, 495 U.S. 207, 219

(1990) (quoting Melville B. Nimmer & David Nimmer, 2 *Nimmer on Copyright* § 9.02 (1989)). For that reason, copyrights are often transferred to those who are willing take on the risks in bringing the work to the market. See *id.*; *Harper & Row*, 471 U.S. at 547. That is no less true in the music industry—record labels and music publishers, rather than artists and songwriters, typically assume the risk in producing and marketing sound recordings and musical works. Even so, uncertainty in valuation unavoidably affects the market value for works. Cf. *United States* v. *Safety Car Heating & Lighting Co.*, 297 U.S. 88, 98 (1936) (patent infringer's profits "too contingent and uncertain … to have a determinable market value when the validity of the patent is unsettled"); Gideon Parchmovosky & Kevin A. Goldman, *Fair Use Harbors*, 93 Va. L. Rev. 1483, 1497–98 (2007) (uncertainty in fair-use doctrine deters market activity). Congress authorized statutory damages for copyright and patent infringement because of that very uncertainty. See *Brady* v. *Daly*, 175 U.S. 148, 154 (1899).

That is also why *legal* uncertainty in the scope of copyright protection matters so much. The market for copyrighted works already must contend with the fact that a work's value often cannot be known until after it is exploited. The last thing that market needs is further uncertainty over which rights can later be clawed back. Cf. *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 544 (2013) (rejecting interpretation that would unsettle reliance interests of booksellers, libraries, museums, and retailers and risk "intolerable consequences").

Copyright law thus places a premium on certainty. Congress's "paramount goal" in revising the Copyright Act in 1976 was "enhancing predictability and certainty of copyright ownership." *Cmty. for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 749 (1989). "In a 'copyright marketplace,' the parties negotiate with an expectation that one of them will own the copyright in the completed work. With that expectation, the parties at the outset can settle on relevant contractual terms, such as the price for the work and the ownership of reproduction rights." *Id.* at 749–50 (citation omitted). This Court has further observed that, "[b]ecause copyright law ultimately serves the purpose of enriching the general public through access to creative works, it is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible." *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 527 (1994).

B. The Fifth Circuit's decision upends settled commercial expectations about termination rights.

The geographic limits of termination have long been settled: §§ 203 and 304 reach U.S. rights and no more. In rejecting that premise, the Fifth Circuit unsettled the expectations of untold parties drafting grants that may be terminable in the future, termination notices parties sent, the deals they struck to resolve termination disputes, and the value placed on rights by both sides of the bargaining table. It also leaves in flux millions of dollars in royalties that have been earned, but which administrators now are unsure to whom they are rightfully owed.

For decades, the copyright community has understood §§ 203 and 304 to mean what their language expressly states: termination affects only rights under U.S. copyrights, leaving foreign rights for foreign law. See 2 Thomas D. Selz et al., *Entertainment Law 3d: Legal Concepts and Business Practices* §§ 16:152–153 (Dec. 2025 update); Jeffrey P. Cunard & Brandon C.

Gruner, *Statutory Termination Rights (Copyright)*, Westlaw Practice Note w-010-0835 (database updated 2026). Indeed, that understanding has long been hornbook law. See 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 11.02[B][2] (2026) (Release No. 125); 7 William F. Patry, *Patry on Copyright* § 25:74 (Mar. 2026 update); Paul Goldstein, *Goldstein on Copyright* § 5.4.1.3 (3d ed., 2026-2 Supp. 2005). Even Vetter's counsel has conceded that this has been the "common industry reading." Tim Kappel & Loren Wells, *Returning Music to Its Creator*, 5 Fla. Ent. & Sports L. Rev. 13, 14–16 (2026).

That common understanding was the foundation of the music industry's dealings. It shaped how parties priced and licensed works, drafted agreements, and administered royalties. In an industry built on chains of title and territory-by-territory exploitation, that stability is not a technical nicety; it is essential to the market's operation. Without it, industry participants reliably know neither which rights they have and can convey nor which revenues may be paid and to whom without reservation.

The Fifth Circuit's decision has upended that settled practice. In virtually all cases before it, recording artists and songwriters who sent putative termination notices recognized that, if termination was available at all, it extended solely to U.S. rights. Now, parties sending termination notices routinely invoke the decision to purport to terminate rights worldwide—or to use that threat as leverage in negotiations. And this unfolding dynamic is not confined to Louisiana, Mississippi, and Texas; in *amici*'s experience, parties residing far outside the Fifth Circuit's domain, from California to New York and places in between, are already raising the decision in notices and negotiations.

Nor are these expanded termination claims limited to "new" notices. Many artists and songwriters who already sent termination notices and renegotiated their contractual arrangements are now sending "supplemental" or "renewed" notices. Those notices rely on the Fifth Circuit's theory to purport to terminate foreign rights and seek *further* compensation—often despite earlier express acknowledgments that no termination rights exist as to foreign exploitation.

That uncertainty has immediate consequences. A party receiving a worldwide termination notice cannot simply act as though the notice is wrong; the mere assertion clouds negotiations and downstream affairs. Music rights are administered through networks of affiliates, sub-publishers, licensees, and digital services, all of which depend on clear territorial allocations. Consider the effects on just music streaming: according to the International Federation of the Phonographic Industry ("IFPI")—the worldwide trade association for the recording industry—there are currently *837 million* paid music streaming subscription accounts globally. See IFPI, *Global Music Report 2026*, at 6 (2026), https://shorturl.at/YLFOi. Streaming services must know *whom* to pay in order to account correctly and completely for the distribution and performance of music. Once a U.S. termination notice purports to reach foreign rights, however, each participant in that chain—streaming or otherwise—faces the same threshold question: who owns what, and where?

The upshot is marked uncertainty—domestic and international alike—over an issue the music industry had long taken as settled. Unless this Court intervenes, a marketplace that depends on stable rules for valuing and transferring rights will be forced into uncharted territory.

II. The decision below risks international discord by overriding rights under foreign copyright regimes.

This Court has also repeatedly granted certiorari when the decision below involves "[s]ignificant federal statutory questions implicating foreign affairs." Shapiro et al., *supra*, § 4.13; see *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 407 (1964) ("[T]he issues involved bear importantly on the conduct of the country's foreign relations …."), *superseded by statute on other grounds*, Foreign Assistance Act of 1964, Pub. L. No. 88-633, 78 Stat. 1009 (1964); *Kolvrat* v. *Oregon*, 366 U.S. 187, 191 (1961) ("important rights asserted in reliance upon federal treaty obligations"); *Ex parte Lau Ow Bew*, 141 U.S. 583, 588–89 (1891) ("[T]he acts of congress are to be considered … in arriving at a conclusion as to the operation upon the treaties with China designed by congress in those enactments."); see also *Jesner* v. *Arab Bank, PLC*, 584 U.S. 241 (2018); *Medellín* v. *Texas*, 552 U.S. 491 (2008).

The international concerns here are acute. Copyright is territorial by design: U.S. law governs U.S. rights, while foreign law governs foreign rights. The Fifth Circuit's rule tosses aside copyright's territorial structure, inviting precisely the international discord that this Court's foreign-affairs and extraterritoriality doctrines are designed to avoid.

A. Courts are especially wary of interpretations that create unnecessary international discord.

Because transnational disputes can affect foreign sovereigns and upset international arrangements, courts do not lightly read U.S. statutes to create international conflict. The baseline rule is as old as the

Republic: "[A]n act of congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (Marshall, C.J.); see also *Cook* v. *United States*, 288 U.S. 102, 120 (1933) ("A treaty will not be deemed to have been abrogated or modified by a later statute, unless such purpose on the part of Congress has been clearly expressed.").

The same caution controls where an interpretation of U.S. law would carry foreign-policy consequences. This Court has repeatedly warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel* v. *Royal Dutch Petro. Co.*, 569 U.S. 108, 116 (2013). Caution "helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches." *Id.* at 116; see *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147 (1957) ("For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed.").

That caution reflects courts' institutional limits. The "vast external realm" presents "important, complicated, delicate and manifold problems." *United States* v. *Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936). The Judiciary simply lacks "the facilities necessary to make … important [foreign] policy decision[s]," *Benz*, 353 U.S. at 147, and "[t]he political branches … have the responsibility … to weigh foreign-policy concerns," *Jesner*, 584 U.S. at 265; see *Chi. & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) ("[T]he Judiciary has neither aptitude, facilities nor responsibility" for foreign affairs, which often involve matters that are "delicate, complex, and involve large elements of prophecy."). Further, judicial caution before extending our law beyond our shores helps ensure that "the United States is … able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors." *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 539 (1995).

Caution is particularly warranted before reading a domestic statute to regulate rights created by foreign law. This Court has thus recognized a statutory presumption against extraterritorial application of U.S. laws to "protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), *superseded on other grounds by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1077. "The possibility of international discord cannot … be gainsaid" when domestic law is extended into areas governed by foreign sovereigns. *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963).

B. Copyright has a transnational—but territorial—structure.

Copyright is domestic law operating in an international system. "An additional dimension of copyright law is its transnational character." 1 Melville B. Nimmer & David Nimmer, *supra*, § A.05. That is particularly true for music, where songs and sound recordings are routinely created in one country, licensed across many more, and exploited around the world.

But a transnational character does not mean a supranational law of copyright controls. The U.S. Copyright Office puts the point plainly: "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 Off., Circular 38A, *International Copyright Relations of the United States* 1 (rev. Dec. 2025), https://shorturl.at/bWsiz. Thus, a long-settled premise of copyright is that "there are a multiplicity of national copyright regimes," under which an owner may hold "a French copyright, a U.S. copyright, a Mexican copyright, a Japanese copyright, and so on." Jane C. Ginsburg, *Global Use/Territorial Rights: Private International Law Questions of the Global Information Infrastructure*, 42 J. Copyright Soc'y U.S.A. 318, 330 (1995).

The Berne Convention—"the principal accord governing international copyright relations," *Golan* v. *Holder*, 565 U.S. 302, 306–07 (2012)—reflects copyright's territorial structure. Article 5(1) provides that creators shall enjoy, in countries other than the country of origin, "the rights which their respective laws do now or may hereafter grant to their nationals." Berne Convention art. 5(1), Sep. 9, 1886, *as amended on* Sep. 28, 1979, S. Treaty Doc. No. 99-27 (1986), WIPO Lex. No. TRT/BERNE/001; see also *Golan*, 565 U.S. at 308 ("Members of the Berne Union agree to treat authors from other member countries as well as they treat their own."). And Article 5(2) provides that "the extent of protection, as well as the means of redress afforded to the [creator] to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed." Berne Convention art. 5(2). Accordingly, a British songwriter seeking protection in the United States receives U.S. rights under U.S. law, and a U.S. songwriter seeking protection in the United Kingdom receives U.K. rights under U.K. law. Neither receives a free-floating global copyright projected outward from the country of origin.

Congress's implementation of the Berne Convention embodies the territorial understanding: "[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). The Convention does not itself create domestic rights or foreign rights; domestic statutes do.

C. The Fifth Circuit's decision creates precisely the international discord courts are supposed to avoid.

The Fifth Circuit's approach upends copyright's territorial structure. Under its single copyright theory, when a U.S. creator grants "worldwide" rights, the creator has not assigned discrete U.S., French, Mexican, Japanese, and other copyrights. Rather, the U.S. creator has assigned a U.S. copyright "to the extent that it extends internationally." *Vetter*, 163 F.4th at 957. That defies the Berne Convention and Congress's intent that U.S. copyright law "gover[n] domestically but … not rule the world." *Microsoft Corp.* v. *AT&T Corp.*, 550 U.S. 437, 454 (2007).

1. The Fifth Circuit's single-copyright theory cannot be squared with the Berne Convention's national-treatment principle. Under the Fifth Circuit's rule, a U.S. creator can use termination under U.S. law to claw back rights worldwide, as ostensibly "arising under" U.S. law. But the rule works the opposite result for foreign creators. If the country of origin supplies the single copyright that then "extends internationally," a foreign creator's U.S. rights do not arise under Title 17, and no termination right exists at all. They arise under foreign law and are merely recognized here. Accordingly, the Fifth Circuit's holding risks giving creators different rights depending on their country of origin; where foreign laws do not recognize copyright termination (as is true in many countries around the world), U.S. creators have more rights, and foreign creators fewer.

This approach destroys the Berne Convention's obligation of reciprocity and non-discrimination. The Berne Convention ensures that foreign works enjoy protection "as generous as that afforded domestic authors and works." Graeme B. Dinwoodie, *International Copyright Law: The Introduction* § 2, *in* 1 *International Copyright Law and Practice* (Burton Ong et al. eds., 2026), LexisNexis. Yet the decision below strips foreign authors of the termination rights held by U.S. authors. And if foreign courts adopted the same approach, U.S. creators would be deprived of the benefits of *foreign* termination (and other) rights (and foreign creators may end up with *greater* rights abroad), on the theory that U.S. creators' rights in such foreign countries do not "arise under" foreign law.

2. The Fifth Circuit's decision also creates an extraterritoriality problem that Congress tried to avoid: it allows a domestic termination provision to unsettle rights created by foreign law.

This Court has long recognized that U.S. copyright law does not govern globally. See *United Dictionary Co.* v. *G. & C. Merriam Co.*, 208 U.S. 260, 264 (1908) (declining to interpret U.S. copyright law to require U.S. copyright notice in English publications because "it is unlikely that [Congress] would require a warning … beyond the jurisdiction where that law was in force"); *Impression Prods., Inc.* v. *Lexmark Int'l, Inc.*, 581 U.S. 360, 379 (2017) (noting that "copyright protections … 'do not have any extraterritorial operation'" (quoting 5 M. Nimmer & D. Nimmer, *Copyright* § 17.02, at 17–26 (2017))). That principle follows from the presumption against extraterritoriality. Unless Congress clearly indicates a statute applies abroad, courts presume it applies only domestically. See *RJR Nabisco, Inc.* v. *Eur. Cmty.*, 579 U.S. 325, 335 (2016).

Termination operates no differently. The Copyright Act says plainly that "[t]ermination of a grant … affects only those rights covered by the grants that arise under [Title 17], and in no way affects rights arising under any … foreign laws." 17 U.S.C.§ 304(c)(6)(E); see also *id.* § 203(b)(5) (similar). The Copyright Office flagged these geographic limits for Congress: "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." Staff of the H. Comm. on the Judiciary, 89th Cong., *Copyright Law Revision, Part 6: Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill* 75 (Comm. Print 1965) (discussing § 203).

The Fifth Circuit crossed the territoriality line that precedent and statutory text draw. Its rule allows a U.S. termination to directly impact foreign copyrights—rights created by other sovereigns. That is extraterritorial application by any practical measure. Cf. *Abitron Austria GmbH* v. *Hetronic Int'l, Inc.*, 600 U.S. 412, 427–28 (2023) (explaining trademark law is territorial and "each country is empowered to grant trademark rights and police infringement within its borders"). Compare *Impression Prods., Inc.*, 581 U.S. at 374 (explaining the exhaustion doctrine "is not a presumption about the authority that comes along with a sale" under the patent-infringement statute but "a limit on 'the scope of the *patentee's rights*'" (citation omitted)), with *id.* at 379 ("The territorial limits on patent rights [are] no basis for distinguishing copyright protections; those protections 'do not have any extraterritorial operation' either." (citation omitted)).

This extraterritoriality problem risks international discord and uncertainty. "Flouting international copyright norms," as the Fifth Circuit's rule does, "invites retaliation—and American creators have more to lose than most. The U.S. runs a trade surplus in intellectual property. If we stop respecting territorial limits, we shouldn't expect other countries to protect American works in return." Aaron Moss, *Fifth Circuit Expands Copyright Termination Beyond U.S. Borders*, Copyright Lately (Jan. 12, 2025), https://shorturl.at/gSMba. And "when U.S. courts disregard the territorial foundations of international copyright, it signals that treaty commitments are negotiable. That's a dangerous message at a moment when trade relations are already strained—and when American rightsholders depend on foreign markets more than ever." *Id.*

Worse, extraterritorial termination invites conflicting judgments. Other countries' willingness to enforce U.S. judgments depends on comity, not obligation. See *Hilton* v. *Guyot*, 159 U.S. 113, 163–64 (1895). Foreign courts need not accept a U.S. court's conclusion that termination under the Copyright Act recaptures foreign copyrights. See 7 Patry, *supra*, § 25:18 ("A U.S. court can opine that there are not foreign rights after termination, but that's meaningless in that foreign country, where a foreign court would surely ignore it as a serious breach of comity, and simply incorrect."); Aaron Moss, *Dear Fifth Circuit: It's Time to Reverse Vetter v. Resnik*, Copyright Lately (Apr. 27, 2025), https://shorturl.at/9Y5Vi ("Realistically, foreign courts aren't likely to honor a U.S. decision that tries to extinguish rights under their own laws ….”). Conflicting judgments further impair licensing, royalty administration, and exploitation of works abroad.

The Court should grant certiorari to prevent the international discord and uncertainty that the Fifth Circuit's holding invites. The correct rule is straightforward and internationally administrable: U.S. termination provisions apply to U.S. rights under Title 17. Foreign rights remain governed by foreign law. The Fifth Circuit's decision will create the very international discord that this Court's foreign-affairs principles are designed to avoid and invites retaliatory legal changes abroad that would disadvantage creators worldwide.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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