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 20 INTELLECTUAL PROPERTY LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS AND THE PETITION FOR CERTIORARI

Tyler T. Ochoa
Counsel of Record
SANTA CLARA UNIVERSITY
SCHOOL OF LAW
500 El Camino Real
Santa Clara, CA 95053
(408) 554-2765
ttochoa@scu.edu

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*

This brief *amicus curiae* in support of Petitioners and the Petition for *Certiorari* is submitted pursuant to Rule 37 of the Rules of this Court.[1]

Amici are professors of copyright law, intellectual property law, and/or international intellectual property law who are familiar with principles of international intellectual property law and its relationship to copyright law in the United States. *Amici* have no financial interest in the parties to or the outcome of this case. *Amici* share a professional and academic interest in ensuring that U.S. copyright law is interpreted in a manner that is consistent with fundamental principles of international intellectual property law and with Congressional intent. To that end, *amici* present a summary of their understanding of the relationship between U.S. copyright law and those fundamental principles, to aid the Court in its deliberations.

A full list of *amici* can be found in the Appendix.

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[1] No party or counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund its preparation or submission. No person other than the *amici* made a monetary contribution to the preparation or submission of this brief. *Amici*'s university affiliations are for identification purposes only; *amici*'s universities take no position on this case.

Pursuant to Rule 37.2 of the Rules of this Court, counsel of record for the *amici* provided counsel for all parties notice of *amici's* intention to file an *amicus curiae* brief at the petition stage on July 3, 2026, which was at least 10 days prior to the due date for the *amicus curiae* brief.

SUMMARY OF ARGUMENT

International copyright treaties are premised on two fundamental principles: the principle of territoriality, and the principle of national treatment. The principle of territoriality means that each nation legislates and regulates intellectual property rights within its own borders. The principle of national treatment requires that each nation give to the nationals of other treaty member nations at least the same protection that it provides to its own nationals.

The Fifth Circuit's decision in this case violates both of those principles. Under the principle of territoriality, copyrights in countries outside the United States "arise under" and are governed by the copyright statutes of those countries. The Fifth Circuit, however, held that the foreign copyright interests of U.S. authors and their assignees "arise under" U.S. copyright law. This violates the long-standing territoriality principle, and it contradicts the express language of the U.S. Copyright Act that "[t]ermination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and *in no way affects rights arising under* any other Federal, State, or *foreign laws*." 17 U.S.C. § 304(c)(6)(E) (emphasis added).

The Fifth Circuit's decision also violates the principle of national treatment. The logical implication of the Fifth Circuit's decision is that termination applies only to U.S. authors and their assignees, because their rights "arise under" U.S. law, while the copyright interests of foreign authors and their assignees "arise under" the laws of their countries of origin. Under the

Fifth Circuit's decision, foreign authors may be denied their rights to termination in the United States altogether, even though U.S. law provides such termination rights to domestic authors. But under the Berne Convention and the U.S. Copyright Act, the United States has an obligation to provide foreign copyright owners with at least the same rights that it provides to domestic copyright owners.

The Fifth Circuit's decision also violates the presumption that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 417 (2023) (cleaned up). Instead of applying the presumption, the Fifth Circuit relied on the *absence* of any geographic limitation in the statute to infer that it applied internationally. That approach turns the presumption against extraterritoriality on its head, making it a presumption in favor of extraterritorial reach unless Congress expressly stated otherwise.

By contradicting the fundamental principles of international intellectual property law, the Fifth's Circuit's decision disrupts the foreign relations of the United States and creates tremendous uncertainty for domestic and foreign copyright owners, assignees, and licensees alike. Assignees and licensees of U.S. authors are now likely to face contradictory rulings, with the Fifth Circuit holding that termination of all foreign copyright interests of U.S. authors are governed by U.S. copyright law, while foreign courts will continue to follow fundamental principles and hold that termination of foreign copyright interests of U.S. authors are governed by the laws of the country for which protection is sought.

Because the Fifth Circuit's decision violates two fundamental principles of international intellectual property law, and a split of authority already exists, the Court should grant the petition for *certiorari*.

ARGUMENT

I. THE INTERNATIONAL COPYRIGHT SYSTEM IS BASED ON THE PRINCIPLES OF TERRITORIALITY AND NATIONAL TREATMENT.

The international copyright treaties to which the U.S. is a party are premised on two fundamental principles: the principle of territoriality, and the principle of national treatment. The principle of territoriality means that each nation legislates and regulates intellectual property rights within its own borders. The principle of national treatment requires that each nation must give to the nationals of other treaty member nations at least the same protection that it provides to its own nationals.

The text of the Berne Convention embodies these two principles. "The Berne Convention for the Protection of Literary and Artistic Works… is the principal accord governing international copyright relations." *Golan v. Holder*, 565 U.S. 302, 306-07 (2014). Although the United States does not consider the Berne Convention to be self-executing, *see* Berne Convention Implementation Act (BCIA), Pub. L. 100-568, § 2(1), 102 Stat. 2853, it has incorporated the principles of the Berne Convention into its domestic copyright law. *See* BCIA § 2(3), 102 Stat. 2853 ("The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention.").

The text of the Berne Convention is premised on the principle of territoriality. While "[e]ach country … must afford at least the minimum level of protection specified by Berne," *Golan*, 565 U.S. at 308, the text of the Convention repeatedly provides that various details "shall be a matter for legislation in the countries of the Union." *See, e.g.*, Berne arts. 2(2), 2(4), 2(7), 2*bis*(1), 2*bis*(2), 7(4), 9(2), 10(2) 10*bis*(1), 10*bis*(2), 11*bis*(2), 14*bis*(2)(a).[2] This repeated incantation recognizes that each nation determines for itself the copyright protection provided to works within its own borders. In one case, moreover, that limitation is even more explicit. Art. 13(1) of Berne provides:

> Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words … to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions *shall apply only in the countries which have imposed them* … (emphasis added)

Under the principle of territoriality, "an author of a literary work will upon creation (and in some countries, fixation) of the work receive a bundle of national copyrights, each conferring protection within a single nation-state. … Thus, an author who

[2] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, 1161 U.N.T.S. 3, and amended in 1979, S. Treaty Doc. No. 99-27 (1986), *available at* https://www.wipo.int/wipolex/en/text/283698.

publishes a work in France receives protection in France according to French copyright law and receives protection in the United Kingdom separately according to the rules of U.K. copyright law. She owns a French copyright and, separately, a U.K. copyright." Graeme B. Dinwoodie, International Copyright Law: The Introduction § 1, in International Copyright Law and Practice (Burton Ong ed., LexisNexis 2025) [hereinafter Dinwoodie].

The text of the Berne Convention also embodies the principle of national treatment. Berne Art. 5(1) provides that "[a]uthors shall enjoy … 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, art. 5(1) (emphasis added). Thus, where the "country of origin" is the United States, copyright protection "in countries … other than the country of origin," *i.e.*, in countries outside the United States, is provided by "the rights which *their respective laws* do now or may hereafter grant to their nationals," *i.e.*, by foreign law. Conversely, the United States is obligated to extend rights to foreign authors that are at least as generous as those provided to U.S. authors.

The next paragraph of the Berne Convention makes it clear that copyrights in foreign countries are separate from and independent of the copyright in the country of origin. It provides that "[t]he enjoyment and the exercise of these rights [i.e., rights "in countries … other than the country of origin"] … shall be *independent of* the existence of *protection in the country of origin* of the work." Berne Art. 5(2) (emphasis added). "Consequently, apart from the provisions of this Convention, the extent of protection … *shall be governed exclusively by the laws of the country where protection is claimed*." Berne, Art. 5(2) (emphasis added). In other words, copyright protection outside the country of origin is governed exclusively by foreign law.

The United States recommitted itself to these principles when it signed the Agreement on Trade Related Aspects of Intellectual Property Rights (or "TRIPS"), which obligates the United States to comply with Articles 1-21 of the Berne Convention (save one). TRIPS Agreement, Art. 9.1, 33 I.L.M. 1197, 1201.

Scholars agree that both of these principles are the foundation of the international copyright system. "Copyright law is territorial. The creation of a work results in a bundle of independent copyrights in all copyright respecting nations. This principle is not only reflected in all national laws, but also underpins and shapes the content of international copyright law." Dinwoodie, *supra*, at § 3[1]. "Copyright law's strict adherence to the principle of territoriality has deep historical roots." Paul Goldstein & P. Bernt Hugenholtz, International Copyright: Principles, Law and Practice §4.1 (2d ed. 2010). National treatment is "embodied in the main copyright and neighboring rights conventions" and is "pervasive[] in international copyright" law. *Id*. at 4.2. "The principle of national treatment is a principle of non-discrimination, requiring each nation to accord treatment to foreign nationals that is at least as favorable as that accorded to its own nationals." Daniel C.K. Chow & Edward Lee, International Intellectual Property: Problems, Cases, and Materials 34 (5th ed. 2025).

II. THE FIFTH CIRCUIT'S DECISION IN THIS CASE VIOLATES BOTH THE PRINCIPLE OF TERRITORIALITY AND THE PRINCIPLE OF NATIONAL TREATMENT.

A. The Fifth Circuit's Decision in this Case Violates the Principle of Territoriality.

The plain language of the Copyright Act follows the principle of territoriality. It provides that "[t]ermination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws." 17 U.S.C. § 304(c)(6)(E).[3] As the Fifth Circuit conceded, "[b]ased on the plain language of 'arise under this title,' termination covers copyrights that were granted under Title 17 of the U.S. Code, which includes the U.S. Copyright Act, and excludes copyrights that were granted under 'any other Federal, State, or foreign laws.'" *Vetter v. Resnik*, 163 F.4th 951, 957 (5th Cir. 2026).

Recall that under the principle of territoriality, copyrights in countries outside the United States are independent of the U.S. copyright. Thus, Petitioners' predecessor-in-interest was entirely correct when it argued below that "the U.S. Copyright Act, together with the implementing legislation of each other member country, creates multiple and separate copyright interests in each country, rather than a

[3] Subsection 304(c) governs termination for pre-1978 grants in pre-1978 works. The identical language appears in the subsection governing termination for grants executed on or after January 1, 1978. *See* 17 U.S.C. § 203(b)(5).

single overarching … master copyright that each country is required to honor." *Vetter*, 163 F.4th at 962.

The Fifth Circuit, however, rejected that premise and instead held that "a copyright is better understood as being granted under the U.S. Copyright Act and recognized by member countries pursuant to the Berne Convention and Universal Copyright Convention." 163 F.4th at 963. This led it to the bizarre conclusion that the *foreign* copyright interests of U.S. authors and their assignees (i.e., the right to prohibit conduct occurring in *foreign* countries) "arose under the U.S. Copyright Act." 163 F.4th at 957.

But the Fifth Circuit's premise and conclusion is directly contradicted by the text of the Berne Convention. The Convention provides that "in countries … other than the country of origin," Berne Art. 5(1), copyright protection "shall be *independent of* the existence of *protection in the country of origin* of the work." Berne Art. 5(2) (emphasis added). In other words, copyrights in countries outside the United States are independent of the U.S. copyright, and do *not* arise under U.S. domestic law. "Consequently, apart from the provisions of this Convention, the extent of protection … *shall be governed exclusively by the laws of the country where protection is claimed*." Berne, Art. 5(2) (emphasis added). In other words, copyright protection outside the country of origin is governed exclusively by foreign law.

Moreover, the Fifth Circuit's decision is inconsistent with the fact that U.S. authors and works were protected in foreign nations *before* the U.S. joined the Berne Convention, and before the Universal Copyright Convention even existed. Some countries provided rights to U.S. authors before the 1891 Chace

Act extended copyright protection in the United States to foreign authors for the first time. Under that Act, Congress conferred reciprocal rights on another country's authors only after a Presidential Proclamation certifying that "such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens." Act of Mar. 3, 1891, ch. 565, § 13, 26 Stat. 1106. As the U.S. was not yet a party to any copyright treaties at the time, the *only* possible legal basis for U.S. authors to obtain copyright protection in foreign countries was that such copyrights "arose under" foreign law.

Even after the United States joined the Berne Convention (on March 1, 1989), it should be self-evident that foreign copyrights "arise under" foreign laws. *See* Chow & Lee, *supra*, at 117 ("an author who is a national of a Berne Union country and who has created a work ... automatically obtains a copyright for that work throughout the Berne Union *under the respective laws of each country* of the Union.") (emphasis added). If the United States were to repeal its Copyright Act, it would be in violation of its obligations under the Berne Convention; but U.S. authors and their assignees would still have copyrights in foreign countries by virtue of the copyright statutes in those countries. Conversely, if a foreign country were to repeal its copyright statute, it would be in violation of its obligations under Berne; but unless the Berne Convention were considered to be self-executing in that country, there would be no legal basis for a U.S. author to assert its supposed rights in that country.

B. The Fifth Circuit's Decision in this Case Violates the Principle of National Treatment.

Under the principle of national treatment, "[m]embers of the Berne Union agree to treat authors from other member countries as well as they treat their own." *Golan*, 565 U.S. at 308. The Fifth Circuit acknowledged only half of this principle. It correctly stated that "[u]nder the Berne Convention, the principle of national treatment states that 'when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.'" *Vetter v. Resnik*, 163 F.4th at 962, *quoting* Berne Art. 5(3). But that subsection applies only to protection "*in that country*," i.e., in the country of origin. Members of the Berne Union are *also* obliged to provide national treatment to works whose country of origin is *outside* of the United States. Under Berne Art. 5(1), "in countries of the Union *other than* the country of origin," "[a]uthors shall enjoy … the rights which *their respective laws* do now or may hereafter grant to their nationals" (emphasis added). Therefore, if the United States were to provide worldwide termination rights to U.S. authors for U.S. works, it would be obliged by the Berne Convention to provide worldwide termination rights to foreign authors for foreign works as well. But the Fifth Circuit's aberrant reading of the U.S. Copyright Act prevents that from happening.

Under the Fifth Circuit's novel "single worldwide copyright" theory, Vetter's "copyright is better understood as being granted under the U.S. Copyright Act and recognized by member countries pursuant to the

Berne Convention and Universal Copyright Convention." *Vetter*, 163 F.4th at 963. And "because Vetter's rights arose under the U.S. Copyright Act, … his termination would be effective as to all of his rights—including his copyright *to the extent that it extends internationally*." *Vetter*, 163 F.4th at 957 (emphasis added). But under this theory, the Fifth Circuit erroneously believed that "Vetter's rights arose under the U.S. Copyright Act" *only* because Vetter and Smith were U.S. authors and their work was first published in the United States. *See* Berne Art. 5(4) (defining "country of origin"). But any copyright interests that Vetter and Smith received internationally are protected under the national laws of those countries, not U.S. copyright law, which has no extraterritorial application.

A foreign author who first publishes in a foreign member country is also protected by the Berne Convention. *See* Berne Art. 3(1). Under the reasoning implicitly underlying the Fifth Circuit's theory, the rights of such a foreign author "arise under" foreign law; namely, the law of the work's "country of origin." *See Vetter*, 163 F.4th at 963 ("a foreign national [of a treaty member country] may seek copyright protection under the Copyright Act *although the source of its rights lies abroad*.") (citation omitted; emphasis added). But under the Copyright Act, termination excludes "rights arising under … foreign laws," 17 U.S.C. § 304(c)(6)(E); so under the Fifth Circuit's interpretation, foreign authors who first publish outside the United States (but in a Berne Union country) are *excluded* from termination rights in the United States altogether, because "the source of [their] rights lies abroad." *See Vetter*, 163 F.4th at 963. This despite the fact that the Copyright Act expressly extends protection to such foreign works. *See* 17 U.S.C. § 104(b)(2) (protecting works "first published … in a foreign nation that, on the date of first publication, is a treaty party"); 17 U.S.C. § 101 (defining "treaty party"). Not only would it violate the Act, but it would be unfair to foreign authors and artists who relied on U.S. termination interests when they signed contracts with U.S. publishers and record labels to embrace a theory that would deprive them of national treatment.

It is a canon of construction that "[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). The Fifth Circuit's interpretation of the statute violates the "law of nations," namely, the principle of national treatment in the Berne Convention, because it provides worldwide termination rights to domestic authors for domestic works, but it denies the same rights to foreign authors for foreign works. By contrast, the Petitioner's interpretation is consistent with the principle of national treatment in the Berne Convention: both domestic and foreign authors enjoy a right of termination within the territory of the United States, while termination and reversion rights in other countries, if any, are left to the copyright laws of those other countries. Some of those countries have given authors more generous termination or reversion rights, and the rationale underlying the Fifth Circuit's decision would override those choices.[4]

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[4] *See* Dinwoodie, *supra*, at §3[1]: "insofar as copyright law shapes the cultural landscape of a particular territory, sovereign states have the right to determine [for themselves] how that landscape should look."

C. The Fifth Circuit's Decision in this Case Also Violates the Strong Presumption Against Extraterritoriality.

In the United States, the principle of territoriality in the international intellectual property system is reinforced by the strong presumption against extraterritoriality. "It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 417 (2023) (cleaned up), *quoting Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010). "The presumption 'serves to avoid the international discord that can result when U. S. law is applied to conduct in foreign countries' and reflects the 'commonsense notion that Congress generally legislates with domestic concerns in mind.'" *Abitron*, 600 U.S. at 417, *quoting RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 335-36 (2016).

> Applying the presumption against extraterritoriality involves a two-step framework. At step one, we determine whether a provision is extraterritorial, and that determination turns on whether Congress has *affirmatively and unmistakably* instructed that the provision at issue should "apply to foreign conduct." … If a provision is not [expressly] extraterritorial, we move to step two, which resolves whether the suit seeks a (permissible) domestic or (impermissible) foreign application of the provision.

Abitron, 600 U.S. at 417-18 (emphasis added). *See also Morrison*, 561 U.S. at 255 ("unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect, we must presume it is primarily concerned with domestic conditions. … When a statute gives no clear indication of an extraterritorial application, it has none.") (citation and internal quotes omitted).

The Fifth Circuit's opinion in this case went awry at step one. Instead of asking "whether Congress has *affirmatively and unmistakably* instructed" that the Copyright Act applies to ownership of copyrights in other countries, the Fifth Circuit instead relied on the *absence* of any geographic limitation in the statute to infer that it applied internationally. *See Vetter v. Resnik*, 163 F.4th at 957 ("There is no explicit geographical limitation in section 304(c)(6)(E) that restricts the exploitation of Vetter's rights to uses within the United States.").[5] That approach turns the presumption against extraterritoriality on its head, making it a presumption in favor of extraterritorial reach unless Congress expressly stated otherwise.

Application of the presumption to this case should have been a straightforward exercise. Not only did Congress *not* "affirmatively and unmistakably" state that the U.S. Copyright Act applies to ownership of copyrights in foreign countries, it affirmatively stated

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[5] This was not inadvertent, because the Fifth Circuit made the same mistake when it also held that U.S. renewal rights in pre-1978 copyrights extend extraterritorially, *see Vetter v. Resnik*, 163 F.4th at 965 ("the renewal provision makes no mention of geographical limitations to the scope of renewal rights"), despite the fact that members of the Berne Convention only have a single copyright term, and formalities such as registration and renewal are prohibited outside the country of origin by Berne Art. 5(2).

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

The Fifth Circuit opined that the presumption against extraterritoriality was inapplicable because this case involves "ownership, assignment, and termination" of copyrights, rather than infringement (conduct). *See Vetter v. Resnik*, 163 F.4th at 963-64. The reasoning is specious. Under the principle of territoriality, ownership of a copyright in another nation gives the owner the right to exclude others from *conduct* (reproduction, adaptation, distribution, communication to the public, etc.) occurring *in that nation*. Assignees and licensees who continue to reproduce the work in foreign countries based on a terminated transfer or grant have either infringed the foreign copyright, or they have not. The concerns animating the presumption against extraterritoriality — namely, that it "serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries," *Abitron*, 600 U.S. at 417 — are as fully applicable in the context of ownership and termination as they are for infringement. Under the principle of territoriality, foreign countries have the power to determine for themselves who owns the right to exclude others from infringing conduct in their countries. This is especially true where, as here, Congress has *expressly* excluded rights "arising under … foreign laws" from the effect of termination.

III. THE FIFTH CIRCUIT'S DECISION IN THIS CASE CREATES A SPLIT IN AUTHORITY AND DISRUPTS THE INTERNATIONAL COPYRIGHT SYSTEM.

As the Petitioners have pointed out, the Fifth Circuit's decision in this case expressly disagreed with the holdings of all of the other courts that have addressed the issue, including the Second Circuit. *See Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17, 20 (2d Cir. 1998) (upon termination, "Warner's *domestic* rights in the Song reverted to Dixon's heirs.") (emphasis added); *Siegel v. Warner Bros. Entertainment, Inc.*), 542 F. Supp. 2d 1098, 1142 (C.D. Cal. 2008) ("the termination notice affects only the *domestic* portion of Siegel's and Shuster's 1938 worldwide grant ('all rights') to Detective Comics") (emphasis in original), *rev'd in part on other grounds*, 504 F. App'x 586 (9th Cir. 2013); *Clancy v. Jack Ryan Enterprises, Ltd.*, 2021 WL 488683, at *46 (D. Md. Feb. 10, 2021) ("the worldwide grant of copyright is only subject to termination insofar as its U.S. component is concerned, but not subject to termination in the rest of the world."). Thus, the Fifth Circuit's decision creates a split in controlling authority that should be addressed.

Moreover, applying the principles of territoriality and national treatment, many foreign courts have *also* held that ownership of copyrights in those countries is governed by the laws of those countries. The Fifth Circuit's ruling therefore creates the very real possibility of inconsistent rulings, and the uncertainty and conflict among foreign and domestic law that the presumption against extraterritoriality is designed to avoid.

For example, in April 2007 the Oberlandesgericht Düsseldorf considered a conflict concerning ownership in Germany of the copyrights to the book series "The Three Investigators" (known in Germany as "Die Drei ???"), created by American author Robert Arthur. The court said:

> As a preliminary matter, it should be noted that German law applies to the questions of ownership at issue here. From the perspective of conflict of laws, this issue must be resolved in accordance with the rules of international intellectual property law applicable to cross-border situations. According to the virtually unanimous view, the governing principle for determining ownership is the law of the state of protection—that is, the law of the state for whose territory intellectual property protection is claimed. … The territorial scope of intellectual property rights is geographically limited to the territory of the state that grants them individually or recognizes them generally under specific conditions. … Under the principle of the country of protection—as established in Art. 5(2), second sentence, of the Revised Berne Convention—the questions of initial ownership and the transferability of copyright are also determined by that law.

OLG Düsseldorf, Judgment of 24 April 2007, Case No. I-20 U 175/06, para. 24 (citations omitted).[6] The

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[6] The judgment in German is available online at https://nrwe.justiz.nrw.de/olgs/duesseldorf/j2007/I_20_U_175_06

German court specifically rejected the applicability in Germany of U.S. termination rights:

> The reversion provision set forth in the U.S. Copyright Act (CA) does not alter the legal status of the [assignee]. While the termination right governed by §§ 203(a)(2) and 304(c)(2) of the CA may have vested in the statutory successors, i.e., in this case, the children of Robert Arthur, upon the individual author's death prior to the termination date, these provisions of U.S. law are irrelevant under German law. … Consequently, [the assignee] remains the holder of the copyrights to this day, insofar as rights in Germany are concerned.

OLG Düsseldorf, Judgment of 24 April 2007, Case No. I-20 U 175/06, para. 31 (citation omitted).

Applying the principle of national treatment, litigants and foreign courts alike have also recognized that ownership of reversion interests of U.S. authors in foreign countries are governed by the laws of those respective countries. For example, in *Redwood Music Ltd. v. Bourne Estate*, 1995 CanLII 7324 (Ont. Ct. Gen. Div.),[7] the court explained that "[t]his matter relates to copyright in popular songs which were written in the period 1920 to 1945 by composers and authors resident in the United States." *Id*. at para. [4]C.7. But although the works were written and published in the United States (at a time when the

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urteil20070424.html (last visited July 5, 2026). The quotes from the opinion are from a machine translation.

7 The Canadian decision is available online in English at <https://canlii.ca/t/1w7zl> (last visited July 5, 2026).

U.S. was *not* a member of the Berne Convention or the Universal Copyright Convention), neither the parties nor the court looked to U.S. law on reversion or termination. Instead, the dispute was about ownership of reversion rights in Canada under Canadian law, in Germany under German law, etc. *See id.* at para. [4]F.24(c). ("any and all reversionary rights and interests now or hereafter existing in and under the copyrights of each of the Works as such reversionary rights and interests are defined *in the respective copyright laws, statutes or regulations of each of the countries*, territories, or possessions") (emphasis added); *id.* at para. [6] ("the defendant says that Germany, Austria and Switzerland do not have reversionary or substituted rights similar to the Canadian rights, and therefore it does not owe any money collected in those countries for [the] songs"); *id.* at para. [30] ("Both parties called expert witnesses from Germany to assist the court with both the interpretation of the German law in question").

Assignees and licensees of U.S. authors are now likely to face contradictory rulings, with the Fifth Circuit holding that ownership of all foreign copyright interests of U.S. authors are governed by U.S. copyright law, while foreign courts will continue to follow fundamental principles and hold that ownership of foreign copyright interests are governed by the laws of the country in which protection is sought. The Fifth Circuit's ruling will also wreak havoc with future transfers and grants of copyright interests, as prospective purchasers will be unable to determine from whom the rights to use a work must be purchased or licensed.

CONCLUSION

The conclusion of the Fifth Circuit panel that the *foreign* copyright interests of U.S. authors arise under *U.S.* copyright law cannot be correct. Although the correct interpretation results in a potential fragmentation of ownership, both the principle of territoriality and the principle of national treatment, as well as the plain language of the statute, require that termination under U.S. law only affects ownership of the U.S. copyright interest, and that ownership of foreign copyright interests "arises under" and is determined by the laws of those countries, even for authors of U.S. works. Those countries, in turn, are obligated to give U.S. authors the same rights that they give to their own nationals (including termination and reversion rights in those countries, if any). Because the Fifth Circuit's decision violates these fundamental principles, and a circuit split already exists, the Court should grant the petition for *certiorari*.

Respectfully submitted,

Tyler T. Ochoa
Counsel of Record
SANTA CLARA UNIVERSITY
SCHOOL OF LAW
500 El Camino Real
Santa Clara, CA 95053
(408) 554-2765
ttochoa@scu.edu
Counsel for *Amicus Curiae*

July 16, 2026

APPENDIX

Table of Appendices

List of *Amici Curiae*

Michael W. Carroll
Professor of Law and Director,
Program on Information Justice and
Intellectual Property
American University Washington College of Law

Zachary L. Catanzaro, Esq.
Assistant Professor of Law
Widener University Delaware Law

Professor Margaret Chon
Donald and Lynda Horowitz Endowed Chair
Technology, Innovation Law, and Ethics Institute
Seattle University School of Law

Thomas F. Cotter
Taft Stettinius & Hollister Professor of Law
University of Minnesota Law School

Graeme B. Dinwoodie
Global Professor of Intellectual Property Law
University Distinguished Professor
IIT Chicago-Kent College of Law

Jay Dougherty
Professor of Law, Emeritus
Loyola Marymount University Law School

Andrew J. Dhuey
Professorial Lecturer in Law
The George Washington University Law School

James Grimmelmann
Tessler Professor of Digital and Information Law
Cornell Law School and Cornell Tech

William D. Henslee
Professor of Law
Florida A&M University College of Law

Timothy R. Holbrook
Provost's Professor and Robert B. Yegge Endowed
Distinguished Professor in Law
University of Denver Sturm College of Law

Professor Edward Lee
Datta Center for High Tech Law
Santa Clara University School of Law

Jeffrey A. Lefstin, Ph.D.
Professor of Law
University of California College of the Law
San Francisco

Mark A. Lemley
William H. Neukom Professor and Director
Stanford Program in Law, Science, and Technology
Stanford Law School

Yvette Joy Liebesman
Professor of Law
Saint Louis University School of Law

Professor Tyler T. Ochoa
Datta Center for High Tech Law
Santa Clara University School of Law

Guy A. Rub
Vincent J. Marella Professor of Law
Temple University Beasley School of Law

Pamela Samuelson
Richard M. Sherman Distinguished Professor of Law
University of California at Berkeley Law School

Professor Jessica Silbey
Hon. Frank R. Kenison Distinguished Scholar in Law
Boston University School of Law

Marketa Trimble, Ph.D.
Samuel S. Lionel Prof. of Intellectual Property Law
William S. Boyd School of Law
University of Nevada, Las Vegas

Rebecca Tushnet
Frank Stanton Professor of the First Amendment,
Harvard Law School