

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**

REPLY BRIEF FOR PETITIONERS

PAUL D. CLEMENT

Counsel of Record

ERIN E. MURPHY

DANIELLE R. SASSOON

KEVIN WYNOSKY

CLEMENT & MURPHY, PLLC

706 Duke Street

Alexandria, VA 22314

(202) 742-8900

paul.clement@clementmurphy.com

Counsel for Petitioners

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AMENDED CORPORATE DISCLOSURE STATEMENT

Petitioners incorporate by reference the corporate disclosure statement included in their petition, with the following amendment: BMG Rights Management (US) LLC is indirectly owned approximately 67% by Bertelsmann SE & Co. KGaA, a German corporation, and owned approximately 33% by affiliates of Great Mountain Partners LLC, a Delaware company. No publicly held company owns 10% or more of BMG Rights Management (US) LLC's interests.

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REPLY BRIEF

Respondent Cyril Vetter's own lawyer has admitted that he brought this case for one reason: to upend the "common industry reading of" the Copyright Act's termination provisions. Tim Kappel & Loren Wells, *Returning Music to Its Creator*, 5 Fla. Ent. & Sports L. Rev. 13, 16 (2026). By embracing Vetter's self-professed "fringe" position, BIO.16, the decision below does just that and more. As amici across industries and academia have attested, the result is disruption and instability so profound as to threaten the licensing of copyrighted works throughout the world. This Court should not let one Fifth Circuit decision radically disrupt copyright worldwide.

Unable to deny that the decision below departs from both statutory text and decades of settled law and uniform understanding, Vetter devotes pages to emphasizing the absence of a circuit split. But that does not mean there is no meaningful split of authority here. The Fifth Circuit departed from text, precedent, scholarship, industry practice, principles of national sovereignty, multilateral treaties, and international norms settled since §304's inception. Vetter does not and cannot contest any of that. Nor does he seriously dispute that the decision upends how all manner of publishing industries have long operated. To the contrary, he celebrates that "the music industry" "has already" been forced to start "adapt[ing]" "toward the Fifth Circuit's approach." BIO.3, 18-19. Of course, that is exactly petitioners' concern—and exactly why Vetter's "breathless[]" calls for "further percolation" ring hollow. BIO.1.

This Court should not permit the Fifth Circuit to fundamentally rewrite bedrock copyright law—especially when its reasoning is deeply flawed. Vetter protests that the decision is textually grounded. But he does so only by invoking inapposite text about the definition of “transfer of copyright” barely raised below, and that even the Fifth Circuit did not endorse (presumably because the argument defies both text and this Court’s extraterritoriality precedent). Vetter then tries to backfill with a one-sided account of termination provisions that ignores the reality that publishers’ substantial, investment-backed contributions are a necessary ingredient for a work’s success. And, with no way to reconcile his reading with the Berne Convention, he dismisses the “principal accord governing international copyright relations” as “irrelevant.” BIO.11, 31.

Vetter is thus left urging this Court to “await further percolation.” BIO.3. But as petitioners’ amici have attested, the instability that the decision below creates harms publishers and authors alike, as authors rely on publishers to promote their works, protect them from infringement, and coordinate royalty payments foreign and domestic. RIAA.Br.10-14. The same goes for legions of potential licensees eager to invest in stable deals that would benefit both creators and grantees. MPA.Br.5-9. These kinds of arrangements require certainty, which the decision below eliminates. The Court should grant certiorari and restore it.

I. The Decision Below Bucks Decades Of Settled Law And Industry Practice.

Vetter does not dispute that the decision below is an outlier in the extreme. He just tries to downplay the significance of the Fifth Circuit’s break from bedrock copyright law so settled that it is not explicitly memorialized in other circuit court holdings. But while Vetter denigrates the views of Nimmer, Patry, Ginsburg, and every other leading scholar as “groupthink,” BIO.16-17, these are the “[l]eading” sources routinely invoked for decades by courts, the government, and experienced Supreme Court counsel alike. *E.g.*, Cert.Pet. at 22, 30, 31, 33, *Cox Commc’ns, Inc. v. Sony Music Ent.*, No. 24-171 (U.S. Aug. 15, 2024). And for as long as §304 has existed, their uniform consensus—shared by courts, authors, and publishers, too—has been that the U.S. statutory termination rights in §203 and §304 permit an author to regain *only* the U.S. rights to a work, not any foreign interests also assigned away. That consensus is no great surprise given how clearly Congress spoke to the issue in the statutory text.¹

Vetter claims that courts, including the Second Circuit, adopted this consensus only in dicta. BIO.14. But the brevity of the analysis of these decisions, and

¹ Vetter accuses Patry of flip-flopping. BIO.16. But Patry has been consistent: “Clearly, then, copyright in an original work of authorship exists both under U.S. law and under the foreign country of origin since that foreign country provides the connecting factor that gives rise to the U.S. right.” William Patry, *Choice of Law and International Copyright*, 48 Am. J. Comp. L. 383, 394 (2000). So have Nimmer, Ginsburg, and the 20 other scholar *amici* who have urged this Court to grant review. Scholars.Br.22-24.

the lack of parties even trying to (unsuccessfully) advance Vetter's novel argument, simply reflects that everyone save the Fifth Circuit recognized for 50 years that the text of §203 and §304 is pellucidly clear. Vetter also has no answer to the conflict the Fifth Circuit's decision creates with the approach of courts abroad, which enforce their own copyright regimes in ways that cannot be reconciled with an author using U.S. law to reclaim worldwide rights. Pet.28-29. And Vetter totally disregards the longstanding interpretation of the Copyright Office across multiple administrations, which flatly contradicts the Fifth Circuit's reading. Pet.20-21.

In short, the Fifth Circuit's decision is at odds with how copyright has always worked in the U.S., and how it still works in countries throughout the world. The territorial nature of copyright is as fundamental as it gets. IFPI.Br.13-15. The Fifth Circuit's contrary view will cause disruption far beyond §203 and §304, and will also drive a wedge between copyright and patents/trademarks in the process.

II. The Fifth Circuit's Outlier View Is Wrong.

1. Vetter does not try to defend the reasoning at the core of both lower courts' decisions—namely, “that ‘foreign rights to [*Double Shot*] ... “arise under” the United States Copyright Act.”” BIO.10, 12 (omission and alteration original). He instead pivots to an argument about the Copyright Act's definition of “transfer of copyright ownership” in §101—an argument that garnered a scant sentence at the back of his Fifth Circuit brief. *Cf.* CA5.Dkt.59 at 56.

Vetter’s felt need to identify some other text purportedly supporting his novel position is understandable. But §101 is not the place to look. To be sure, the broad definition of “transfer” makes clear that copyrights all over the world may be subject to a transfer. 17 U.S.C. §101 (a transfer is still a transfer “whether or not it is limited in ... place”). But as Vetter himself agrees, what matters here is “whether any of §304(c)’s ‘conditions’” “narrow” the scope of what returns to the author *after* a transfer has been terminated. BIO.23. And the answer is yes: Section 304(c)(6)(E) says that “rights arising under ... foreign laws” do not return to the author.

Vetter insists that this phrase refers to the law under which *the transfer* arose, and that §101 makes clear that it arose under federal law. But even accepting the latter premise (which is dubious to say the least), §304(c)(6)(E) does not say that “termination of a grant under this subsection affects only *grants* that arise under this title, and in no way affects *grants* arising under any other Federal, State, or foreign laws.” It says 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 statutory text thus plainly focuses on the law under which *the rights* arose, not the law under which their transfer was effectuated—and it just as plainly limits the termination to the rights “that arise under this title.”

Vetter tries to construe “rights arising ... under foreign laws” to mean “rights under foreign law” that

are “comparable” to the U.S. rights granted but “dictate[d]” by other countries’ laws. BIO.24. But in the next breath, he insists that the phrase comparable “rights under foreign law” *excludes* comparable foreign rights in “the nature of” copyright, because it is “entirely implausible” “that Congress used” it “to draw a distinction between U.S. and foreign rights.” BIO.24, *see* BIO.26-27. In fact, it is entirely implausible that Congress did *not* mean “rights arising under ... foreign laws” to draw a distinction between U.S. and foreign copyrights. Not only is that the most natural reading of those words, that is exactly what the Copyright Office—who wrote them—urged Congress to do, and exactly what the Office understood them to mean, both then and now. Pet.20-21.

In short, rights “arising under ... [T]itle” 17 refers to U.S. copyrights; rights “arising under foreign laws” refers to foreign copyrights. Far from being “surplusage,” BIO.27, that distinction confirms that Congress (unlike Vetter) sought to respect copyright’s territorial foundation. *Cf.* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2161-62 (2016). And Vetter’s countervailing attempt to give “arising under” a broad meaning in “arising under this title” but a narrow meaning in “arising under foreign laws” fares no better here than a comparable effort did in *Holmes Group v. Vornado Air Circulation Systems*, 535 U.S. 826, 833-34 (2002).

2. Recognizing the strong current against which he is swimming, Vetter formally disclaims the Fifth Circuit’s “‘international copyright’ theory.” BIO.34. But he then functionally argues for just that by calling

this “a domestic transaction” “reall[ocat] ownership of copyright rights that were granted under, and can still be terminated under, U.S. law.” BIO.29-30. That confirms he cannot avoid embracing the Fifth Circuit’s deeply flawed one-global-copyright theory.

That position flouts both statutory text and the foundational premise of Berne’s national-treatment rule, which requires member countries to “treat authors from other member countries as well as they treat their own” even without formal copyright registration in that member country. *Golan v. Holder*, 565 U.S. 302, 308 (2012). There is simply no way to reconcile Vetter’s position with that anti-discrimination principle—which, to repeat, is expressed in relation to a foreign author of domestic copyright rather than a foreign copyright itself. Under Vetter’s view, a copyright holder with rights that arose in the United States has a broad, worldwide termination right under U.S. law, while a rightsholder with rights that arose under another country’s law does not. That is the opposite of what Berne requires.

Vetter downplays Berne by characterizing it as about “the scope of protection” rather than “ownership.” BIO.31-33. Although he concedes that Berne signatories cannot discriminate when it comes to the methods available to *protect* a copyright from infringement, he claims that Berne signatories can discriminate with abandon when it comes to methods available to *attain* ownership. If that were true, the latter would promptly swallow the former, with countries free to adopt nationalistic ownership rules preventing foreign authors from getting a copyright to protect in the first place. That is one of the very

problems Berne was created to solve. See Paul G. St-Pierre, *International Copyright in Historical Context: Who are the Real Pirates?*, in Charleston Conference Proceedings 322 (2018). Unsurprisingly, neither the drafters of Berne nor the cases Vetter cites endorse his self-defeating regime. *E.g.*, *Itar-Tass Russian News Agency v. Russian Kurier*, 153 F.3d 82, 89 (2d Cir. 1998) (anti-discrimination principle governs “both the question of whether the right exists and the question of the scope of the right”).

Nor did Congress endorse that kind of self-defeating regime when it implemented Berne’s formality-free approach. When Congress passed 17 U.S.C. §104(c), it once again took care to respect the traditional territorial understanding of copyright—which is what allows authors multiple copyrights in multiple countries, and which long predates Berne, see St-Pierre, *supra*, at 321-22—while explicitly dispelling any (mis)apprehension that Berne would somehow empower U.S. law to reach into other countries:

Any rights ... that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

Reading that language “careful[ly]” and “logical[ly]” requires rejecting Vetter’s position. *Contra* BIO.34-35. After all, termination under §304 is unquestionably a “right[]” that “derive[s] from this title.” And in a pre-Berne, formality-heavy world, a U.S. author would not automatically have foreign copyrights; unless he jumped through country-specific

hoops country by country, he would have no foreign rights to recapture. By contrast, in a post-Berne world, a U.S. author now automatically has copyright rights enforceable in every signatory country. If, as Vetter says, a U.S. author could use §203 or §304 to recapture all those rights in one fell swoop, that would be a quintessential “expan[sion]” of a right “by virtue of” Berne and “the adherence of the United States thereto.”

Fairly viewed, §104(c) is actually designed to head off all the hard questions about how country-specific policies work in a regime that is territorial in form and formality-free in function. Pet.29-30. Yet the Fifth Circuit’s logic makes those questions unavoidable. And Vetter does not even attempt to answer them. BIO.36 (“[T]his case simply does not present those questions.”).

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

As a chorus of amici from across creative industries (and across the globe) have attested, ownership rules are the paradigmatic context in which it is just as important—if not more so—that “the applicable rule of law be settled” as it is for the rule to “be settled right.” *Kimble v. Marvel Ent.*, 576 U.S. 446, 455 (2015). Yet thanks to the Fifth Circuit, the status quo is profoundly *unsettled*. The industry today is actively negotiating deals running through 2072, Pet.33—and as Vetter concedes, foreign rights represent a significant factor in those negotiations, BIO.28. Without the ability to determine *ex ante* who owns what, getting those deals done becomes exponentially harder. And if the Court were to accept

Vetter’s invitation to wait years before weighing in, each and every deal hence would have to price in the risk that the foundation may still shift yet again.

Though Vetter suggests that “Publishers can afford” it and will emerge “just fine,” BIO.3, 20, it is not just publishers whose oxen are gored—as petitioners’ amici have confirmed. Paramount.Br.8-12, IFPI.Br.20-21, MPA.Br.5-16. Vetter may count the decision below as a win, but that does not change what this Court recognized long ago: *Authors* cannot “realiz[e]” a work’s maximum value if they do not have a publisher to develop, transform, promote, distribute, license, and protect it. *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643, 656-57 (1943). And if publishers do not have clarity about the scope of rights they are acquiring, then as a matter of basic economics, markets cannot work efficiently or maximize value for all parties.

What is more, setting aside the author-publisher dynamic, the former’s creative labor and the latter’s investment of time and money both stand to benefit when licensees pay to bring works to the public. In an environment where potential licensees and investors are not sure whether they are getting a durable worldwide license or signing themselves up for foreign infringement litigation, the short-term cost is that any licensing deal becomes more expensive, and some will run aground entirely. The medium-term cost will be a pyrrhic victory for Vetter. And the long-term cost will fall to society as a whole, in the form of creative works *not* created—all because of a Fifth Circuit decision injecting untenable uncertainty into the careful statutory balance through which Congress sought to

“secure a fair return for an author’s creative labor” while also securing a fair return for publishers’ promotion, protection, and payment efforts. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975).

Vetter claims that this case is a bad vehicle to restore certainty because “Petitioners have not sought review of” “the Fifth Circuit’s holding on the renewal interest.” BIO.12, 17-18. But that issue is entirely subsumed by the question presented, as *both* the Fifth Circuit’s holdings turned on the (il)logic that foreign rights travel with U.S. rights when the latter revert to the author, whether the reversion happens via termination notice or via inheritance. Whether that (il)logic is correct is precisely what the question presented asks this Court to decide. Pet.i-ii (“When copyright rights revert to authors *or their heirs* by operation of U.S. law, is the reversion limited to U.S. copyrights ... or does the reversion extend worldwide.” (emphasis added)).²

Vetter next tries to downplay the importance of the decision he procured by claiming that §203 and §304 are becoming “increasingly” obsolete in the “streaming environment.” BIO.19. That claim is doubly implausible. It is belied by Vetter himself, who

² This Court should not countenance Vetter’s vow to stymie the effect of a reversal by “veto[ing]” subsequent “transactions” involving *Double Shot* to the extent possible, regardless of how mutually beneficial they may be. BIO.3, 17-18. That would be the *ne plus ultra* of cutting off one’s nose to spite one’s face—not to mention a distortion of the certiorari process. Moreover, as the outpouring of amici support underscores, the decision below affects far more than future transactions involving *Double Shot*.

built this test case not as an obsolescing frolic, but to “give terminating songwriters leverage they never had before.” Kappel & Wells, *supra*, at 14. And it is also belied by the numerous amici (in and out of the music industry) who recognize the enormous ongoing significance of a decision that endorses Vetter’s effort to upend the “common industry reading of” §203 and §304. Kappel & Wells, *supra*, at 16.³ Vetter sought to do just that and to get this issue “to the Supreme Court.” Artists Rts. Inst., *Vetter v. Resnik update, the landmark copyright termination case* at 18:40-19:35 (Mar. 31, 2025), <https://perma.cc/2SUB-73KH>. This Court should grant his latter wish, reverse the decision below, and restore Congress’ intent to leave “rights arising ... under foreign laws” undisturbed.

³ To the extent the Court has any doubts, it may wish to call for the views of the Solicitor General so the Copyright Office can confirm the disruption this case has spawned.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

PAUL D. CLEMENT

Counsel of Record

ERIN E. MURPHY

DANIELLE R. SASSOON

KEVIN WYNOSKY

CLEMENT & MURPHY, PLLC

706 Duke Street

Alexandria, VA 22314

(202) 742-8900

paul.clement@clementmurphy.com

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