

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 25A1109

BMG RIGHTS MANAGEMENT (US) LLC; CAPITOL CMG, INC.; ESSENTIAL MUSIC
PUBLISHING LLC; and WARNER-TAMERLANE PUBLISHING CORP.;

Applicants,

v.

CYRIL E. VETTER and VETTER COMMUNICATIONS CORPORATION;

Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), BMG Rights Management (US) LLC, Capitol CMG, Inc., Essential Music Publishing LLC, and Warner-Tamerlane Publishing Corp. hereby move for a second extension of time of 30 days, to and including June 12, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be May 13, 2026.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Fifth Circuit rendered its decision on January 12, 2026 (First Applic. for Extension, Exhibit A). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On April 3, 2026, undersigned counsel for Applicants, Paul D. Clement, applied for an extension of time of 30 days, to and including May 13, 2026, for the filing of a petition for a writ of certiorari.

3. On April 13, 2026, Justice Alito granted that application.

4. In support of the first application for an extension, counsel explained how the Fifth Circuit’s decision has upended long-settled understandings across the entire creative ecosystem—and unsettled countless private contracts, many decades old and some worth many millions of dollars. For generations, authors and publishers around the world have ordered their affairs on the understanding that, although the U.S. Copyright Act affords an author (or certain of his heirs) the option in specific limited circumstances to claw back U.S. copyright rights that he previously granted or transferred away, “[t]ermination of the grant of U.S. rights” under those provisions “does *not* affect the ownership of rights granted for other territories.” Richard Arnold & Jane C. Ginsburg, *Foreign Contracts and U.S. Copyright Termination Rights: What Law Applies?*, 43 Colum. J.L. & Arts 437, 453 (2020) (emphasis added). That uniform understanding, which guides contractual negotiations about the value of rights to an author’s works, is consistent not only with the text of the Copyright Act, but with the Berne Convention for the Protection of Literary and Artistic Works and with basic principles of extraterritoriality. It is literally hornbook law, representing the uniform consensus of Nimmer, Patry, and every other leading copyright scholar. And it has been a reliable feature of both U.S. and foreign case law for decades. Indeed, it has prevailed for so long that basic industry norms have been built on it.

But the Fifth Circuit called all those foundational norms into question by holding that when an author assigns away “worldwide” copyright rights—as countless authors have done, and as countless assignees have bargained for—the author is not actually assigning a bundle of domestic rights and discrete foreign rights, but is only assigning a single copyright arising under the laws of his jurisdiction “to the extent that it extends internationally.” *Vetter v. Resnik*, 163 F.4th 951, 957 (5th Cir. 2026). Under that disruptive (il)logic, when a domestic U.S. author effectively exercises the statutory clawback right under U.S. law, the author regains both U.S. *and* foreign rights. But a foreign author cannot avail himself of the same clawback of his U.S. rights because—under the Fifth Circuit’s theory—the foreign author does not actually have distinct U.S. rights.

5. If unreviewed, the Fifth Circuit’s decision promises a seismic upheaval across all creative industries: Not only does it purport to strip legions of U.S. authors of the discrete foreign rights that everyone has long understood to exist, but it means that a foreign author who previously assigned away U.S. rights in his work cannot avail himself of U.S. law to recapture those U.S. rights. *Contra Corcovado Music Corp. v. Hollis Music, Inc.*, 981 F.2d 679, 685 (2d Cir. 1993) (holding that a Brazilian author could use §304 to claw back his U.S. rights in compositions that originated in Brazil, even though Brazilian law offered him no mechanism to claw back his Brazilian rights). Nor will the disruption be limited to this side of the Atlantic. In addition to rending a circuit split at home, the Fifth Circuit has put itself at odds with (at least) U.K. courts, which have expressly declined to give effect to foreign laws

purporting to allow foreign authors to claw back U.K. rights in works originating in foreign countries; U.K. courts have instead respected and reinforced the territorial nature of copyright. *See Peer Int’l Corp. v. Termidor Music Publisher Ltd.* [2006] EWHC 2883 at 54 (Ch.), *available at* <https://perma.cc/X39B-P78Q>. That is well-nigh the opposite of what the Fifth Circuit held—that a U.S. author can use U.S. law to claw back U.K. (and other foreign) rights in a work of U.S. origin—and it is massively destabilizing. For example, if an author exercises his U.S. termination rights but the U.K. publisher continues monetizing the work in the U.K. in reliance on its contract with the author and U.K. precedent, the author can sue the publisher in the Fifth Circuit and seek an injunction preventing the publisher from continuing to monetize the work in the future. Yet if that same author monetizes the work in the U.K. in reliance on the Fifth Circuit’s rule, the U.K. publisher can sue the author in the U.K. and win. That outcome is just as untenable as it sounds.

6. The facts of this case aptly illustrate the uncertainty. The work at the heart of this case is *Double Shot (Of My Baby’s Love)*, which some consider “the greatest fraternity rock song of all time.” C.A.ROA.10. Written by Cyril Vetter and Donald Smith in 1962, it was made famous by a 1966 cover recorded by the Swingin’ Medallions and has gone on to be featured in many popular television shows and movies. C.A.ROA.18-19, 22. But in 1963, a few years before *Double Shot* became a hit, Vetter and Smith transferred “all rights, claims and demands in any way relating” to *Double Shot* to Windsong Music Publishers, including giving Windsong “the exclusive right to secure copyright therein throughout the entire world, and to

have and to hold the said copyrights”—plural—“and all rights of whatever nature now and hereafter thereunder existing ... for and during the full terms of all of said copyrights.” C.A.ROA.19. Windsong later transferred part of its interest to Robert Resnik. C.A.ROA.23-24. In 2022, after Vetter invoked his termination rights under 17 U.S.C. §304, Resnik conceded the effectiveness of the termination as to the U.S. rights to *Double Shot*, but contended that the clawback did not extend to the foreign rights that Vetter had also assigned away in 1963. *See also* 17 U.S.C. §304(c)(6)(E) (“Termination of a grant under this section 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.”). That contention prompted Vetter to file suit in the Middle District of Louisiana on what he euphemistically described as a “relatively novel” theory: That §304 afforded him an opportunity not only to recapture the U.S. rights in *Double Shot*, but also all foreign rights as well, on the supposition that there exists only a single copyright in *Double Shot*, with rights therein and thereto extending internationally by operation of various treaties. D.Ct.Dkt.17 at 6.

7. Vetter’s theory is not just novel, it is directly contrary to the text of both the Copyright Act and the Berne Convention for the Protection of Literary and Artistic Works, which is “the principal accord governing international copyright relations.” *Golan v. Holder*, 565 U.S. 302, 306-07 (2012). The Copyright Act makes clear that a U.S. author’s rights “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.” 17 U.S.C. §104(c). And Article 5 of the Berne Convention specifies

that foreign authors “shall enjoy ... in countries ... other than the country of origin, the rights which [those countries’] respective laws do now or may hereafter grant to their nationals,” “independent of the existence of protection in the country of origin of the work.” 25 U.S.T. 1341, 1161 U.N.T.S. 30 (1971), *available at* <https://perma.cc/NW33-G5EY>. It is hard to imagine a clearer refutation of the notion that “there is only one copyright, afforded in the work’s country of origin and then recognized by the international community pursuant to treaty obligations”—which is presumably why, as Vetter himself conceded in district court, every court “to consider the geographical scope of termination rights ha[d] ruled contrary to [his] position.” *Vetter v. Resnick*, 2024 WL 3405556, at *9-10, 13 (M.D. La. 2024).

8. Nonetheless, the district court became the first court ever to accept Vetter’s “relatively novel” theory, and the Fifth Circuit became the second. After the Fifth Circuit issued its mandate on February 2, 2026, *see* C.A.Dkt.128, Applicants—a consortium of music publishing entities—stepped into the breach. To ensure that this Court would have an opportunity to weigh in on this important question, they acquired the copyright interest at stake in this litigation and, on April 1, 2026, successfully moved in district court to be substituted as defendants. *See* D.Ct.Dkt.61. They also retained undersigned counsel to prepare and file a petition for a writ of certiorari that best presents the arguments for this Court’s review.

9. Although Mr. Clement has been working diligently to prepare this petition, he requires additional time in light of his substantial professional obligations between now and May 13, 2026. Those obligations include:

- an amicus brief due on May 4 in *Holtec International v. New York*, No. 25-2657 (2d Cir.);
- oral argument on May 5 in *Town of Pine Hill v. 3M Company*, No. 25-10746 (11th Cir.);
- a petition for rehearing due on May 8 in *Petersen Energía v. Argentine Republic*, No. 23-23 (2d Cir.); and
- preparing for an oral argument on May 14 in *Perkins Coie LLP v. Department of Justice*, No. 25-5241 (D.C. Cir.).

WHEREFORE, for the foregoing reasons, Applicants request that a further extension of time, to and including June 12, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,



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