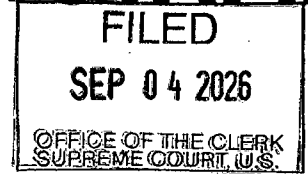


ORIGINAL

No. 26-331



In The
SUPREME COURT OF THE UNITED STATES

MARK MAHON,
Petitioner,

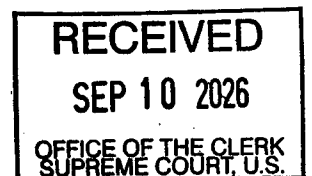
v.

APPLE INC., *et al.*;
YOUTUBE, LLC and GOOGLE LLC;
MAINSAIL, LLC, *et al.*,
Respondents,

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Judicial estoppel is an equitable doctrine designed to protect the integrity of judicial proceedings. It ordinarily applies only where a party has actually taken a prior position, a court has accepted that position, and the party later seeks an unfair advantage by taking a clearly inconsistent position.

In these related copyright appeals, judicial estoppel was applied against Petitioner based on a purported 2016 declaration attributed to him. Petitioner preserved sworn record evidence that he did not execute that declaration, had not seen it before April 2020, and maintained that it was forged and unauthorized. The courts nevertheless treated the declaration as Petitioner's prior position without resolving, or meaningfully addressing, the preserved dispute over authenticity, provenance, execution, and attribution.

The questions presented are:

1. Whether a federal court may apply judicial estoppel to bar a copyright plaintiff's ownership or standing position based on an alleged "prior position" where the litigant preserved sworn record evidence that the statement was not his, was not executed by him, and was materially disputed as to authenticity, provenance, execution, and attribution.

2. Whether judicial estoppel may be applied without evaluating, on the preserved record, whether the alleged prior position was actually attributable to the litigant, whether a court accepted that position, and whether the litigant obtained or would obtain an unfair advantage.

3. Whether preserved record evidence of U.S.-based copying, reproduction, use, distribution, reformatting, platform activity, or distribution-chain conduct can create a triable issue of domestic copyright infringement where some downstream exploitation also occurred abroad.

PARTIES TO THE PROCEEDINGS

1. Mark Mahon was the plaintiff-appellant below and is the Petitioner here.
2. Apple Inc. (NASDAQ: AAPL), Apple Inc. d/b/a iTunes, Apple Inc. d/b/a iTunes Store, and Apple Distribution International Ltd. were appellees in Ninth Circuit No. 24-3571 and are Respondents here. They are referred to collectively as "Apple."
3. YouTube, LLC and Google LLC were appellees in Ninth Circuit No. 24-3570 and are Respondents here. Google LLC is a subsidiary of Alphabet Inc. (NASDAQ: GOOGL, GOOG). They are referred to collectively as "Google/YouTube."
4. Mainsail, LLC, Shoreline Entertainment, Inc., Sam Eigen, and Morris Ruskin were appellees in Ninth Circuit No. 24-3589 and are Respondents here. They are referred to collectively as "Mainsail."

RELATED PROCEEDINGS

This petition seeks review of three related Ninth Circuit judgments involving identical or closely related questions. A single petition covering all three judgments is proper under Supreme Court Rule 12.4.

The proceedings directly at issue are:

Mahon v. Apple Inc., et al., No. 24-3571, United States Court of Appeals for the Ninth Circuit, memorandum disposition entered February 24, 2026, rehearing denied June 18, 2026; originating from N.D. Cal. No. 4:20-cv-01534-YGR, judgment entered June 4, 2024.

Mahon v. YouTube, LLC and Google LLC, No. 24-3570, United States Court of Appeals for the Ninth Circuit, memorandum disposition entered February 24, 2026, rehearing denied June 18, 2026; originating from N.D. Cal. No. 4:20-cv-01525-YGR, judgment entered June 4, 2024.

Mahon v. Mainsail, LLC, et al., No. 24-3589, United States Court of Appeals for the Ninth Circuit, memorandum disposition entered February 24, 2026, rehearing denied June 18, 2026; originating from N.D. Cal. No. 4:20-cv-01523-YGR, judgment entered June 4, 2024.

Petitioner has also filed separate appeals from the district court's denial of post-judgment Rule 60(d)(3)/62.1 motions concerning alleged fraud on the court and indicative-ruling relief. Those separate appeals are Ninth Circuit Nos. 26-2134, 26-2299, and 26-2533. Those appeals are not the judgments directly under review in this petition, but they are related proceedings arising from the same underlying litigation.¹

¹ In those post-judgment proceedings, Petitioner submitted sworn verifications obtained from Mainsail LLC representatives on March 6–7, 2025, stating that the Sales Agency Agreement (“SAA”) was not amended. Petitioner contends those verifications bear on the licensing-history and fraud-on-the-court issues raised in the separate Rule 60(d)(3)/62.1 appeals because the SAA excluded North America and Ireland, and an unamended SAA would not itself supply distribution authority for those excluded territories. This petition does not ask the Court to resolve those post-judgment matters in the first instance; they are identified only as related proceedings and context.

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PETITION FOR A WRIT OF CERTIORARI

Mark Mahon ("Petitioner") seeks review of three related Ninth Circuit judgments under Supreme Court Rule 12.4.

OPINIONS BELOW

The Ninth Circuit issued memorandum dispositions affirming the judgments in the three related appeals. The memorandum disposition in the Apple appeal, No. 24-3571, is reproduced at Appendix ("App.") A. The memorandum disposition in the Google/YouTube appeal, No. 24-3570, is reproduced at App. C. The memorandum disposition in the Mainsail appeal, No. 24-3589, is reproduced at App. E.

The Ninth Circuit denied timely petitions for panel rehearing and rehearing en banc on June 18, 2026. The rehearing-denial orders are reproduced at App. B, App. D, and App. F.

The district court's summary judgment order is reproduced at App. G. The district-court judgments are reproduced at Apps. H–J. The judges who acted on the appeals are Consuelo M. Callahan, Michelle T. Friedland and Daniel A. Bress.

JURISDICTION

The Ninth Circuit entered judgment in the related appeals by memorandum dispositions filed February 24, 2026. Petitioner timely filed petitions for panel rehearing and rehearing en banc. The

Ninth Circuit denied rehearing in all three appeals on June 18, 2026.

This petition is timely under Supreme Court Rule 13 because it is filed within 90 days after the denial of timely rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

17 U.S.C. § 411(b)(1) provides:

(b)

(1) A certificate of registration satisfies the requirements of this

section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and
(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

17 U.S.C. § 106 provides:

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted works in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. § 501(b) provides:

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

28 U.S.C. § 1254(1) provides:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

INTRODUCTION

Federal courts cannot protect the integrity of judicial proceedings by applying judicial estoppel based on a document whose authenticity, provenance, execution, and attribution were materially disputed. Judicial estoppel depends on the premise that the party to be estopped actually made, adopted, advanced, or successfully maintained the alleged prior position. Where that premise is disputed by sworn record evidence, the court must address the dispute before using estoppel to bar ownership, standing, or other threshold rights.

That did not happen here.

Petitioner Mark Mahon is the creator, writer, producer, and director of the motion picture, *Strength and Honour* (the "Film"). In three related copyright actions, Petitioner sought to vindicate his rights in the Film against respondents involved in separate but related distribution and platform pathways. The district court entered summary judgment against him, and the Ninth Circuit affirmed.

A central ground for those judgments was judicial estoppel. The courts treated a purported 2016 declaration attributed to Petitioner as a prior position that supposedly contradicted his present ownership and standing position. But Petitioner submitted sworn record evidence that he did not execute that declaration, had not seen it before April

2020, and maintained that it was forged and unauthorized. He preserved that attribution dispute in each appeal.

The dispute was not collateral. It went to the foundation of judicial estoppel. The question is not whether Petitioner ultimately owns the copyrights or will prevail on infringement. The question is whether judicial estoppel may bar ownership and standing before the court resolves whether the alleged prior position was actually his. A court cannot determine whether a party took inconsistent positions without first determining whether the alleged prior position is fairly attributable to that party. Nor can a court fairly determine acceptance or unfair advantage without addressing record evidence that the litigant disputed the statement's authorship, execution, and provenance.

The decisions below allowed judicial estoppel to operate without that threshold inquiry. They treated the disputed declaration as Petitioner's prior position, yet did not meaningfully decide whether Petitioner made it, adopted it, benefited from it, or successfully maintained it in the manner required by this Court's estoppel cases. The result was a dispositive bar imposed on the basis of an unresolved record predicate.

That approach undermines the doctrine it purports to serve. Judicial estoppel exists to prevent litigants from manipulating courts through

inconsistent positions. It does not preserve judicial integrity to bind a litigant to a statement he maintained was forged, unauthorized, and never seen by him before the litigation in which he repudiated it. If judicial estoppel may rest on such a disputed predicate, the doctrine becomes a vehicle for avoiding the very inquiry that integrity requires.

This case is important beyond its facts. Federal courts frequently encounter disputes involving declarations, assignments, corporate records, settlement materials, and litigation filings that later become central to estoppel, preclusion, standing, or ownership arguments. If a disputed document can be treated as a litigant's prior position without resolving attribution, judicial estoppel can be used to terminate claims before the court determines whether the litigant actually took the position attributed to him.

That risk is especially serious where judicial estoppel operates at the threshold. Here, estoppel affected Petitioner's ability to assert copyright ownership and standing despite his federally registered copyright interests in the screenplay and Film. The ruling therefore did not merely discount a piece of evidence; it prevented Petitioner from invoking federal copyright rights without first resolving whether the alleged prior position used to defeat those rights was actually his. That approach threatens the practical value of federal copyright

registration by allowing a court to bypass the statutory framework for authorship, ownership, and enforcement rights through estoppel based on an unresolved attribution dispute. Once imposed, the doctrine also prevented full consideration of Petitioner's claims, including record evidence of unauthorized copying, distribution, platform activity, and distribution-chain exploitation of his Film in California and elsewhere in the United States. The attribution question therefore mattered not merely to one evidentiary point, but to whether a creator with federally registered copyright interests could obtain adjudication of those rights at all.

The petition also presents a related copyright question concerning domestic acts of infringement in modern distribution systems. Petitioner preserved record evidence of U.S.-based copying, reproduction, use, distribution, reformatting, platform activity, and distribution-chain conduct involving Apple, Google/YouTube, and Mainsail-related pathways. The Ninth Circuit's treatment of that evidence raises uncertainty over how the domestic-act requirement applies where infringing conduct involves U.S.-based platforms, vendors, servers, reformatting, and distribution intermediaries, even though some downstream exploitation also occurs abroad.

This Court's review is warranted. At minimum, the judgments should be vacated and remanded so the courts below may address the

preserved authenticity, provenance, and attribution dispute; apply the judicial-estoppel predicates of attribution, acceptance, and unfair advantage to the actual record; and assess Petitioner's preserved domestic-infringement evidence under the proper standard.

STATEMENT OF THE CASE

A. Petitioner, the Film, and the Rights at Issue

Petitioner Mark Mahon is the creator, writer, producer, and director of the motion picture, *Strength and Honour*. He authored the underlying screenplay and created the motion picture as an original audiovisual work. The work is protected by United States copyright registrations covering the screenplay and motion picture: TXu1-289-556, PA 1-642-297, and PA 1-398-376. Apple C.A.² DktEntry 21-4 at 90–91, 117, 143–44.³

Petitioner brought these related federal actions to protect his copyright ownership and beneficial ownership interests in the Film. His claims

² "C.A." refers to the United States Court of Appeals for the Ninth Circuit. "DktEntry" refers to the appeal docket entry number in the identified appeal. "ER" refers to the Excerpts of Record filed in the identified Ninth Circuit appeal.

³ The same registrations appeared in the related Google/YouTube and Mainsail appellate records. Google/YouTube C.A. DktEntry 16-4 at 9–10, 32, 57–58; Mainsail C.A. DktEntry 10-5 at 90–91, 117, 172–73.

arose from alleged unauthorized copying, reproduction, distribution, performance, platform exploitation, unauthorized altered cover artwork, and distribution-chain use of *Strength and Honour* by respondents and related entities. App. G 27a–28a, 36a–37a; Apple C.A. DktEntry 20-1 at 24, 37–41, 46–48, 51–60; Google/YouTube C.A. DktEntry 15-1 at 47, 52–59, 61; Mainsail C.A. DktEntry 9-1 at 41–44, 49–54, 58.

The rights dispute arose against the background of earlier distribution arrangements involving Maron Pictures and its downstream distributor, Mainsail LLC. App. G 29a–31a. The prior state litigation was brought by Maron Pictures, while these federal actions were brought by Petitioner personally to assert his individual copyright ownership and beneficial ownership interests. App. G 32a–33a, 42a–47a. Petitioner consistently maintained that he did not personally assign away his authorship, ownership, beneficial ownership, or enforcement rights in the work, and that any asserted distribution authority was limited, disputed, revoked, exceeded, or otherwise unavailable for the exploitation challenged in these cases. App. G 29a–31a, 41a–46a; Apple C.A. DktEntry 20-1 at 66–70; Google/YouTube C.A. DktEntry 15-1 at 67–71; Mainsail C.A. DktEntry 9-1 at 61–65.

The distinction between Petitioner personally and Maron Pictures was central to the proceedings below. Respondents argued that Petitioner was barred from asserting his ownership or standing position because of alleged prior statements concerning Maron Pictures. App. G 42a–47a; App. A 5a; App. C 12a; App. E 19a–20a. Petitioner responded that the record did not support estoppel against him personally, and that the key document attributed to him — a purported 2016 declaration — was not executed by him, had not been seen by him before April 2020, and that he maintained it was forged and unauthorized. Apple C.A. DktEntry 20-1 at 66–70; 5-ER-944 ¶ 8⁴; 3-ER-412:4–22; Google/YouTube C.A. DktEntry 15-1 at 67–71; 4-ER-870–871 ¶ 8⁵; Google/YouTube C.A. DktEntry 59-4 at 4–6; Mainsail C.A. DktEntry 9-1 at 61–65; 3-ER-470–471 ¶ 8⁶; 4-ER-564:4–22.

That dispute is the principal reason this petition warrants review. The question is not whether Petitioner should ultimately prevail on ownership, standing, or infringement. The question is whether a federal court may use judicial estoppel to bar those threshold rights based on a document

⁴ The Apple Excerpts of Record are located at Apple C.A. DktEntry 21.

⁵ The Google/YouTube Excerpts of Record are located at Google/YouTube C.A. DktEntry 16.

⁶ The Mainsail Excerpts of Record are located at Mainsail C.A. DktEntry 10.

whose authenticity, provenance, execution, and attribution were preserved as materially disputed.

B. The Three Related Federal Actions

Petitioner filed three related federal copyright actions in the United States District Court for the Northern District of California.

The Apple action concerned Apple's alleged copying, reproduction, performance, distribution, use, and platform exploitation of *Strength and Honour* through Apple-related systems and services. Apple C.A. DktEntry 20-1 at 24, 37-41, 46-48, 55-60; 6-ER-1134:22-24; 6-ER-1137:14-17; 6-ER-1175; 6-ER-1187; 6-ER-1250-1264; 6-ER-1257:25-28; 6-ER-1258:1.

The Google/YouTube action concerned Google and YouTube's alleged copying, hosting, use, distribution, reformatting, performance, and platform exploitation of *Strength and Honour*, including conduct connected to YouTube LLC's California operations. Google/YouTube C.A. DktEntry 15-1 at 47, 52-59, 61; 6-ER-1392:20-24; 6-ER-1407:8-14; 6-ER-1411:12-13; 5-ER-1012-1013; 4-ER-723-724.

The Mainsail action concerned Mainsail and related distribution-chain conduct, including alleged California-based handling, copying, or use of master materials through Visual Data Media Services, Inc. ("Visual Data"), unauthorized altered cover artwork and distribution materials, and related downstream

exploitation. Mainsail C.A. DktEntry 9-1 at 41–44, 49–54, 58; 6-ER-1178; 6-ER-1180–1181; 2-ER-111–129; 2-ER-151–153; 5-ER-825.

The district court entered summary judgment against Petitioner in each case. App. G 26a–53a; App. H 55a; App. I 58a; App. J 61a. The Ninth Circuit affirmed in three related memorandum dispositions. App. A 3a–6a; App. C 10a–13a; App. E 17a–21a.

Although the respondents and exploitation pathways differed, the appeals shared two issues relevant to this petition.

First, the courts applied judicial estoppel based on a purported 2016 declaration attributed to Petitioner. Respondents treated that declaration as evidence that Petitioner had previously taken a position inconsistent with his present ownership and standing position. Petitioner preserved sworn evidence that he did not execute the declaration, had not seen it before April 2020, and maintained that it was forged and unauthorized. Apple C.A. DktEntry 20-1 at 66–70; 5-ER-944 ¶ 8; 3-ER-412:4–22; Google/YouTube C.A. DktEntry 15-1 at 67–71; 4-ER-870–871 ¶ 8; Google/YouTube C.A. DktEntry 59-4 at 4–6; Mainsail C.A. DktEntry 9-1 at 61–65; 3-ER-470–471 ¶ 8; 4-ER-564:4–22.

Second, Petitioner preserved evidence of domestic U.S. copyright acts in each appeal. He cited record evidence of U.S.-based copying, reproduction,

use, distribution, reformatting, platform activity, master-material handling, and distribution-chain conduct. Apple C.A. DktEntry 20-1 at 24, 37–41, 46–48, 55–60; 6-ER-1134:22–24; 6-ER-1137:14–17; 6-ER-1175; 6-ER-1187; 6-ER-1250–1264; 6-ER-1257:25–28; 6-ER-1258:1; Google/YouTube C.A. DktEntry 15-1 at 47, 52–59, 61; 6-ER-1392:20–24; 6-ER-1407:8–14; 6-ER-1411:12–13; 5-ER-1012–1013; 4-ER-723–724; Mainsail C.A. DktEntry 9-1 at 41–44, 49–54, 58; 6-ER-1178; 6-ER-1180–1181; 2-ER-111–129; 2-ER-151–153; 5-ER-825. The Ninth Circuit nevertheless affirmed, including on the ground that Petitioner had not shown actionable domestic infringement. App. A 4a–5a; App. C 11a–12a; App. E 19a–20a.

Petitioner timely sought panel rehearing and rehearing en banc in each appeal. The Ninth Circuit denied rehearing on June 18, 2026. App. B 8a; App. D 15a; App. F 23a–24a.

This petition seeks review of those judgments.

C. The Purported 2016 Declaration and the Preserved Authenticity Dispute

The judicial-estoppel ruling rested on a purported 2016 declaration attributed to Petitioner. Respondents treated that declaration as evidence that Petitioner had previously taken a position inconsistent with his present ownership and standing position. App. G 42a–44a; Apple C.A. DktEntry 20-1 at 66–70; Google/YouTube C.A.

DktEntry 15-1 at 67-71; Mainsail C.A. DktEntry 9-1 at 61-65.

Petitioner preserved sworn record evidence that he did not execute that declaration, had not seen it before April 2020, and maintained that it was forged and unauthorized. In the Apple appeal, Petitioner preserved the issue in his opening brief and cited sworn record evidence disputing the declaration's authenticity and attribution. Apple C.A. DktEntry 20-1 at 66-70; 5-ER-944 ¶ 8; 3-ER-412:4-22.

In the Google/YouTube appeal, Petitioner likewise preserved the issue in his opening brief and cited sworn record evidence disputing the declaration's authenticity and attribution. Google/YouTube C.A. DktEntry 15-1 at 67-71; 4-ER-870-871 ¶ 8; Google/YouTube C.A. DktEntry 59-4 at 4-6.

In the Mainsail appeal, Petitioner preserved the same attribution dispute in his opening brief and cited sworn record evidence that he did not execute the declaration and did not see it before April 2020. Mainsail C.A. DktEntry 9-1 at 61-65; 3-ER-470-471 ¶ 8; 4-ER-564:4-22.

That dispute went to the threshold premise of judicial estoppel. Judicial estoppel applies where a party "assumes a certain position in a legal proceeding" and later seeks to assume a contrary position after succeeding on the first. *Davis v.*

Wakelee, 156 U.S. 680, 689 (1895); *see also New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001). If the alleged prior position is contained in a document whose attribution and authenticity are materially disputed, a court cannot determine inconsistency, acceptance, or unfair advantage without first addressing whether the statement is fairly attributable to that party.

The attribution dispute was therefore not collateral. It was predicate-dispositive. If Petitioner did not execute, authorize, adopt, successfully maintain, or benefit from the purported declaration, then the declaration could not supply the prior position necessary to estop him from asserting his ownership or standing position.

D. The Lower Courts Applied Judicial Estoppel Without Resolving That Threshold Predicate

The district court applied judicial estoppel against Petitioner and entered summary judgment. App. G 42a–47a; App. H 55a; App. I 58a; App. J 61a. The Ninth Circuit affirmed. App. A 5a; App. C 12a; App. E 19a–20a.

The district court's reliance on privity did not resolve the separate attribution problem. The court stated that Petitioner's statements and Maron Pictures' statements were attributable to each other for judicial-estoppel purposes. App. G 43a n.12. But that conclusion did not decide whether the purported

2016 declaration was actually made, executed, authorized, adopted, or seen by Petitioner. Entity privity and document attribution are distinct inquiries. Even if Maron Pictures' litigation positions could sometimes be attributed to Petitioner, a disputed declaration could not be treated as Petitioner's own prior position without resolving Petitioner's sworn evidence that he did not execute it, had not seen it before April 2020, and maintained that it was forged and unauthorized.

The district court also resolved disputed licensing-history inferences against Petitioner. For example, in rejecting Petitioner's position concerning the scope of Irish distribution authority, the court characterized Petitioner's evidence as "self-serving." App. G 41a n.11. Petitioner had submitted corroborating evidence from Irish counsel and disputed whether counsel's later statement concerning correction of the DVD release had been authorized by Petitioner or Maron Pictures. Those disputes reinforced why estoppel should not have turned on contested attribution, authorization, and licensing-history inferences.

The same problem affected the court's acceptance analysis. The court treated Maron Pictures' state-court litigation position as sufficient even though the prior litigation was brought by Maron Pictures, not Petitioner personally, and even though Petitioner's federal claims followed his later

discovery of alleged California-based copying and related exploitation. App. G 44a-45a & n.14.

The courts therefore treated the purported declaration and related corporate litigation history as supplying Petitioner's prior position without meaningfully resolving whether Petitioner personally made, executed, authorized, adopted, successfully maintained, or benefited from that position. App. G 42a-47a; App. A 5a; App. C 12a; App. E 19a-20a.

The Ninth Circuit's affirmance allowed judicial estoppel to function as a dispositive bar without resolving the facts necessary to decide whether estoppel could apply. Judicial estoppel protects courts from manipulation by litigants who take inconsistent positions. It cannot preserve judicial integrity by resting on a record predicate whose authenticity, provenance, execution, and attribution were preserved as materially disputed.

E. Petitioner Preserved Evidence of Domestic U.S. Copyright Acts

Petitioner also preserved evidence of domestic U.S. copyright acts in each appeal.

In the Apple appeal, Petitioner preserved evidence that Apple admitted California-connected copying, reproduction, performance, display, distribution, use, and platform activity, including identification of the Film by its title, *Strength and Honour*, in connection with California use. Apple

C.A. DktEntry 20-1 at 24, 37–41, 46–48, 55–60; 6-ER-1134:22–24; 6-ER-1137:14–17; 6-ER-1175; 6-ER-1187; 6-ER-1250–1264; 6-ER-1257:25–28; 6-ER-1258:1.

In the Google/YouTube appeal, Petitioner preserved evidence of U.S.-based copying, hosting, reproduction, use, performance, distribution, reformatting, and platform activity, including record evidence connected to YouTube LLC's San Bruno, California operations. Google/YouTube C.A. DktEntry 15-1 at 47, 52–59, 61; 6-ER-1392:20–24; 6-ER-1407:8–14; 6-ER-1411:12–13; 5-ER-1012–1013; 4-ER-723–724.

In the Mainsail appeal, Petitioner preserved evidence of California-based copying, handling of master materials, and use through Visual Data and distribution-chain conduct and activity connected to those materials. Mainsail C.A. DktEntry 9-1 at 41–44, 49–54, 58; 6-ER-1178; 6-ER-1180–1181; 2-ER-111–129; 2-ER-151–153; 5-ER-825.

The district court nevertheless stated that, even if the Film was copied, stored, or transmitted on U.S. servers during the limitations period, Petitioner had provided “no evidence” of such conduct and that Entertainment One, rather than Apple or YouTube, exercised control over the uploads. App. G 47a n.15. Petitioner disputed that premise on appeal, citing verified discovery responses and record admissions identifying *Strength and Honour* and addressing

copying, reproducing, hosting, performing, displaying, distribution, platform activity, and server-related conduct in California and the United States. Apple C.A. DktEntry 20-1 at 24, 37–41, 46–48, 55–60; 6-ER-1134:22–24; 6-ER-1137:14–17; 6-ER-1175; 6-ER-1187; 6-ER-1250–1264; 6-ER-1257:25–28; 6-ER-1258:1; Google/YouTube C.A. DktEntry 15-1 at 47, 52–59, 61; 6-ER-1392:20–24; 6-ER-1407:8–14; 6-ER-1411:12–13; 5-ER-1012–1013; 4-ER-723–724.

The relevant evidence was not absent; portions of the record and briefing concerning that evidence were maintained under seal. The Ninth Circuit's dispositions reflect that portions of the appellate record concerning the platform defendants were maintained under seal, including excerpts of record, supplemental excerpts, exhibits, and portions of the briefing. App. A 6a; App. C 12a–13a.

The Ninth Circuit nevertheless affirmed, including on the ground that Petitioner had not shown actionable domestic infringement. App. A 4a–5a; App. C 11a–12a; App. E 19a–20a.

F. Rehearing Was Denied

Petitioner timely sought panel rehearing and rehearing en banc in each appeal. The Ninth Circuit denied rehearing on June 18, 2026. App. B 8a; App. D 15a; App. F 23a–24a.

This petition timely seeks review of those judgments under 28 U.S.C. § 1254(1) and Supreme Court Rules 13.1 and 13.3. Because the judgments

involve identical or closely related questions decided by the same court, a single petition covering all three judgments is proper under Supreme Court Rule 12.4.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. THE DECISIONS BELOW CONFLICT WITH THIS COURT'S JUDICIAL-ESTOPPEL FRAMEWORK AND DEPART FROM THE ACCEPTED COURSE FOLLOWED BY OTHER CIRCUITS

This case satisfies the considerations identified in Supreme Court Rule 10. The decisions below conflict with this Court's judicial-estoppel framework and, at minimum, sanction a departure from the accepted and usual course of judicial proceedings. Judicial estoppel cannot protect judicial integrity by resting on a document whose authenticity, provenance, execution, and attribution were preserved as materially disputed.

This Court has long framed judicial estoppel in terms of a position actually assumed by the party to be estopped. In *Davis v. Wakelee*, the Court explained that "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position," the party may not later assume a contrary position simply because his interests have changed. 156 U.S. 680, 689 (1895). In *New Hampshire v. Maine*, the Court reaffirmed that judicial estoppel

protects the integrity of the judicial process and identified the familiar considerations of clear inconsistency, court acceptance, and unfair advantage or detriment. 532 U.S. 742, 749–51 (2001).

Those principles presuppose attribution. A court cannot determine whether a party took clearly inconsistent positions, whether a court accepted the earlier position, or whether the party obtained an unfair advantage unless the alleged prior position is fairly attributable to the party being estopped.

Other circuits follow that accepted course. The First Circuit describes judicial estoppel as applying to a position “taken by that litigant” and to the prototypical case where “a party has adopted one position, secured a favorable decision, and then taken a contradictory position.” *Alternative Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 33–35 (1st Cir. 2004). The Second Circuit likewise describes the doctrine as preventing a party who secured a judgment by “assuming a given position” from later assuming an inconsistent position. *Maharaj v. BankAmerica Corp.*, 128 F.3d 94, 98 (2d Cir. 1997); see also *DeRosa v. Nat’l Envelope Corp.*, 595 F.3d 99, 103 (2d Cir. 2010). The Third Circuit requires that “the party to be estopped” have asserted a position irreconcilably inconsistent with one asserted in a prior proceeding. *Montrose Med. Grp. Participating Sav. Plan v. Bulger*, 243 F.3d 773, 779–81 (3d Cir. 2001). The Fifth Circuit likewise requires that “the

party against whom judicial estoppel is sought” have asserted a legal position plainly inconsistent with a prior position. *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011) (en banc). The Eighth Circuit applies the doctrine where a party abuses the judicial forum by making a knowing misrepresentation or perpetrating a fraud on the court. *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1047–49 (8th Cir. 2006). And the Eleventh Circuit requires courts to consider “all the facts and circumstances” before finding that a party intended to make a mockery of the judicial system. *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1185–86 (11th Cir. 2017) (en banc).

Those decisions reflect a common principle: judicial estoppel turns on the party’s own litigation conduct — a position the party *actually* took, adopted, advanced, asserted, or successfully maintained — not on an adversary’s attribution of a disputed document to that party. Judicial estoppel is not triggered by the mere existence of a statement somewhere in a record. It is triggered, if at all, by a party’s own prior position. Where the alleged prior position is contained in a document whose authenticity, execution, provenance, and attribution are materially disputed, the court must address that threshold dispute before imposing estoppel.

The decisions below departed from that accepted course. The courts treated a purported 2016

declaration as Petitioner's prior position even though Petitioner preserved sworn evidence that he did not execute it, had not seen it before April 2020, maintained that it was forged and unauthorized, and later repudiated it under oath. That unresolved attribution dispute should have prevented the courts from using the document as the premise for judicial estoppel without first deciding whether the statement was actually Petitioner's position.

The attribution defect was compounded by the absence of any finding that Petitioner successfully maintained the alleged prior position or obtained an unfair advantage from it. *Davis v. Wakelee*, 156 U.S. 680, 689 (1895); *see also New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001).

Review is warranted because the decisions below allow judicial estoppel to operate without the foundational inquiry required by this Court's cases and reflected in the decisions of other circuits. A doctrine designed to protect judicial integrity cannot be applied by assuming the very attribution that the litigant preserved as materially disputed.

**II. JUDICIAL ESTOPPEL CANNOT
PROTECT JUDICIAL INTEGRITY BY
RESTING ON A DOCUMENT WHOSE
AUTHENTICITY, PROVENANCE,
EXECUTION, AND ATTRIBUTION WERE
PRESERVED AS MATERIALLY
DISPUTED**

Judicial estoppel is a doctrine of integrity. It prevents a party from manipulating the judicial process by taking one position, persuading a court to accept it, and later taking a clearly inconsistent position to obtain an unfair advantage. *Davis v. Wakelee*, 156 U.S. 680, 689 (1895); *New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001).

But the doctrine has a threshold premise: the alleged prior position must be the party's position. Judicial estoppel cannot fairly apply unless the party to be estopped actually made, adopted, authorized, or successfully maintained the position later attributed to him. *Davis*, 156 U.S. at 689. Without that predicate, there is no inconsistent position by the party, no manipulation of the court by the party, and no equitable basis for barring the party's claim.

The decisions below depart from that foundation. The judicial-estoppel ruling rested on a purported 2016 declaration attributed to Petitioner. Respondents treated that declaration as evidence that Petitioner had previously taken a position inconsistent with his present ownership and standing position. But Petitioner preserved sworn record evidence that he did not execute the declaration, had not seen it before April 2020, and maintained that it was forged and unauthorized. Apple C.A. DktEntry 20-1 at 66–70; 5-ER-944 ¶ 8; Google/YouTube C.A. DktEntry 15-1 at 67–71; 4-ER-

870-871 ¶ 8; Mainsail C.A. DktEntry 9-1 at 61-65; 3-ER-470-471 ¶ 8.

The district court's privity analysis did not cure that defect. The court stated that Petitioner's statements and Maron Pictures' statements were attributable to each other for judicial-estoppel purposes. App. G 43a n.12. But privity does not establish authorship, execution, authorization, adoption, or knowledge of a disputed declaration. The courts below treated privity as a substitute for proof of authorship, execution, authorization, or adoption. It is not.

Nor was this an uncontested record document. Respondents invoked a declaration whose authenticity, execution, and attribution Petitioner disputed by sworn evidence and later repudiated under oath in deposition. Apple C.A. DktEntry 59-4 at 4-6 (Mahon Dep. 80:20-23, 81:1-12, 82:11-16); Google/YouTube C.A. DktEntry 59-4 at 4-6 (Mahon Dep. 80:20-23, 81:1-12, 82:11-16); Mainsail C.A. DktEntry 43-4 at 4-6 (Mahon Dep. 80:20-23, 81:1-12, 82:11-16). The courts below then treated that disputed document as Petitioner's prior position without resolving the predicate dispute.

That preserved dispute was not a collateral evidentiary quarrel. It went to the gateway issue on which judicial estoppel depends: whether the alleged prior position was fairly attributable to Petitioner at all. If Petitioner did not execute, authorize, adopt,

successfully maintain, or benefit from the declaration, then the declaration could not supply the prior position necessary to estop him.

The courts below did not resolve that predicate. They treated the purported declaration as Petitioner's prior position without first determining whether Petitioner actually made, executed, authorized, or adopted the statement. That approach allowed judicial estoppel to operate on the assumption of attribution, even though attribution was the very issue Petitioner preserved as disputed.

That is the legal error warranting review. A federal court cannot protect judicial integrity by resting estoppel on a document whose authenticity, provenance, execution, and attribution were preserved as materially disputed. Judicial estoppel exists to prevent parties from misleading courts. It does not authorize courts to bind a litigant to a statement he preserved as not his, not executed by him, and never seen by him before the later litigation in which he repudiated it.

The danger of the rule applied below is substantial. If a disputed declaration or litigation document can be treated as a litigant's prior position without deciding whether the litigant actually made, executed, authorized, or adopted it, judicial estoppel becomes detached from its equitable foundation. The doctrine can then bar ownership, standing, or other threshold rights based not on a litigant's inconsistent

litigation conduct, but on an unresolved attribution dispute.

That result is especially troubling where estoppel is dispositive. Here, the estoppel ruling affected Petitioner's ability to assert copyright ownership and standing. Once estoppel was applied, the courts did not fully consider Petitioner's asserted ownership position or preserved infringement evidence. The disputed predicate therefore controlled access to adjudication of those rights.

This Court's review is warranted to confirm a basic limitation on judicial estoppel: before a court may estop a party based on an alleged prior position, the court must address a preserved material dispute over whether the party actually made, executed, authorized, adopted, or successfully maintained that position. Anything less allows judicial estoppel to undermine the judicial integrity it is supposed to protect.

**III. THE COURTS BELOW APPLIED
ESTOPPEL WITHOUT DECIDING
WHETHER PETITIONER ACTUALLY
TOOK THE ALLEGED PRIOR
POSITION OR OBTAINED ANY
UNFAIR ADVANTAGE FROM IT**

The decisions below also warrant review because they bypassed the ordinary safeguards that keep judicial estoppel equitable. Judicial estoppel is not a mechanical rule triggered by the presence of

inconsistent words somewhere in a record. It is a discretionary doctrine guided by whether the party's later position is clearly inconsistent with an earlier position, whether a court accepted the earlier position in a manner creating the perception that a court was misled, and whether the party would derive an unfair advantage or impose an unfair detriment if not estopped. *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001); *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1133–34 (9th Cir. 2012).

Those safeguards mattered here. The alleged earlier position was not a statement Petitioner admitted making. It was contained in a purported declaration that Petitioner preserved as not executed by him, not seen by him before April 2020, and maintained that it was forged and unauthorized. Petitioner also repudiated the declaration under oath in deposition before respondents continued to rely on it. Apple C.A. DktEntry 20-1 at 66–70; 5-ER-944 ¶ 8; Google/YouTube C.A. DktEntry 15-1 at 67–71; 4-ER-870–871 ¶ 8; Mainsail C.A. DktEntry 9-1 at 61–65; 3-ER-470–471 ¶ 8; Google/YouTube C.A. DktEntry 59-4 at 4–6.

On that record, the courts could not fairly determine clear inconsistency without first deciding attribution. A litigant does not take inconsistent positions merely because *an adversary attributes a disputed document to him*. The relevant question is

whether Petitioner actually made, executed, adopted, authorized, or successfully maintained the alleged earlier position. The courts below did not answer that question.

The acceptance analysis was also incomplete. The district court stated that Maron Pictures had successfully persuaded the California courts to accept earlier ownership-related contentions and that the prior case need not have been resolved in Maron Pictures' favor. App. G 44a-45a & n.14. But that did not resolve the materially different questions presented here. The prior state litigation was brought by Maron Pictures, not Petitioner personally. It concerned earlier contractual and accounting disputes, not the later-discovered federal copyright claims Petitioner filed after learning in December 2019 of alleged California-based copying and related exploitation. Nor did the district court determine that Petitioner personally made, authorized, adopted, or successfully maintained the disputed 2016 declaration used to defeat his federal ownership and standing position. Acceptance of some corporate litigation position is not the same as acceptance of a disputed personal declaration or a later bar to individually asserted federal copyright claims.

The estoppel ruling also exceeded the scope of any alleged prior position. Petitioner's preserved record evidence concerned alleged California-based

copying of his masters discovered in 2019, after the state proceedings, in a territory the SAA excluded and that Petitioner maintained was never assigned or authorized. Whatever effect a prior corporate position might have had on earlier contractual or accounting disputes, it could not automatically estop Petitioner personally from asserting later-discovered federal copyright claims based on different conduct, different timing, and different territorial limits.

Nor did the courts meaningfully address whether the earlier position was accepted in a way that created a perception that a court was misled. *New Hampshire*, 532 U.S. at 750; *Baughman*, 685 F.3d at 1133–34. That inquiry cannot be satisfied by pointing to a disputed document without identifying what position was accepted, by what court, and whether the accepted position is fairly attributable to the party being estopped.

The unfair-advantage inquiry was likewise essential. A party who preserves sworn evidence that a declaration is not his, and who repudiates it under oath, does not obtain an unfair advantage by refusing to be bound by that declaration. The unfair advantage, if any, runs in the opposite direction: the doctrine is used to bar a litigant's ownership or standing position based on a document whose authenticity, execution, and attribution remain unresolved.

The district court's treatment of Petitioner's 2017 supplementary copyright filing illustrates the same defect. The court described the correction as "dubious at best" and stated that Petitioner's explanation to the Copyright Office was "false and misleading." App. G 44a-45a & n.13. But Petitioner disputed that characterization. He explained that, when he sought correction, the Maron Pictures appeal had been dismissed, and that he understood after legal advice that his personal rights had reverted to him upon his October 1, 2015 formal revocation from Maron Pictures. He also explained that the revocation had been formally recorded, that Maron Pictures was a separate legal entity, and the prior state litigation did not adjudicate the later federal copyright-infringement claims. Those disputed circumstances could not substitute for a finding that Petitioner obtained an unfair advantage by successfully maintaining the specific prior position used to estop him.

That defect is especially significant because the district court expressly stopped short of finding fraud on the Copyright Office. App. G 44a-45a & n.13. The Copyright Act supplies a specific framework for registration inaccuracies: a certificate satisfies the registration requirement notwithstanding inaccurate information unless the applicant knowingly included inaccurate information and the inaccuracy, if known, would have caused the

Register of Copyrights to refuse registration. 17 U.S.C. § 411(b)(1). *See Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 185–186 (2022) (describing the safe-harbor rule in § 411(b)(1)); *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F.3d 616, 624–25 (7th Cir. 2013). Having declined to find fraud and without completing the statutory invalidation inquiry, the court should not have used disputed inferences about the supplementary filing as an equitable shortcut to defeat Petitioner’s ownership and standing position.

The disputed supplementary filing also concerned matters that were not inherently improper. Petitioner’s position was that the original registration contained a filing error because it identified Maron Pictures where it should have identified Mark Mahon personally. That correction was consistent with the ordinary distinction between a natural person’s authorship and an entity’s possible ownership or distribution role: a company may hold or receive rights, but it cannot itself perform the natural-person creative acts of writing a screenplay or directing a motion picture. Petitioner maintained that he is the writer, producer, director, and creator of *Strength and Honour*, and that the supplementary filing reflected that authorship and his retained or reverted copyright interests. Those disputed circumstances could not support an estoppel finding without the court first determining, under

the proper statutory and equitable framework, that Petitioner knowingly misled the Copyright Office and obtained an unfair litigation advantage from doing so. The record did not turn on whether Petitioner was the natural-person author and creator of the Film. His authorship and creative role as writer, producer, and director were independently reflected in the Film's credits and registration materials. The issue concerned a supplementary correction intended to reflect Petitioner's creative role and asserted beneficial ownership interests.

The alleged prior position also did not produce the kind of successful advantage that judicial estoppel requires. Respondents relied on a purported declaration suggesting that Maron Pictures owned the relevant rights, but the Maron Pictures proceedings did not result in a successful adjudication conferring an ownership or infringement advantage on Petitioner personally. App. G 32a-33a, 42a-47a. Nor did Petitioner obtain a benefit by preserving and later repudiating a declaration he maintained was not his. The record therefore did not support the premise that Petitioner had prevailed on one position and then sought to gain a second advantage by taking an inconsistent position.

To the contrary, Petitioner's position was that the disputed declaration and incomplete licensing-chain materials impaired his ability to vindicate his

copyright interests. Judicial estoppel is intended to prevent a litigant from obtaining an unfair advantage through inconsistent positions; it should not be used to impose a dispositive disadvantage on a litigant who did not successfully maintain the alleged prior position and who preserved sworn evidence disputing the document on which estoppel rested.

The decisions below therefore allowed judicial estoppel to do what equity does not permit. They treated the doctrine as a shortcut around disputed predicate facts. Judicial estoppel is meant to protect courts from being manipulated by litigants; it is not meant to relieve courts from deciding whether the alleged manipulation occurred.

This Court's review is warranted because the rule applied below threatens to distort judicial estoppel in cases involving disputed declarations, corporate records, assignments, settlement materials, and litigation filings. Before estoppel bars a litigant from asserting threshold rights, a court must determine that the alleged prior position was actually the litigant's position, that a court accepted that position in a relevant way, and that refusing estoppel would create an unfair advantage or detriment.

That minimum requirement is especially important in copyright ownership and standing disputes. Those issues often turn on chains of title,

assignments, corporate relationships, beneficial ownership, and litigation positions taken by different entities or persons. If a court may apply judicial estoppel without resolving whether the alleged prior position belongs to the person being estopped, then the doctrine can extinguish copyright claims before the court decides who actually owns or may enforce the rights at issue.

The judgments should be vacated so the lower courts can apply the judicial-estoppel predicates to the preserved record rather than assume the very attribution, acceptance, and unfair-advantage findings on which estoppel depends.

**IV. THE QUESTION IS IMPORTANT
BECAUSE FEDERAL COURTS
REGULARLY RELY ON LITIGATION
FILINGS, DECLARATIONS, AND
CORPORATE RECORDS TO
DECIDE THRESHOLD ESTOPPEL,
STANDING, AND OWNERSHIP ISSUES**

The question presented is important because the problem is not confined to this case. Federal courts routinely confront disputes involving declarations, assignments, corporate records, settlement materials, licensing documents, and prior litigation filings. Those materials often become central to judicial estoppel, standing, ownership, preclusion, and chain-of-title disputes.

When such a document is undisputed, a court may evaluate its legal effect in the ordinary course. But when the document's authenticity, provenance, execution, or attribution is materially disputed, a different problem arises. The court cannot fairly use the document as the party's prior position without first determining whether the statement is attributable to the party to be estopped.

That threshold requirement matters because judicial estoppel is uniquely powerful. It does not merely affect the weight of evidence. It can bar a litigant from asserting a position altogether. When applied to ownership or standing, as here, it can prevent a court from reaching the merits of the claim at all.

The decisions below permit that dispositive consequence to follow from an unresolved attribution dispute. Under that approach, a declaration or litigation filing may be treated as a party's prior position even where the party preserved sworn evidence that the document was not executed, authorized, adopted, or seen by him before the later litigation in which he repudiated it. That approach creates a substantial risk that judicial estoppel will be used not to protect courts from manipulation, but to avoid deciding whether manipulation occurred.

The issue is especially important in copyright cases. Copyright ownership and standing frequently depend on chains of title, assignments, licenses,

corporate relationships, beneficial ownership, and the distinction between a creator's personal rights and an entity's distribution or exploitation rights. The Copyright Act expressly permits suit by the "legal or beneficial owner of an exclusive right under a copyright." 17 U.S.C. § 501(b); see also *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 884–85 (9th Cir. 2005) (en banc); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1144–45 (9th Cir. 2003).

That statutory protection is not limited to formal title. Courts have long recognized that an author or transferor who parts with legal title in exchange for royalties or retained economic rights may remain a beneficial owner with standing to sue to protect those interests. See *Cortner v. Israel*, 732 F.2d 267, 271 (2d Cir. 1984); *Moran v. London Records, Ltd.*, 827 F.2d 180, 183–84 (7th Cir. 1987); *Batiste v. Island Records Inc.*, 179 F.3d 217, 223–24 (5th Cir. 1999); *Broadcast Music, Inc. v. Hirsch*, 104 F.3d 1163, 1166 (9th Cir. 1997); *Fantasy, Inc. v. Fogerty*, 654 F. Supp. 1129, 1131 (N.D. Cal. 1987). Petitioner preserved that alternative theory: even assuming Maron Pictures held some legal-title interest, Petitioner asserted that he remained the author, 100% owner and beneficial owner of Maron Pictures, and holder of retained or reverted royalty and enforcement interests.

The courts used a disputed declaration not only as though it were Petitioner's statement, but also as though it conclusively resolved ownership and standing, even though copyright standing turns on legal or beneficial ownership under 17 U.S.C. § 501(b), not merely on an asserted corporate label. That statutory inquiry could not be resolved by attributing to Petitioner a disputed declaration he preserved as not executed by him, not seen by him before April 2020, maintained that it was forged and unauthorized, and later repudiated under oath.

Nor could the declaration, even if considered, substitute for analysis of whether Petitioner personally retained legal or beneficial ownership rights, including rights arising from authorship, royalty interests, revocation or reversion, or ownership interests distinct from Maron Pictures' asserted distribution role.

That makes attribution essential. A creator should not be estopped from asserting copyright ownership or standing based on an alleged prior statement unless the court first determines that the creator actually made, executed, adopted, or successfully maintained that statement. The same principle applies beyond copyright: estoppel should not turn on a disputed record document unless the court resolves the predicate question of whether the document can fairly be attributed to the party being estopped.

The danger extends beyond this case. Federal copyright registration is meant to provide creators, courts, licensees, and markets with a reliable statutory framework for determining authorship, ownership, and enforcement rights. If courts may bypass that framework through estoppel based on an unresolved attribution dispute, the practical value of a copyright certificate is substantially weakened, and creators' threshold access to federal copyright enforcement becomes less secure.

Review is warranted to confirm that judicial estoppel remains tied to its equitable purpose. The doctrine exists to prevent parties from misleading courts through inconsistent positions. It should not permit courts to impose a dispositive bar based on a document whose attribution and authenticity were preserved as materially disputed.

**V. THE DOMESTIC-INFRINGEMENT
RULINGS DEEPEN UNCERTAINTY
OVER U.S.-BASED COPYRIGHT ACTS IN
MODERN DIGITAL AND
DISTRIBUTION-CHAIN CASES**

The petition also presents an important copyright question concerning domestic acts of infringement. Copyright exploitation today often occurs through multi-jurisdictional systems involving U.S.-based platforms, servers, vendors, reformatting processes, master-material handling, and distribution intermediaries. A work may be copied,

reproduced, reformatted, hosted, performed, transmitted, distributed, monetized, or made available through U.S.-based systems even though some downstream exploitation also occurs abroad.

The Ninth Circuit affirmed on the ground that Petitioner had not shown actionable domestic infringement. App. A 4a-5a; App. C 11a-12a; App. E 19a-20a. But Petitioner preserved record evidence of U.S.-based conduct in each appeal. In *Apple*, Petitioner preserved evidence of California-connected copying, reproduction, performance, displaying, distribution, use, and platform activity involving *Strength and Honour*, as identified by Apple's own verified discovery responses. Apple C.A. DktEntry 20-1 at 24, 37-41, 46-48, 55-60; 6-ER-1134:22-24; 6-ER-1137:14-17; 6-ER-1175; 6-ER-1187; 6-ER-1250-1264; 6-ER-1257:25-28; 6-ER-1258:1.

In *Google/YouTube*, Petitioner preserved evidence of U.S.-based copying, reproduction, hosting, use, distribution, reformatting, performance, and platform activity, including conduct connected to YouTube LLC's California operations. Google/YouTube C.A. DktEntry 15-1 at 47, 52-59, 61; 6-ER-1392:20-24; 6-ER-1407:8-14; 6-ER-1411:12-13; 5-ER-1012-1013; 4-ER-723-724.

In *Mainsail*, Petitioner preserved evidence of California-based handling, copying, reproduction, or use of master materials through Visual Data, along with related distribution-chain conduct. Mainsail C.A.

DktEntry 9-1 at 41–44, 49–54, 58; 6-ER-1178; 6-ER-1180–1181; 2-ER-111–129; 2-ER-151–153; 5-ER-825.

The preserved evidence was not absent merely because portions of it were maintained under seal. The Ninth Circuit's Apple disposition reflects that Volume 6 of the excerpts of record, Volume 2 of the supplemental excerpts of record, and portions of the answering and reply briefs were maintained under seal. App. A 6a. The Google/YouTube disposition likewise reflects that sealed excerpts, supplemental excerpts, exhibits, and portions of the briefing were maintained under seal. App. C 12a–13a. Those sealing orders concerned the platform defendants, Apple and Google/YouTube, and underscore why the domestic-infringement issue should not have been resolved by treating the preserved record as though it contained no evidence of U.S.-based conduct.

The Ninth Circuit's treatment of that evidence creates uncertainty over how the domestic-act requirement applies where U.S.-based conduct forms part of a broader distribution system. It is settled that the Copyright Act does not generally apply to wholly extraterritorial conduct. *Subafilms, Ltd. v. MGM-Pathe Commc'ns Co.*, 24 F.3d 1088, 1095–98 (9th Cir. 1994) (en banc). But courts must also distinguish impermissible extraterritorial liability from actionable domestic conduct implicating exclusive rights under 17 U.S.C. § 106. See *L.A. News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d

987, 990–92 (9th Cir. 1998); *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731–36 (9th Cir. 2019).

That distinction matters here. Petitioner did not rely only on foreign exploitation. He preserved evidence of domestic copying, reproduction, use, performance, hosting, reformatting, platform activity, master-material handling, and distribution-chain conduct. Where conduct occurring in the United States implicates exclusive rights under 17 U.S.C. § 106, the fact that downstream exploitation also occurred abroad should not eliminate the need to analyze the domestic acts themselves.

The issue is recurring because digital and platform-based distribution rarely occurs in a single territorial location. Platforms may ingest, store, encode, display, transmit, license, or distribute works through systems located in the United States, while users, licensees, or downstream markets may be located elsewhere. If courts treat foreign downstream exploitation as negating preserved evidence of domestic acts, copyright owners will face uncertainty in enforcing U.S. rights against U.S.-based conduct.

This case is a suitable vehicle to clarify that distinction. Petitioner preserved domestic-act evidence across three related appeals involving different respondents and different exploitation pathways: platform distribution, online video systems, and physical or digital distribution-chain handling of master materials. The common legal

problem is whether preserved evidence of U.S.-based acts can be disregarded because the broader exploitation pathway also includes foreign components.

At minimum, the judgments should be vacated and remanded so the lower courts may assess the preserved domestic-infringement evidence under a standard that distinguishes between impermissible extraterritorial liability and actionable U.S.-based acts implicating exclusive rights under the Copyright Act.

**VI. THIS CASE IS A SUITABLE VEHICLE
BECAUSE THE SAME PREDICATE
DEFECT AFFECTED THREE RELATED
JUDGMENTS AND WAS PRESERVED IN
EACH APPEAL**

This case is a suitable vehicle because the same judicial-estoppel defect affected three related judgments. The respondents and distribution pathways differed, but the predicate legal issue was the same: whether judicial estoppel may bar Petitioner's ownership or standing position based on an alleged prior position contained in a declaration whose authenticity, provenance, execution, and attribution Petitioner preserved as materially disputed.

The issue was preserved in each appeal. In Apple, Petitioner argued that the purported declaration could not be used as an estoppel

predicate because he preserved sworn evidence that he did not execute it, had not seen it before April 2020, and maintained that it was forged and unauthorized. Apple C.A. DktEntry 20-1 at 66–70; 5-ER-944 ¶ 8; 3-ER-412:4–22. In Google/YouTube, Petitioner preserved the same dispute. Google/YouTube C.A. DktEntry 15-1 at 67–71; 4-ER-870–871 ¶ 8; Google/YouTube C.A. DktEntry 59-4 at 4–6. In Mainsail, Petitioner likewise preserved the attribution dispute. Mainsail C.A. DktEntry 9-1 at 61–65; 3-ER-470–471 ¶ 8; 4-ER-564:4–22.

The question is cleanly presented because Petitioner does not ask this Court to resolve the underlying factual dispute in the first instance. The question is whether the lower courts could impose judicial estoppel without addressing that dispute at all. If a declaration's authenticity, execution, and attribution are materially disputed, the court must decide whether the alleged prior statement is fairly attributable to the party before using it to bar ownership or standing.

That makes this case a proper vehicle for a limited remedy. The Court need not decide who ultimately owns the relevant rights, whether Petitioner will prevail on infringement, or whether respondents have other defenses. The Court need only decide that judicial estoppel cannot rest on an unresolved attribution predicate and remand for the lower courts to apply the proper framework.

The case is also suitable because the error was outcome-determinative. Judicial estoppel was not a peripheral evidentiary ruling. It affected Petitioner's ability to assert copyright ownership and standing. The doctrine therefore operated at the threshold, restricting access to adjudication of Petitioner's asserted rights and preserved infringement evidence.

The domestic-infringement issue also supports review or, at minimum, vacatur and remand. In *Apple*, Petitioner preserved the issue through arguments and record citations concerning Apple's admitted California copying, reproduction, performance, display, distribution, use, import/export, and conduct implicating exclusive rights under § 106. *Apple* C.A. DktEntry 20-1 at 24, 46-48, 55-60. Petitioner likewise preserved evidence of U.S.-based conduct across three related appeals involving different modern distribution pathways: Apple's platform activity, Google/YouTube online video systems, and Mainsail-related handling, copying, and distribution of master materials through Visual Data in California. Those records provide a concrete setting for clarifying that domestic acts implicating exclusive rights under 17 U.S.C. § 106 should not be disregarded merely because the broader exploitation chain includes foreign or downstream components.

Those same records also show why the issue mattered at the threshold. Petitioner preserved that

the alleged domestic platform use affected his asserted rights not only as a copyright owner, but as the registered author and beneficial owner whose work was allegedly altered, reformatted, displayed, and presented through unauthorized materials. Apple C.A. DktEntry 20-1 at 71-75.

Nor would review require this Court to supervise a sprawling factual record. The petition presents legal questions: whether judicial estoppel may be applied without resolving a preserved attribution dispute; whether the acceptance and unfair-advantage predicates may be bypassed on such a record; and whether preserved domestic copyright acts must be assessed separately from foreign downstream exploitation.

The three judgments are also properly presented together. They were entered by the same court of appeals and involve identical or closely related questions. A single petition covering all three judgments is therefore proper under Supreme Court Rule 12.4.

The proper remedy is at least vacatur and remand. The lower courts should be directed to address whether the purported declaration can fairly be attributed to Petitioner; whether any court accepted an attributable prior position in the sense required by judicial-estoppel doctrine; whether Petitioner obtained or would obtain an unfair advantage; and whether the preserved domestic-

infringement evidence creates triable issues under the Copyright Act.

Because the same predicate defect affected three related judgments and was preserved in each appeal, this case offers a clean vehicle to confirm that judicial estoppel cannot be used to bar threshold rights based on a document whose authenticity, execution, and attribution were preserved as materially disputed.

CONCLUSION

Judicial estoppel is meant to protect the integrity of the courts. It cannot serve that purpose when applied on the basis of a document whose attribution and authenticity were materially disputed. Before a court may bar a litigant's ownership or standing position based on an alleged prior statement, it must determine that the litigant actually made, authorized, or successfully maintained that statement.

The courts below did not do that. They treated a disputed declaration as Petitioner's prior position without resolving the threshold attribution dispute, and without applying the acceptance and unfair-advantage inquiries to the preserved record. They also did not separately assess preserved evidence of U.S.-based copyright acts under a standard that distinguishes impermissible extraterritorial liability from actionable domestic conduct in modern platform and distribution-chain systems.

The petition for a writ of certiorari should be granted. Alternatively, the judgments should be vacated and the cases remanded so the lower courts may address the disputed attribution predicate, apply the judicial-estoppel framework to the preserved record, and evaluate Petitioner's domestic-infringement evidence under the proper standard.

Respectfully submitted,

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