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Termination of Copyright Transfers is Effective Worldwide

A U.S. appeals court ruling, left in place by the Supreme Court because it lacked a quorum, says authors and heirs may use U.S. copyright law to reclaim worldwide rights to works after 35 years—not just U.S. rights. The ruling may prompt renegotiations of older licenses, but its reach and how foreign courts will treat it remain uncertain.

By David Rabinowitz and Toby Butterfield | November 18, 2026

A recent decision by the U.S. Supreme Court sustaining a decision by a federal appeals court earlier this year has permitted the descendants of a U.S. author to reclaim rights to the author's copyrighted work around the world, rather than only in the U.S. This controversial decision gives U.S. authors and their heirs significant and previously unrecognized rights to license their works around the world after 35 years.

The decision builds on a statutory right granted to authors and their heirs that Congress modified and codified in 1976. Ever since the creation of copyright by the Statute of Anne in 1710, authors have been able to renew their copyrights after an initial term. In 1831, the United States extended that renewal right to the authors' widows and orphans. However, until 1976, the author and family could lose the right to the renewal term under certain circumstances, for example if the author assigned the copyright before the renewal term began.

In the Copyright Act of 1976, Congress revised the law to give authors or their statutory successors the statutory right to recover transferred interests in copyrights, and made that right inalienable, regardless of prior assignments or transfers. That right to recover rights under copyright is referred to as the right of termination of transfers. Under that U.S. law, transfers can generally be terminated after 35 years.

However, Congress can only enact law for the United States. As a result, the international effect of a termination of a transfer that grants rights worldwide has been hotly debated. Do U.S. authors or their statutory successors recover all rights worldwide, or only rights in the United States? The major U.S. copyright treatises, Nimmer and Patry, favored the conclusion that only rights in the United States could be terminated under the U.S. Copyright Act. Absent a clear appeals court ruling, most assumed that to be the law.

Now, however, a federal appeals court decision giving termination international effect instead has been affirmed by the Supreme Court, settling the point – to a certain degree. The Supreme Court couldn't muster a quorum to hear the case. Invoking 28 U.S.C. §2109, a rarely used statute that covers such cases, the Court declared the case affirmed, having the effect of an affirmance by an equally divided court. *Vetter v. Resnik*, 163 F.4th 951 (5th Cir. 2026), *aff'd*, 2026 WL 3116604 (Oct. 19, 2026).

The obstacles perceived by Nimmer and Patry to international effect of termination were 17 U.S.C. §203(b)(5) and §304(c)6)(E), which both provide that, "Termination of a grant under this [sub]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." This language raised the question whether the rights of a United States author abroad, under the Berne Convention or other treaties providing for international recognition, "arise under" the U.S. Copyright Act or under foreign law.

In *Vetter*, the Fifth Circuit drew an analogy to the Supreme Court decision in *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013). In *Kirtsaeng*, the Supreme Court interpreted similar language in the first sale doctrine statute, which immunizes resales of copies of works that are "lawfully made under this title" ("this title" referring to the U.S. Copyright Act). There, the court held that "under this title" meant in accordance with or in compliance with the U.S. Copyright Act, and included sales of copies that were lawfully made under U.S. law even though the first sales were made abroad.

Based on *Kirtsaeng*, as well as policy considerations, the Fifth Circuit in *Vetter* held that §304(c)6)(E)'s language "rights… that arise under this title" meant "copyrights that were granted in accordance with the Copyright Act of 1976" and that such rights did not arise under foreign law. Hence, a grant of worldwide rights under such a copyright was a grant "under this title" and terminable just like domestic rights. 163 F.4th at 958-59.

The Berne Convention, to which the United States adhered in 1989, provides authors from member countries with international protection for their copyrights. The Convention states that "The works mentioned in this Article shall enjoy protection in all countries of the Union." Article 2, §(6). While this clause appears to some to be a grant of rights independent of the country of origin, the Fifth Circuit rejected that reading. The Fifth Circuit relied on 17 U.S.C. §104(c) ("Effect of Berne Convention") saying (163 F.4th at 963):

> 'No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.' 17 U.S.C. §104(c). Given the statutory text, context, and purpose of §304(c) as well as the public policy and industry norms discussed supra, it is more likely that a copyright is better understood as being granted under the U.S. Copyright Act and recognized by member countries pursuant to the Berne Convention and Universal Copyright Convention.

The *Vetter* decision therefore concluded that it was Congress that granted copyright interests to U.S. authors that were given effect abroad, and that foreign copyright interests are therefore subject to the "termination of transfer" provisions described above.

The *Vetter* decision also accords with the general conflicts of law rule concerning ownership of property, which applies the law of the jurisdiction with the most significant relationship to the property and parties. That rule was invoked in *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 90 (2d Cir. 1998) to apply Russian law to ownership

of a copyright originating in Russia. The Second Circuit there stated:

> Copyright is a form of property, and the usual rule is that the interests of the parties in property are determined by the law of the state with "the most significant relationship" to the property and the parties. The Restatement [Restatement (Second) of Conflict of Laws §222] recognizes the applicability of this principle to intangibles such as "a literary idea." Since the works at issue were created by Russian nationals and first published in Russia, Russian law is the appropriate source of law to determine issues of ownership of rights.

Itar-Tass has been generally followed on this point. It appears to mandate application of U.S. rules to ownership issues concerning U.S. works, therefore including the effect of termination of a transfer.

Authors and their heirs likely have limited scope to recapture rights in existing derivative works, such a motion picture adaptations of literary works that were the subject of a terminated grant. Advice from an experienced practitioner on such situations is highly recommended. But this decision is likely to prompt many U.S. authors of older works and their heirs to review whether they can recapture many foreign rights that they previously assumed were beyond the reach of a U.S. "termination of transfer." It's possible too that existing terminations can now be interpreted to include recapture of foreign rights, prompting negotiations to license those rights anew.

However, if no new licensing deals are struck, what will foreign courts do with copyrights terminated in the United States under this new interpretation of United States law? Will the foreign courts follow U.S. law as to who has rights abroad after a termination of a transfer? An interesting question, though foreign publishers can also be sued in the United States if subject to jurisdiction here, even if the infringement occurs abroad, keeping the issue away from foreign courts. 3 Nimmer on Copyright §17.03[A].

But what will happen if a prospective foreign defendant files abroad first, for a declaration of rights? Given the unusual procedural history of the *Vetter* decision, transferees of foreign copyright interests will likely also argue that the *Vetter* decision is limited both to its specific facts, and to the 5th Circuit's jurisdiction (Texas, Louisiana and Mississippi). Both licensees of works subject to international termination of their licenses and authors of valuable copyrighted works subject to older licenses should seek expert legal advice on the impact of this far-reaching decision.

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