Copy That

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SECTION 203 REACHES ALL RIGHTS (AND IT'S ALRIGHT)

I HOPE YOU'VE HAD YOUR "double shot" of espresso (or whatever fuels you) because in this edition we're going to get into the weeds a bit to understand why the Fifth Circuit's recent holding in *Vetter v. Resnik*[1] has led some to fear an international crisis…and why those fears are entirely unwarranted.

It's no secret that the people who originate creative works are often the least likely to capture their long-term value. Instead, that value is often realized by publishers, labels, studios, and others who, with the benefit of their inherent, often severe, inequality in bargaining power, obtain copyright transfers from artists for comparatively modest fees. We celebrate authorship but the marketplace rewards ownership.

This, of course, is the very problem Sections 203 and 304(c) of the Copyright Act were written to address by providing authors (or their heirs) with a "second chance" to reclaim or renegotiate rights to their works after 35 years—ensuring that the artist gets a turn after the beneficiary of the transfer has had ample opportunity to profit off the works. Specifically, with respect to copyright transfers made before January 1, 1978, Section 304(c) provides that *any "exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it…is subject to termination."*

But following the Fifth Circuit's recent holding in *Vetter v Resnik*, the music industry has gone into a veritable tailspin, with some commentators passionately arguing that a Section 203 termination of the transfer of "any right under a copyright" cannot possibly mean a termination of the transfer of…well…*any* right under a copyright. Some have even claimed that the *Vetter* decision threatens to "destabilize U.S. foreign relations by attempting to dictate the copyright policies of more than 180 Berne Convention nations."[2]

But it does no such thing, and such dramatic claims are unwarranted.

To be sure, this is an important issue. The US is by far the world's largest market for recorded music, but approximately two-thirds of global music revenue comes from foreign markets. Thus, whether Section 203 affects transfers of foreign rights is *very* consequential. And this, of course, is why attorneys and commentators who represent labels, studios, and other transferees want you to believe that the *Vetter* ruling is an existential threat to the world order.

Fortunately, the Fifth Circuit saw through the hype and, in an extremely thorough and well-reasoned opinion, concluded that the language and intention of Section 203 gives creators the right to recapture both foreign and domestic copyright grants, and that such recaptures in no way violate our treaty obligations or have any other untoward implications (for foreign affairs or otherwise). To understand why, let's begin with a little Copyright 101.

Foreign Rights Are Just a Stick in the Bundle

First, under US copyright law, a "bundle" of rights exists the moment an original work is created and fixed in a tangible medium. That bundle includes numerous exclusive rights such as the right to reproduce, license, and create derivative works both domestically and worldwide.

Next, as the Act—and courts interpreting it—make clear, ownership of this "bundle of rights" is divisible into an almost infinite number of sub-rights. Thus, an artist may transfer the entirety of their copyright interest to a third party, or may transfer just domestic rights, just foreign rights, domestic rights to display a work in shopping malls, the exclusive right to reproduce copies on Pianolas, the exclusive right to license paintings of llamas in Peru, or any other slice of their bundle of rights that may be agreed upon.

Such transfers are expressly authorized by and concern rights that arose under US copyright law—at least in the case of a US artist transferring rights in works made domestically to another domestic person—because they concern rights that arise under the US Copyright Act. And there is simply no language in either Section 203 or 304 that limits termination to grants made domestically or for domestic rights. Those claiming otherwise point to Section 304(c)(6)(E) which provides: "Termination 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." But this subsection merely tells us that terminations only reach the bundle of rights that arose under the Act and not, for example, moral rights or any other rights that may exist under other laws.

To be sure, US Copyright law is not solely and exclusively concerned with what happens inside US borders. Rather, it recognizes that copyright owners also have rights to control what happens outside the United States and in limited instances—such as the predicate act doctrine under which US courts will address copyright violations that occur outside the United States—will address extraterritorial copyright violations. It thus follows that the plain language of Section 203 requires that *all* copyrights that arose when the work was created and which were conveyed in a transfer—domestic and foreign alike—are subject to recapture.

In making precisely this finding, the Fifth Circuit found additional support in the purpose of the termination statute (discussed above) and relevant Supreme Court authority, including *Kirtsaeng v. John Wiley & Sons, Inc.*[3] in which the Supreme Court adopted a non-geographical interpretation of the phrase "lawfully made under this title" in applying the first-sale doctrine to textbooks manufactured outside the United States.

Desperate to protect their profitable foreign rights, studios, labels, and other investors have rallied to support Resnik Music Group, ringing alarm bells and decrying the injudiciousness of the Fifth Circuit's holding. Their primary argument is that Section 304(c)(6)(E) is properly interpreted to mean that a transferor's copyright interests outside US borders cannot be recaptured because any attempt to claw back foreign rights undermines the sovereignty of foreign nations to decide how and when transfers of rights can be terminated in their jurisdictions and violates our treaty obligations under the Berne Convention and the Universal Copyright Convention.

It doesn't.

Let's first get one thing out of the way: no one disputes that foreign courts have the right to interpret and apply copyright law in their jurisdictions. They had that right before the *Vetter*, and the Fifth Circuit's holding does not purport to take that right away. *Vetter* only speaks to the view of the US courts on the meaning of a statute written by our legislative branch to allow the parties to a transfer of copyrights to revisit that transfer. Foreign courts will then have to decide what weight to give the views of the US courts, and if a foreign court (or legislature) decides that a Section 304(c) termination carries no weight in that court's jurisdiction then so be it. But if a foreign court looks to US law to determine whether a copyright claimant in that jurisdiction has a valid copyright interest—which is how US courts address foreign copyright claimants—then the *Vetter* holding simply (and properly) informs.

And second, the *Vetter* holding in no way violates the "National Treatment" principle established by the Berne and the Universal Copyright Conventions. That principle merely requires member countries to afford the same copyright protection in each other member as it accords to its own nationals. The principle applies to the *protection* of copyrights, not the *existence* of copyrights. As the Second Circuit recognized in *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, "The Convention does not purport to settle issues of ownership."[4]

Itar-Tass and National Treatment

In *Itar-Tass* the Second Circuit logically separated ownership analysis from infringement analysis, explaining that ownership of a valid copyright (the first element of an infringement claim) is properly determined under the laws of the originating country while infringement is determined under the laws of the jurisdiction where the infringing acts occurred (*lex loci delicti*).

In that case, the Court reversed a judgment obtained by a Russian newspaper for the reproduction of its articles by a New York defendant because Russian law explicitly excludes newspapers from a work-for-hire doctrine—meaning that the journalists who wrote the articles, and not the newspaper, hold the copyright in those articles. Had Russian law given the Itar-Tass news agency a copyright interest in the articles penned by its reporters, *then* the principle of National Treatment would require that those copyrights be fully enforceable in the United States. But it does not require US courts to create a copyright interest where a foreign national comes to them without one.

The holding of *Itar-Tass* should be no surprise as it is fully consistent with how courts address property interests in other contexts. As the Second Circuit explained: "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 recognizes the applicability of this principle to intangibles such as 'a literary idea.'"[5]

Itar-Tass is generally regarded as a well-reasoned holding which has become a foundational case for handling cross-border copyright disputes. And while it is not directly applicable to *Vetter* (which did not address ownership of a foreign copyright), one can't really disagree with the Fifth Circuit's *Vetter* holding without also taking issue with *Itar-Tass*.

Well, one can. But only by making the principle of "National Treatment" into something it isn't.

It is a perversion of the National Treatment doctrine to suggest that it requires foreign courts to treat copyrights originating in the United States differently than the United States does. Which, ironically, is what the anti-*Vetter* camp is actually saying. They would have our federal courts declare that Section 203 terminations do not apply to foreign rights under US law—knowing that foreign jurisdictions will then have to find transfers of rights into their jurisdiction to be excluded from the Section 203 termination if they apply the same sound reasoning as *Itar-Tass.*

Again, courts in other countries will interpret their treaties and apply their laws as they think appropriate after *Vetter*, just as they did before. But to the extent their law tracks ours, they will look to *Vetter* to understand whether US law permits the termination of foreign transfers in addressing copyright ownership for foreign claims. Doing so has exactly zero possibility of creating an international crisis and certainly provides no justification for depriving copyright creators of the right to fully terminate transfers of interests in those copyrights.

In fairness, the *Vetter* holding does stand to work a short-term inequity on those who invested in foreign rights—especially shortly before termination—in reliance on the pre-*Vetter* conventional wisdom that only transfers of domestic rights to exploit copyright-protected works could be terminated. Indeed, Resnik Music Group only acquired a share of the copyright to the song "Double Shot (Of My Baby's Love)" in 2019 after it was owned for decades by Windsong Music Publishers. But *Vetter* also resolves the bigger inequity of that same pre-*Vetter* conventional wisdom which frustrated Section 203 by depriving creators of the Copyright Act's promise that they could fully recover "any right under a copyright" that they may have transferred away when they were young and desperate.

Will *Vetter* stand as the correct interpretation of the scope of copyright terminations? Industry forces are certainly hoping not as BMG bought a stake in "Double Shot" to get standing to seek Supreme Court review and hired high-court veteran Paul Clement to handle it. On the other hand, the creatives of the world hope that if SCOTUS grants review it will agree that a termination of all rights means a termination of all rights…and it's all right. ◀◀

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Endnotes

1. *Vetter v. Resnik*, 163 F.4th 951 (5th Cir. 2026).
2. *See* "The 5 Worst Copyright Decisions of 2024" by Aaron Moss (addressing the district court's underlying ruling that was upheld by the Fifth Circuit). https://copyrightlately.com/the-5-worst-copyright-decisions-of-2024/#:~:text=Territoriality%20Tossed%20Overboard.,grants%20of%20foreign%20rights%20untouched.
3. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013).
4. 153 F.3d 82, 91 (2d Cir. 1998) (citing Jane C. Ginsburg, "Ownership of Electronic Rights and the Private International Law of Copyright," 22 Colum.-VLA J.L. & Arts 165, 167–68 (1998) ("The Berne Convention 'provides that the law of the country where protection is claimed defines what rights are protected, the scope of the protection, and the available remedies; the treaty does not supply a choice of law rule for determining ownership.'")).
5. *Id.* at 89–90 (citations omitted).

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ing provisional measures across UPC territory and referring four questions to the CJEU) https://www.unifiedpatentcourt.org/sites/default/files/files/api_order/Referral%20order%20Dyson%20-%20Dreame_0.pdf.

20. *Fujifilm v. Kodak*, UPC_CoA_312/2025, UPC_CoA_333/2025, UPC_CoA_880/2025, and UPC_CoA_882/2025 (UPC Ct. App. June 2, 2026); *see* Norton Rose Fulbright, UPC extends its reach to the UK, https://www.nortonrosefulbright.com/en-nl/knowledge/publications/cad0300c/upc-extends-its-reach-to-the-uk.
21. *Amgen v. Sanofi/Regeneron*, UPC_CoA_528/2024, and *Edwards v. Meril*, UPC_CoA_464/2024 (UPC Ct. App. Nov. 25, 2025); see EIP, UPC Court of Appeal sets out comprehensive guidance on key substantive issues, https://eip.com/uk/case-reports/upc-court-of-appeal-sets-out-comprehensive-guidance-on-key-substantive-issues.
22. UPC Central Division (Section Munich), order of June 22, 2026, UPC_CFI_830/2024 (parallel UPC revocation action devoid of purpose following EPO Board of Appeal revocation), https://upc.law/decisions/munich-central-division/central-division-section-munich-22-june-2026-order-upc_cfi_830-2024/.
23. *Amgen v. Sanofi/Regeneron*, UPC_CoA_528/2024, and *Edwards v. Meril*, UPC_CoA_464/2024 (UPC Ct. App. Nov. 25, 2025); *see* EIP, UPC Court of Appeal sets out comprehensive guidance on key substantive issues, https://eip.com/uk/case-reports/upc-court-of-appeal-sets-out-comprehensive-guidance-on-key-substantive-issues.
24. JUVE Patent, *Amgen vs Sanofi*: A Chronology of the Patent Battle over Repatha and Praluent (Mar. 2026), https://www.juve-patent.com/cases/amgen-vs-sanofi-a-chronology-of-the-patent-battle-over-repatha-and-praluent/; Amgen Inc., Quarterly Report (Form 10-Q) for the quarter ended March 31, 2026 (reporting the settlement and related withdrawals), https://www.sec.gov/Archives/edgar/data/0000318154/000031815426000057/amgn-20260331.htm.