

Copyright Ruling Leaves Worldwide Rights In Legal Limbo

By **Ivan Moreno**

Law360 (October 23, 2026, 6:33 PM EDT) -- The U.S. Supreme Court left music publishers, creators and catalog buyers facing potentially different rules for worldwide copyright termination after an unusual quorum failure ended the entertainment industry's bid to overturn a Fifth Circuit ruling allowing authors to recapture foreign rights included in worldwide grants.

Four justices took no part in the case, according to the Oct. 19 order, **triggering** a rarely used federal statute that required the Fifth Circuit judgment to be affirmed, giving Louisiana songwriter Cyril Vetter a victory in his effort to use U.S. copyright law to reclaim his worldwide rights to the 1960s hit "Double Shot (Of My Baby's Love)."

The Supreme Court's order did not say why the four justices took no part. All four — Sonia Sotomayor, Neil Gorsuch, Amy Coney Barrett and Ketanji Brown Jackson — have published books through Penguin Random House. Its parent company, Bertelsmann, owns a controlling stake in BMG Rights Management, which joined other major music publishers to acquire the disputed copyright interest and sought Supreme Court review of the Fifth Circuit's ruling from January.

Tyler Ochoa, a professor at Santa Clara University School of Law, said BMG may have undermined its Supreme Court bid through its involvement in the case, using a sports reference to describe the result as an "incredible own goal" that left the company without an answer to the worldwide-rights question it wanted resolved.

The result preserved the Fifth Circuit's ruling without creating nationwide precedent, prolonging legal ambiguity over contracts long understood to convey durable worldwide rights. The decision binds federal courts in Texas, Louisiana and Mississippi, while lawyers elsewhere assess its implications for catalog valuations, foreign royalties and where future termination disputes should be heard as they await a definitive ruling from the Supreme Court.

"It's just a tremendous amount of uncertainty because of a decision which literally until this case, everyone had thought the answer was 100% clear," Ochoa said, referring to the long-standing understanding that U.S. copyright termination could recapture domestic rights but not copyrights governed by foreign law.

Vetter's counsel, Joshua Rosenkranz of Orrick Herrington & Sutcliffe LLP, welcomed the result while predicting the Fifth Circuit's reasoning will gain traction elsewhere.

"The wrong group of companies bought the right to take the wrong case to the Supreme Court at the wrong time," he said in a statement to Law360. "As time passes, I am confident that more circuits will see the wisdom of the Fifth Circuit's careful analysis and agree that Congress intended to protect authors from exploitation."

Counsel for the petitioners did not respond to a request for comment.

The music publishers, which also included Capitol CMG Inc. and Essential Music Publishing LLC, argued the Fifth Circuit departed from the prevailing view of other courts and international treaties. They pointed to the Second Circuit's 1998 decision in *Fred Ahlert Music Corp. v. Warner/Chappell Music Inc.*, as well as district court rulings involving Superman co-creator Jerome Siegel and author Tom Clancy in California and Maryland, respectively, as support for the view that U.S. termination leaves foreign rights undisturbed.

In the Ahlert case, Ochoa said the Second Circuit treated termination as restoring only domestic rights, although it stated that conclusion in a single sentence without extensive analysis.

Ochoa attributed the Second Circuit's limited analysis partly to what he described as the clarity of the statute, saying that before the Vetter decision, the idea that it could be read differently "was pretty far-fetched."

The Fifth Circuit relied on the phrase "arise under this title" in the Copyright Act, reasoning that Vetter's rights were part of a worldwide grant of a copyright that originated under U.S. law.

"In other words, because termination affects rights that 'arise under' the U.S. Copyright Act, and because Vetter's rights arose under the U.S. Copyright Act, the plain language of section 304(c)(6)(E) dictates that his termination would be effective as to all of his rights — including his copyright to the extent that it extends internationally," the Fifth Circuit said.

The appellate court also said Congress meant to give artists a "second chance" at reclaiming their rights because they often sign bad deals early in their careers. Vetter and the co-writer of "Double Shot (Of My Baby's Love)" had initially assigned the rights to the song for \$1 and a royalty promise.

Ken Anderson, a partner at Rimon PC's entertainment, sports and media team, said he had long assumed copyright termination reached only U.S. rights largely because that was what he had heard throughout his decadeslong career. But the Fifth Circuit's ruling prompted him to go back to the statutory language, he said, and he came away believing the issue was "nowhere near as clear" as the industry's reaction to the Fifth Circuit's decision in the Vetter case would suggest.

"I was one of those guys I was just complaining about, who just sort of went along with what they heard the general status of the law was," Anderson said.

He said the lack of clarity over copyright termination "is a textbook example of why there is a Supreme Court" and suggested greater transparency around recusals could help prevent significant cases from being stranded without a quorum.

The Vetter appeal marked the second copyright petition in less than 18 months that the Supreme Court could not consider for lack of a quorum. In **May 2025**, five justices took no part in a suit accusing author Ta-Nehisi Coates of copying a self-published book, leading the high court to invoke the same statute and affirm a Second Circuit judgment dismissing the case. Justices Sotomayor, Gorsuch, Barrett and Jackson sat out both matters, while Justice Samuel Alito joined them in sitting out the Coates case. Like the Vetter case, the justices in the Coates litigation did not say why they didn't take part in the case.

Still, Anderson said the absence of a nationwide rule does not mean the Fifth Circuit's approach will upend the entertainment business. Companies could adapt by offering creators more favorable reversion terms, he said, while authors or estates that recover rights could simply strike new deals with competing publishers rather than remove valuable works from the market altogether.

That view contrasts with warnings the Supreme Court received from music and film industry groups, which said the Fifth Circuit ruling could unsettle catalog valuations, complicate licensing and royalty payments, and create potentially conflicting claims to foreign copyrights. Several amicus briefs **supporting** the music publishers' appeal argued that decades of transactions were structured on the assumption that U.S. termination rights did not disturb foreign copyrights.

New York-based music attorney Ted Hall called the Supreme Court outcome the type of "funny bank shot" featured as "a bizarre play of the week" on SportsCenter. Nevertheless, he said it will force lawyers to examine jurisdiction and litigation risk at a level of detail that catalog transactions previously did not require.

"Lawyers like me will have a little more work to do because we used to sell property that was known to be ruled by nationwide law. You could just say, 'It's under American law,'" he said. "Now people [will] care about what circuit has jurisdiction over these contracts, and that's just a level of granularity people have not had to delve into."

Hall and others expect the conflicting legal rules will affect where cases are litigated.

"People will be flooding into or out of the Fifth Circuit, depending on what kind of law they want to take advantage of," he said.

Jed Ferdinand, partner and chair of Meister Seelig & Schuster PLLC's intellectual property group, likewise called the Vetter decision a "major concern" for transactions involving worldwide grants potentially subject to termination. Buyers may now need to determine who can invoke termination and whether an author's heirs are alive, he said.

New agreements could use escrows or indemnification to allocate some of that risk, he said, but existing deals may offer little room for protection.

"Some of these deals have been in place for years, so it's already too late," Ferdinand said.

Attorneys expect another challenge to the Fifth Circuit's decision will eventually emerge, but Ferdinand said the entertainment industry faces a strategic choice over how aggressively to litigate the next one. While the hope

may be that another circuit takes a different view and leads to the Supreme Court overturning the Fifth Circuit, there is "a nightmare scenario" for entertainment companies that another circuit actually agrees, he said.

"Then they're in real trouble," he said.

--Editing by Michael Watanabe.