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## *vetter v. resnik*: a copyright termination opinion that knows no boundaries

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For the first time, a federal court has held that termination rights under Section 304 of the Copyright Act of 1976 (17 U.S.C. § 304) re-capture not only U.S. copyright rights, but also foreign rights as well, where the original grant of rights was for "worldwide" rights. *Vetter v. Resnik*, No. 23-1369-SDD-EWD, 2024 WL 3405556 (D. La. July 12, 2024).

Cyril Vetter and Don Smith were co-authors of the song "Double Shot (Of My Baby's Love)" ("the Song"). In 1963, they each assigned all of their copyright interests in the Song to Windsong Music Publishers, granting Windsong exclusive worldwide rights to the Song for the full term of copyright protection. Consistent with Supreme Court precedent (*Stewart v. Abend*, 495 U.S. 207 (1990)), this meant that the granting of the original and renewal term was a contingent assignment of the latter term to Windsong. In 1966, Windsong made an original copyright registration for the Song at the U.S. Copyright Office (and subsequently, a timely renewal registration was made by the renewal claimants).

Smith, one of the songwriters, died before the renewal date, such that under *Stewart v. Abend*, 495 U.S. 207, the renewal rights vested in his heirs. In 2019, Plaintiffs, the Smith heirs' successors-in-interest, sent a notice of termination pursuant to Section 304 and ultimately brought suit, seeking a declaration that they owned *worldwide rights* to the Song. Defendant, Windsong's successor, filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), asserting that Plaintiffs had recaptured only U.S. rights.

In ruling on the motion, the district court considered two issues: (1) the territorial effect of the vesting of the renewal term rights for pre-1978 works under the 1909 Copyright Act; and (2) the territorial scope of the re-capture of rights under the Section 304 termination provisions where a U.S. contract granted "worldwide" rights. The court denied Defendant's motion to dismiss, holding that the Plaintiffs had presented a plausible claim to both domestic and foreign

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rights to the Song under both the vesting of the renewal rights and Section 304 termination. The court reasoned as follows:

**Renewal Rights.** The court reiterated the history and purpose of the two terms of copyright under the 1909 Act, which was to give authors an opportunity to recapture and re-grant rights for the renewal term (now 67 years after the initial term of 28 years). Although looking to Supreme Court and other influential cases for guidance, the court apparently concluded that the issue of whether the vesting of the renewal term rescinds foreign as well as domestic grants of rights has not previously been resolved. Thus, the district court found Vetter's somewhat unique description of a grant of worldwide copyright rights as a "single" copyright and not "multiple" copyrights in each country was plausible, concluding that both the granting of U.S. and foreign rights in the renewal term by Smith were contingent rights. Therefore, when the renewal term vested in Smith's heirs upon Smith's death before the renewal term, it reset the worldwide -- U.S. and non-U.S. -- treatment of the renewal term and rights in the song.

**Termination Rights.** In a first-time reading of Section 304's express language, the court found it plausible that a U.S. copyright termination could result in the recapture of foreign copyright rights. Section 304(c)(6)(E) reads: "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." Nonetheless, rejecting, for example, another district court's holding in *Siegel v. Warner Bros. Entertainment, Inc.*, 542 F.Supp.2d 1098 (C.D. Cal. 2008), which limited termination to U.S. rights, the *Vetter* court instead interpreted the phrase "arise under this title" to apply to both U.S. and foreign rights. As a result, the court concluded: "It plausibly and logically follows that a termination of a worldwide grant results in the recapture of worldwide rights; in other words, worldwide rights were covered by the terminated grant, so worldwide rights revert upon termination."

If this ruling holds (which seems unlikely), termination and re-capture of rights, including the worldwide versus U.S.-market valuation of such rights for new grants, will be significantly impacted. Additionally, since Section 203 (grants of rights after 1977) includes nearly identical language to Section 304 (pre-1978 grants), if this result were upheld, it could result in major upheaval not just for older works and grants, but for newer ones as well.