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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 ALAN U. SCHWARTZ, TRUSTEE OF
THE TRUST UNDER ARTICLE
12 THREE OF THE LAST WILL AND
TESTAMENT OF TRUMAN CAPOTE
13 DATED MAY 4, 1981,

14 Plaintiff,

15 v.

16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and DOES 1 through 100,
18 inclusive,

19 Defendants.
20

Case No.: 2:20-cv-11470-SB-JPR

Assigned to Hon. Stanley Blumenfeld,
Jr.

**MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR REMAND**

Date: February 26, 2021
Time: 8:30 a.m.
Ctrm: 6C

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1 **I. INTRODUCTION**

2 In this action, Plaintiff seeks declarations that (i) it, rather than defendant
3 Paramount Pictures Corporation (“Paramount”), owns all motion picture rights in
4 Truman Capote’s 1958 novella “Breakfast at Tiffany’s” (the “Story”), and (ii) a
5 screenplay that Paramount is actively shopping (the “Paramount Screenplay”) is an
6 infringing “derivative work” of the Story.

7 Several months ago, Plaintiff sent a draft federal court complaint to Paramount,
8 and asserted the same arguments that are in its current Complaint. After Paramount
9 rejected Plaintiff’s claims, and cautioned that it would seek attorneys’ fees under the
10 Copyright Act if Plaintiff were to file the draft complaint, Plaintiff turned around and
11 filed its virtually identical Complaint in state court. Paramount removed Plaintiff’s
12 lawsuit to this Court, and Plaintiff now argues that its claims only involve a
13 contractual dispute, such that federal subject matter jurisdiction does not exist.

14 Plaintiff is wrong, for two reasons.

15 First, Plaintiff’s request that the Court declare the Paramount Screenplay to be
16 an infringing “derivative work” plainly arises under the Copyright Act, as it is
17 “obvious that the claim require[s] a determination as to whether the two works [are]
18 sufficiently similar to warrant a finding of infringement – a clear question of copyright
19 law.” *Scholastic Entm’t, Inc. v. Fox Entm’t Group, Inc.*, 336 F.3d 982, 987 (9th Cir.
20 2003). Unable to seriously dispute this obvious point, Plaintiff resorts to arguing that
21 its request to have the Paramount Screenplay declared an infringing derivative work
22 is not a “big deal” – an argument that is both factually and legally baseless. Plaintiff’s
23 remand motion must fail for this reason alone.

24 Second, Plaintiff’s own allegations make clear that its interpretation of the
25 contract at issue rests on Plaintiff’s (disputed) interpretation of the Copyright Act.

26 Specifically, after domestic (but not foreign) rights in the Story reverted from
27 Paramount to Plaintiff (by operation of U.S. copyright law) following Capote’s death,
28 the parties entered into an agreement – the Option Agreement, Assignment of

1 Copyright and Settlement Agreement (the “1991 Agreement”). In accordance with
2 the clear terms of that contract, when it exercised its option in 1994, Paramount
3 reacquired the reverted rights and confirmed that it held all motion picture rights, in
4 perpetuity, to the Story. However, Plaintiff now argues that the 1991 Agreement does
5 not mean what it says, and that Paramount did not acquire the rights that it paid for.
6 Instead, for months Plaintiff has alleged – both in the Complaint, and in documents
7 incorporated by reference therein – that a court should disregard the plain language
8 of the 1991 Agreement in favor of “extrinsic evidence” – including Plaintiff’s (faulty)
9 interpretation of the “legal state of affairs” that existed in 1991.

10 According to Plaintiff’s own allegations, following Capote’s death, Plaintiff
11 came to own all rights (rather than merely domestic rights) that Capote had previously
12 assigned to Paramount, as a result of the Copyright Act of 1909’s renewal provisions,
13 and the United States Supreme Court’s decision in *Stewart v. Abend*, 495 U.S. 207
14 (1990). Thus, according to Plaintiff, it had “superior bargaining position,” was free
15 to make “excessive” and “exorbitant” demands, and simply “would not have” agreed
16 to sell its rights to Paramount for the price specified in the 1991 Agreement –
17 regardless of the clear language of the contract. In its Complaint, Plaintiff also asserts
18 that Paramount’s reading of the 1991 Agreement “make[s] no sense whatsoever,” and
19 thus should be rejected, because it is inconsistent with Plaintiff’s interpretation of
20 *Abend* as resulting in all (as opposed to merely domestic) rights reverting to Plaintiff
21 following Capote’s death.

22 It is axiomatic that where a claim requires “construction” or “an interpretation”
23 of the Copyright Act, that claim “arises under” the Copyright Act for purposes of
24 federal subject matter jurisdiction. Here, Plaintiff’s own allegations establish that its
25 purported interpretation of the 1991 Agreement requires the Court to construe and
26 analyze copyright law, by addressing what rights the Plaintiff had (or did not have) as
27 a result of the *Abend* reversion. Plaintiff’s remand motion must be rejected for this
28 reason as well.

1 **II. STATEMENT OF FACTS**

2 **A. Capote Assigns Worldwide Rights to Paramount In 1958; After His**
 3 **Death, Certain Rights Revert To His Estate.**

4 In 1958, Truman Capote (“Capote”) wrote the Story. Complaint (“Compl.”)
 5 ¶16, 20. That same year, Capote assigned the worldwide motion picture rights to the
 6 Story to Paramount. *Id.* ¶ 20. In 1961, Paramount released its Academy-Award
 7 winning adaption of the Story, a full-length motion picture also called *Breakfast at*
 8 *Tiffany’s* (the “Film”). *Id.* ¶¶ 21-22.

9 Because the Story was published prior to the passage of the 1976 Copyright
 10 Act, its protections are governed by the 1909 Copyright Act, which divides copyright
 11 protections into two terms – an initial term, and a renewal term. Compl. ¶ 23.
 12 Because Capote died during the initial term of copyright (in 1984), by operation of
 13 the 1909 Act (and the Supreme Court’s interpretation of same in *Stewart*, 495 U.S.
 14 207 (1990)), certain rights in the Story reverted to his estate (the “Estate”), which
 15 were then assigned to Plaintiff. Compl. ¶¶ 24-25, 27.

16 Throughout its Complaint, Plaintiff alleges that this *Abend* reversion resulted
 17 in all rights in the Story reverting to the Estate. However, this is a disputed legal
 18 issue. As explained below, a grant of foreign (outside of the U.S.) rights is not subject
 19 to an *Abend* reversion, and remains vested in the initial grantee. Indeed, this legal
 20 dispute was specifically referenced by the parties during their negotiation of the
 21 contract at issue in this litigation, including in documents incorporated by reference
 22 in the Complaint. *See* Declaration of David Grossman (“Grossman Decl.”), Ex. A, at
 23 3 (Plaintiff’s attorney asserts that “Paramount has, at most [rights] in those foreign
 24 territories which do not adopt or apply the Stewart decision . . .,” but disputes that
 25 Paramount has even those rights).¹

26 _____
 27 ¹ The letter attached as Grossman Decl. Ex. A is incorporated by reference in
 28 Plaintiff’s Complaint, which quotes from this letter in discussing arguments that
 Plaintiff made concerning the effect of the *Abend* decision during the course of
 contract negotiations. *See* Compl. ¶ 37 (quoting from Grossman Decl., Ex. A, at 4).

B. Paramount And Plaintiff Enter Into The 1991 Agreement, And Paramount Regains All Film Rights To The Story, In Perpetuity.

On or around August 13, 1991, Plaintiff and Paramount entered into the 1991 Agreement. Pursuant to paragraph III.B thereof, Plaintiff conveyed to Paramount an option (the “Option”) to purchase all rights to produce new “Motion Pictures” based on the Story, and provided that, upon exercising the Option, Paramount would own such rights worldwide and in perpetuity:

Upon Paramount’s election to exercise said option, Paramount shall own all of [Plaintiff’s] rights held anywhere throughout the World in perpetuity, in any and all media now known or hereafter devised...including, without limitation, unlimited remakes or sequel Motion Pictures, whether theatrical or made for television....

(emphasis added).

The 1991 Agreement provided that Paramount’s Initial Option Period would be for eighteen months, subject to extension for an additional eighteen months. *See* Grossman Decl. Ex. B (¶¶ II.F, II.O, IV.B.1). So long as Paramount exercised its Option during such period – by giving written notice and paying \$300,000 – the parties’ agreement reiterated that:

Upon such payment and notice, the rights granted hereunder shall subsist forever in accordance with the terms of this agreement and shall include, without limitation, all Motion Picture rights in all media, worldwide in perpetuity

Id., ¶ IV.B.2 (emphasis added).

See Crea v. City of Hope, No. CV 08-6464-GW (AGRx), 2010 U.S. Dist. LEXIS 146525, at *25 (C.D. Cal. Oct. 4, 2010) (considering policy incorporated by reference in plaintiff’s complaint in denying renewed motion to remand, because “[i]n determining what are the well-pleaded claims in a complaint, the court can examine not only the allegations in that pleading but also can...under the incorporation by reference doctrine, take into account documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff’s pleading.”) (internal citations omitted). The Court may therefore consider the 1991 Agreement, and the pre-execution correspondence Plaintiff references in the Complaint in making a determination regarding jurisdiction.

1 Plaintiff concedes that Paramount validly exercised the Option. Compl. ¶¶48-
2 50, 54. Thus, under the plain language of the 1991 Agreement, Paramount obtained
3 all of Plaintiff’s Motion Picture rights, “forever” and “in perpetuity.”

4 The 1991 Agreement also contained additional provisions, which were
5 conditioned on Paramount failing to exercise the Option. Specifically, paragraph
6 III.C provides that “if Paramount does not elect to exercise its option pursuant to
7 Paragraph III.B above,” then Paramount “shall quitclaim to [Plaintiff] its rights in and
8 to [the Story]” – *i.e.*, the foreign rights that were not subject to the *Abend* reversion –
9 “for [a] six (6) year period” (defined in the agreement as the “Reversionary Period”).
10 Paragraph III.D further provides that, if Plaintiff failed to produce its own motion
11 picture during this contingent “Reversionary Period,” then Paramount would have a
12 new three-year period “commencing upon the expiration of [the] Reversionary
13 Period” (defined as “Paramount’s Additional Option Period”) to both pay the
14 purchase price and produce a new motion picture, or else quitclaim its subsisting
15 rights to Plaintiff “at the end of [Paramount’s Additional Option Period].”

16 Because Paramount did exercise the Option pursuant to paragraph III.B, neither
17 this contingent “Reversionary Period” nor “Paramount’s Additional Option Period”
18 ever came into existence (much less expired), and Paramount was never required to
19 quitclaim its rights to Plaintiff.

20 **C. Years Later, Plaintiff Purports To Rely On The “Legal State Of**
21 **Affairs” Following The *Abend* Reversion To Argue That Paramount**
22 **Did Not Acquire The Rights It Paid For.**

23 In 2020, Paramount learned that Plaintiff was shopping a television series based
24 on the Story. Because the 1991 Agreement provides that Paramount and Plaintiff
25 share in television rights, Paramount informed Plaintiff that it could not produce a
26 television series without Paramount’s involvement. *See* Compl. ¶¶ 60, 63-64.

27 During the ensuing discussions, Plaintiff claimed that it, not Paramount, solely
28 controlled all rights in the Story. Compl. ¶¶65. In correspondence from Plaintiff’s

1 attorney, which was shared with Paramount’s business affairs executive and is
2 incorporated by reference in the Complaint (*see id.*), Plaintiff made clear that this
3 position was based not on the language of the 1991 Agreement, but on purported
4 “extrinsic evidence” – including the “legal state of affairs” resulting from the *Abend*
5 reversion.

6 Specifically, in the April 28, 2020 letter to Paramount from Plaintiff’s attorney
7 Vincent Chieffo (the “Chieffo Letter,” Grossman Decl. Ex. C), Plaintiff argued that
8 Paramount’s claim of ownership of the motion picture rights is “based solely on its...
9 reading of only the words of the 1991 Agreement,” but that a court should also
10 consider “all extrinsic evidence...relevant to determine the contracting parties intent.”
11 *Id.* at 3. In particular, Plaintiff’s attorney asserted that Paramount’s interpretation of
12 the agreement “does not sufficiently consider the circumstances of and the disputes
13 resolved by the 1991 Agreement” -- *i.e.*, the reversion of renewal rights premised on
14 *Abend. Id.*

15 According to Plaintiff’s argument, following such reversion “all rights to
16 produce any future derivative works based on [the Story]...were now owned
17 exclusively by the Trust,” and “[b]ecause of [*Abend*], the Trust regained exclusive
18 ownership and control over very valuable intellectual property.” *Id.* According to
19 Plaintiff, “[g]iven that legal state of affairs,” the Trust was not willing to grant future
20 production rights to Paramount “without any corresponding obligation of Paramount
21 to actually produce [a] motion picture,” and this “legal state of affairs” must be
22 considered in interpreting the 1991 Agreement. *Id.*

23 As explained above, Plaintiff’s interpretation of the “legal state of affairs” –
24 that Plaintiff controlled all (as opposed to only domestic) rights following the *Abend*
25 reversion – is a disputed issue of copyright law.
26
27
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1 **D. Plaintiff Files Its Complaint, Which Asserts Claims Requiring**
2 **Construction Of The Copyright Act.**

3 On August 19, 2020, Plaintiff sent Paramount a draft complaint for declaratory
4 relief (and for copyright infringement) – to be filed in the Central District of
5 California. Plaintiff’s draft complaint asserted that federal question jurisdiction was
6 appropriate pursuant to 28 U.S.C. § 1331 and 1338(a). Grossman Decl., Ex. D, ¶9.
7 This draft complaint alleged that “there was a screenplay at Paramount that Paramount
8 executives liked, and that Paramount intended to sell the project to a streaming
9 platform” (*id.* ¶60), and sought a declaration that such screenplay (which the draft
10 complaint defined as the “Infringing Work”) is a “derivative work” of the Story. *Id.*
11 ¶76. The draft federal court complaint also contained numerous allegations
12 concerning the purported legal effect of the *Abend* reversion, and its relevance to
13 interpreting the 1991 Agreement. *Id.* ¶¶ 22-36.

14 In response to Plaintiff’s draft complaint, Paramount sent Plaintiff a letter
15 explaining that Plaintiff’s legal position was untenable, and that if Plaintiff were to
16 file such a complaint Paramount would seek attorneys’ fees pursuant to 17 U.S.C. §
17 505. McPherson Decl., Ex. 1. Plaintiff never responded to this letter. Instead,
18 Plaintiff filed the current Complaint in state court, which omits the draft complaint’s
19 cause of action for copyright infringement, but is otherwise indistinguishable from
20 the draft federal court complaint in all material respects.

21 **1. Plaintiff’s Complaint Repeats Its Argument That The Legal**
22 **Effect Of The *Abend* Reversion Must Be Considered In**
23 **Interpreting The 1991 Agreement.**

24 As in the Chieffo Letter (and the draft federal complaint), Plaintiff’s Complaint
25 relies heavily on “extrinsic evidence” that it contends supports its interpretation of the
26 1991 Agreement – including the *Abend* reversion. Plaintiff dedicates pages of its
27 Complaint to addressing (its view of) the legal effect of the *Abend* reversion (Compl.
28 ¶¶ 23-37), and repeatedly alleges that its legal interpretation – that *Abend* resulted in

1 all rights in the Story reverting to Plaintiff – supports Plaintiff’s interpretation of the
2 1991 Agreement. For example, the Complaint alleges that:

- 3 • Under the Copyright Act of 1909, and the Supreme Court’s decision in
4 *Abend*, Paramount’s rights in the Story reverted to Plaintiff upon renewal
5 (*id.* ¶¶ 23-27);
- 6 • As a result, Plaintiff allegedly regained “exclusive” ownership rights in the
7 Story, and Paramount lost “all” ownership rights (*id.* ¶ 30) (emphasis
8 added);
- 9 • Paramount’s continued exploitation of the Film, in any format, would
10 necessarily be infringing (*id.* ¶ 28);
- 11 • Plaintiff had the exclusive right to produce sequels, prequels and remakes
12 of the Film (*id.* ¶ 29);
- 13 • Based on Plaintiff’s interpretation of copyright law and the resulting alleged
14 ownership status, Plaintiff was free to make “excessive” and “exorbitant”
15 demands (*id.* ¶ 37, quoting *Abend*);
- 16 • As a result of the purported legal status following the *Abend* reversion,
17 Paramount face a “devastating” prospect and was “desperate” to re-obtain
18 its rights, and Plaintiff thus had “superior bargaining position” (*id.* ¶¶ 31-
19 32, 34) (emphasis added); and
- 20 • In light of this background, Plaintiff “was not willing to return to the
21 conditions set in the original 1957 Agreement between Paramount and
22 Capote, in which the future production rights had been granted without any
23 corresponding obligation of Paramount to actually produce any motion
24 picture based on the Work” (*id.* ¶ 36).

25 Plaintiff also argues, in its Complaint, that Paramount’s reading of the 1991
26 Agreement “makes no sense” in light of Plaintiff’s (disputed) interpretation of the
27 *Abend* reversion as resulting in Paramount losing all (as opposed to only domestic)
28 rights in the Story. *See* Compl. ¶76 n.1. Specifically, Plaintiff argues (contrary to the

1 express language of the 1991 Agreement) that Paramount’s conditional obligation to
 2 quitclaim its rights to Plaintiff could not have been conditioned on Paramount failing
 3 to exercise the Option, because “if Paramount had not exercised an option, it would
 4 have had no right[s] ... in the first place.” *Id.* However, if Paramount retained foreign
 5 rights in the Story following the *Abend* reversion, the conditional obligation to
 6 quitclaim those rights to Plaintiff upon failing to exercise the Option would make
 7 perfect sense.

8 2. **The Complaint Seeks A Declaration That A “Paramount** 9 **Screenplay” Is An Infringing “Derivative Work.”**

10 Plaintiff’s Complaint alleges that:

11 Elizabeth Raposo, the President of Productions at Paramount, liked the
 12 ‘Breakfast at Tiffany’s’ project...there was a screenplay at Paramount
 13 (hereinafter the ‘Paramount Screenplay’) that Paramount executives
 14 liked, and...Paramount intended to sell the project to a streaming
 15 platform.

16 Compl. ¶ 73. This exact allegation appears in Plaintiff’s draft federal complaint.
 17 Grossman Decl., Ex. D.

18 Based on this allegation, Plaintiff seeks a declaration that “the Paramount
 19 Screenplay is a derivative work of [the Story].” Compl. ¶79(d). Plaintiff also seeks
 20 declarations that Plaintiff “owns all rights, title and interest in and to” the Story, that
 21 Plaintiff has not sold, assigned, or otherwise transferred such rights to Paramount, and
 22 that Paramount has no right to sell, distribute, license or exploit “derivative works”
 23 based on the Story. *Id.* ¶¶ 79(a), (c).

24 **III. ARGUMENT**

25 “The Ninth Circuit follows the majority rule as outlined in *T.B. Harms Co. v.*
 26 *Eliscu*, 339 F.2d 823 (2d Cir. 1964), to determine if copyright subject matter
 27 jurisdiction exists.” *Scholastic Entm’t, Inc.*, 336 F.3d at 986. Under that test, an
 28 action “arises under” the Copyright Act if the complaint (i) “asks for a remedy
 expressly granted by the Copyright Act,” or (ii) requires “construction” or “an
 interpretation” of the Copyright Act. *Id.* Here, these criteria are unquestionably met.

1 **A. Plaintiff’s Claim For A Declaration That The Paramount**
2 **Screenplay Is A “Derivative Work” Plainly Arises Under The**
3 **Copyright Act.**

4 As explained above, Plaintiff seeks a declaration that “the Paramount
5 Screenplay” is a derivative work of the Story, that Plaintiff has not authorized
6 Paramount to exploit such derivative works, and that only Plaintiff (and not
7 Paramount) has the right to exploit such “derivative works.”

8 Of course, the exclusive right of a copyright owner to exploit “derivative
9 works” is a function of the Copyright Act. *See* 17 U.S.C. § 106. Thus, a declaration
10 that the Paramount Screenplay is a derivative work necessarily entails a determination
11 that it infringes Plaintiff’s (purported) exclusive rights under the Copyright Act. *See,*
12 *e.g., Sobhani v. @radical.media, Inc.*, 257 F. Supp. 2d 1234, 1238 (C.D. Cal. 2003)
13 (“[A] ‘derivative work’ ... is one which ‘would be considered an infringing work if
14 the material which it has derived from a preexisting work had been taken without the
15 consent of the copyright proprietor of such preexisting work.’”) (quoting *Mirage*
16 *Editions, Inc. v. Albuquerque A.R.T. Co.*, 856 F.2d 1341, 1343 (9th Cir. 1988));
17 *Litchfield v. Spielberg*, 736 F.2d 1352, 1357 (9th Cir. 1984) (same); *Oddo v. Ries*, 743
18 F.2d 630 (9th Cir. 1984) (“The manuscript and the book are both derivative works
19 based on the articles. As derivative works they necessarily infringe the copyrights in
20 the articles unless [plaintiff] granted permission to use the articles.”). And claims for
21 “declarations” of infringement plainly arise under the Copyright Act, for purposes of
22 subject matter jurisdiction. *See Humphreys & Partners Architects LP v. Atl. Dev. &*
23 *Invs. Inc.*, No. CV-14-01514-PHX-JJT, 2016 U.S. Dist. LEXIS 50977, at *15 (D.
24 Ariz. Apr. 15, 2016) (subject matter jurisdiction found over claim seeking declaration
25 of infringement).

26 Further, the determination of whether the Paramount Screenplay is sufficiently
27 similar to the Story to constitute a “derivative work” plainly requires a construction
28 or interpretation of the Copyright Act. In determining whether a work is “derivative”

1 of an earlier copyrighted work, “the Ninth Circuit has imported the similarity standard
2 used to determine infringement.” *Sobhani*, 257 F. Supp. 2d at 1238; *see also, e.g.,*
3 *Litchfield*, 736 F.2d at 1357 (plaintiff must establish “substantial similarity” to show
4 that defendant’s work is a derivative work); *UM Corp. v. Tsuburaya Prods. Co.*, No.
5 CV 15-03764-AB (AJWx), 2017 U.S. Dist. LEXIS 203303, at *33 (C.D. Cal. Sep. 8,
6 2017) (“To constitute a derivative work, the infringing work ... must be substantially
7 similar to the copyrighted work.”). And the determination of “substantial similarity”
8 requires that a court to review the works in question, to conduct a two-part analysis
9 consisting of the “extrinsic” test” and the “intrinsic” test, and to filter out purported
10 similarities that are “unprotectible” under the Copyright Act. *See, e.g., Rentmeester*
11 *v. Nike, Inc.*, 883 F.3d 1111, 1118 (9th Cir. 2018). Thus, where (as here) a claim
12 requires a comparison of two works in order to determine whether they are
13 “substantially similar” or if one is a “derivative work” of the other, it requires
14 construction of the Copyright Act and gives rise to federal jurisdiction. *See Scholastic*
15 *Entm’t*, 336 F.3d at 987 (explaining that, in a prior case, the Ninth Circuit found that
16 federal subject matter jurisdiction existed “because it was obvious that the claim
17 required a determination as to whether the two works...were sufficiently similar to
18 warrant a finding of infringement – a clear question of copyright law.”).²

19 Plaintiff’s efforts to evade this obvious result are unavailing. First, Plaintiff
20 spends pages arguing that “the complaint does not ‘arise under’ the Copyright Act
21 merely because the declaratory relief action seeks a judgment that defendants have no

22
23 ² *See also Shepard’s McGraw-Hill, Inc. v. Legalsoft Corp.*, 769 F. Supp. 1161, 1166
24 (D. Col. 1991) (“[T]he claims here require construction of the Copyright Act and
25 probably will require comparison of works.”); *XCEL Data Sys., Inc. v. Best*, No. 1:08-
26 CV-00613-OWW-GSA, 2009 U.S. Dist. LEXIS 34904, at *20 (E.D. Cal. Mar. 31,
27 2009) (“In declaring each party’s respective ownership rights, it is necessary to
28 examine and interpret both the original and derivative XPAWN programs and decide
the scope of each copyright. This question turns upon an application of the Copyright
Act.”) (citation omitted); *Performance Pulsation Control, Inc. v. Sigma Drilling
Techs., LLC*, No. 4:17-CV-00450, 2017 U.S. Dist. LEXIS 191530, at *11 (E.D. Tex.
Nov. 20, 2017) (claim for declaratory judgment regarding copyright ownership over
“derivative works” required the Court to construe the Copyright Act, and thus gave
rise to federal jurisdiction).

1 ...rights to sell...derivative works.” Mtn. at 19-20. But this is a red herring. Plaintiff
 2 does not merely seek a declaration that Paramount cannot sell “derivative works” in
 3 general; Plaintiff seeks a declaration that one specific screenplay – the Paramount
 4 Screenplay, which according to Plaintiff, Paramount is in the process of selling to a
 5 streaming service (Compl. ¶ 73) – is an infringing, derivative work.

6 As the Ninth Circuit held in *Topolos v. Caldewey*, 698 F.2d 991 (9th Cir. 1983),
 7 “[o]nly when [copyright] ownership is the sole question for consideration are federal
 8 courts without jurisdiction.” *Id.* at 994 (emphasis added). Here, because Plaintiff
 9 seeks not only a declaration that it owns and controls all rights in the Story, but also
 10 a declaration that a specific screenplay (which, by Plaintiff’s own allegations,
 11 Paramount is actively shopping) is an infringing work, Plaintiff’s arguments that an
 12 ownership claim, without more, is not enough to confer jurisdiction (Mtn. at 15-18)
 13 are simply inapposite.³

14 Next, Plaintiff disingenuously claims that it “has not accused Paramount of
 15 copyright infringement...through the creation of the Paramount Screenplay,” but
 16 rather merely alleges that Paramount “liked” the screenplay. Mtn., at 20. Not so.
 17 Plaintiff also seeks a declaration that the Paramount Screenplay is “derivative” (*i.e.*,
 18 infringing) of the Story, and alleges that Paramount intends to *distribute* the
 19 Paramount Screenplay by selling the project to a streaming platform – which (if
 20 Plaintiff’s arguments are accepted) would necessarily constitute copyright
 21 infringement. *See* 17 U.S.C. §106(3) (copyright owner has exclusive right of

22
 23 ³ Plaintiff also argues that *Scholastic* “completely contradicts” Paramount’s position,
 24 because in that case the Court declined to exercise jurisdiction because only
 25 ownership was at issue. Mtn. at 22-23. Plaintiff ignores that, in *Scholastic*, the
 26 counterclaim defendant had *stipulated* that it would not resell the allegedly infringing
 27 series until the courts resolved the ownership issue. Thus, in that case, “the ownership
 28 issue was the sole question presented for review.” *Scholastic Entm’t, Inc.*, 336 F.3d
 at 988. Here, by contrast, Paramount has not stipulated that it will not continue to
 exploit its motion picture rights in and to the Story, and Plaintiff itself alleges that
 Paramount is actively shopping the Paramount Screenplay. While the facts and results
 of *Scholastic* may have been different, the principles enunciated in that case – that
 “the existence of an ownership issue, in addition to copyright issues, does not deprive
 this court of jurisdiction,” *id.*, clearly support Paramount’s position.

1 distribution). Plaintiff cannot evade federal jurisdiction merely by casting its
2 infringement claim as one for “declaratory judgment.” At most, Plaintiff’s argument
3 suggests that he has not “sought a remedy granted by the Copyright Act;” it does
4 nothing to change the fact that determination of whether the Paramount Screenplay is
5 an infringing derivative work requires construction or an interpretation of the
6 Copyright Act, which alone suffices to establish federal jurisdiction.

7 Finally, Plaintiff resorts to arguing that its request to have the Paramount
8 Screenplay declared an infringing derivative work is “incidental” and no “big deal.”
9 Mtn. at 20-21. This is both factually incorrect – Plaintiff’s allegation that Paramount
10 is on the verge of selling a project to a streaming platform, and its request that the
11 Paramount Screenplay for that project be declared to be an infringing derivative work,
12 is substantively a “big deal” by any measure – and also legally baseless.

13 Plaintiff cites one New York case, *Stepdesign, Inc. v. Rsch. Media, Inc.*, 442 F.
14 Supp. 32 (S.D.N.Y. 1977), for the proposition that jurisdiction is lacking where
15 infringement allegations are “incidental.” However, the Second Circuit has expressly
16 rejected *Stepdesign*, and its “merely incidental” test, as inconsistent with the *T.B.*
17 *Harms* rule (which, as explained above, has been adopted in the Ninth Circuit). In
18 *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343 (2d Cir. 2000), the Second
19 Circuit criticized *Stepdesign* for “purporting to follow *T.B. Harms*” but in fact
20 “cit[ing] it for the proposition it rejected.” *Id.* at 349 n.4. *Bassett* recognized that
21 “[t]he *T.B. Harms* test differed significantly from the essence-of-the-dispute or
22 merely-incidental test,” (*id.* at 349), and explicitly rejected the “merely incidental”
23 test as “unworkable.” *Id.* at 352; *see also Parachute Press, Inc. v. Scholastic, Inc.*,
24 No. 99-7235, 2000 U.S. App. LEXIS 21398, at *4 (2d Cir. Aug. 22, 2000) (affirming
25 *Bassett*’s rejection of the “merely incidental” test).

26 Plaintiff also misleadingly suggests that *Nimmer on Copyright* “synthesiz[ed]
27 the various cases” and concluded that “the question boils down to whether the aspect
28 of the case which involves the Copyright Act is a ‘big deal.’” Mtn. at 21. This is

1 patently false. In fact, *Nimmer* was merely quoting (with apparent amusement) the
 2 verbiage of one South Carolina state court, and was not adopting that court’s
 3 reasoning. See 3 *Nimmer on Copyright* §12.01[A][1][b] (2020) (citing *Maxey v. R.L.*
 4 *Bryan Co.*, 295 S.C. 334, 338 (S.C. Ct. App. 1988)).⁴ Where *Nimmer* actually
 5 discusses the merely-incidental test, which is derived from the “short-lived approach
 6 in *Schoenberg v. Shapolsky Publishers, Inc.*, 971 F.2d 926 (2d Cir. 1992),” *Nimmer*
 7 explains that “the Second Circuit jettisoned *Schoenberg*.” *Nimmer* § 12.01[A][1][a].

8 Plaintiff’s demand for a declaration that the Paramount Screenplay is an
 9 infringing derivative work clearly requires construction of the Copyright Act. For
 10 this reason alone, federal jurisdiction is necessary.

11 **B. Plaintiff’s Own Complaint Establishes That Its Ownership Claim**
 12 **Requires Construction Of The Copyright Act.**

13 **1. The Effect of the *Abend* Reversion.**

14 Plaintiff dedicates pages of its Complaint to discussing the renewal provisions
 15 of the Copyright Act, and the Supreme Court’s interpretation of those provisions in
 16 *Stewart v. Abend*.

17 As Plaintiff notes, “[t]he Copyright Act of 1909 ... provided authors a 28-year
 18 initial term of copyright protection plus a 28-year renewal term,” *Stewart*, 495 U.S.
 19 at 212, (with the renewal term subsequently being extended by an additional 39 years,
 20 see, e.g., 3 *Nimmer on Copyright* § 9.11). The Supreme Court has held that
 21 “assignment of renewal rights by an author before the time for renewal arrives cannot
 22 defeat the right of the author’s statutory successor to renewal rights if the author dies
 23 before the right to renewal occurs.” *Stewart*, 495 U.S. at 215 (citing *Miller Music*
 24 *Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960)).

25
 26
 27 ⁴ The South Carolina court, in fact, concluded that the defendant’s alleged contractual
 28 breach (which resulted in copyright forfeiture) required construction of the Copyright
 Act to determine plaintiff’s damages, and therefore arose under the Copyright Act.
Maxey v. R.L. Bryan Co., 295 S.C. 334, 338 (1988).

1 On December 9, 1958, Plaintiff assigned Paramount “all motion picture rights”
 2 in the Story, “forever and throughout the world” Compl. ¶20. Because Capote
 3 died in 1984, during the initial term of copyright under the 1909 Act, Plaintiff
 4 correctly states that the rights in the renewal term of copyright, under the 1909 Act,
 5 reverted to Capote’s Estate. Compl. ¶¶23-24.

6 However, Plaintiff errs when it concludes that, as a result of this reversion, all
 7 rights in the Story passed to Plaintiff. This is because the Copyright Act has “no
 8 extraterritorial impact.” 3 Melville B. Nimmer & David Nimmer, *Nimmer on*
 9 *Copyright* § 9.06[E]; *see also, e.g., Subafilms, Ltd. v. MGM-Pathe Communs. Co.*, 24
 10 F.3d 1088, 1093 (9th Cir. 1994) (it is an “undisputed axiom that United States
 11 copyright law has no extraterritorial application”). Thus, because Capote granted
 12 Paramount worldwide rights in the Story, unlimited in time, following the domestic
 13 *Abend* reversion, Paramount continued to control all motion picture rights in the Story
 14 outside of the United States: “[A]lthough an author ... may recapture the United States
 15 copyright for the renewal term, rights under foreign copyright laws will largely remain
 16 vested in the original grantee absent any language in the grant to the contrary.” 3
 17 *Nimmer on Copyright* § 9.06[E].⁵

18 Of course, any court addressing the impact and scope of an *Abend* reversion
 19 (including the extraterritorial effect, if any, of such a reversion) must interpret and
 20 apply federal copyright law – as the *Abend* decision itself makes clear. *See Stewart*,
 21 495 U.S. 207 (engaging in statutory construction of the Copyright Act’s renewal
 22 provisions and considering Congressional intent behind the provision in reaching its
 23 ruling); *Penguin Group (USA) Inc. v. Steinbeck*, 537 F.3d 193, 197 (2d Cir. 2008)

24
 25 ⁵ Plaintiff disingenuously suggests that Paramount “appears to be about 30 years too
 26 late” to raise this issue regarding the effect of the *Abend* reversion. Mot. at 23. In
 27 fact, as Plaintiff well knows, this legal dispute was specifically referenced by the
 28 parties during the negotiation of the 1991 Agreement, and is in fact referenced in the
 1991 Agreement itself. *See* Grossman Decl. Ex. B, Recitals ¶6 (stating that, as a result
 of Capote’s death, Paramount’s rights to make and distribute future productions
 “within the United States ... may be deemed to have lapsed,” and that the *Abend*
 decision affected Paramount’s rights “at least within the United States.”)

1 (same); *Shropshire v. Canning*, 809 F. Supp. 2d 1139, 1143-45 (N.D. Cal. 2011)
2 (concluding that the issue of the extraterritorial reach of the Copyright Act is a
3 question arising under the Act). As explained below, Plaintiff’s own allegations
4 demonstrate that its claims require a construction and interpretation of these issues;
5 for this additional reason, this Court has subject matter jurisdiction over Plaintiff’s
6 claims.

7 **2. Plaintiff’s Allegations Establish That Its Interpretation Of**
8 **The 1991 Agreement Depends On Its (Faulty) Interpretation**
9 **Of The Legal Effect Of The *Abend* Reversion.**

10 Plaintiff argues that its claims do not “arise under” the Copyright Act because
11 this case requires “application of state law to interpret the parties’ ownership rights
12 flowing from a contractual agreement.” Mot. at 15. However, as explained above,
13 federal subject matter jurisdiction exists where a plaintiff’s claim requires
14 “construction” or an “interpretation” of the Copyright Act. Thus, even where a case
15 involves an ownership dispute or issues of contractual interpretation, federal subject
16 matter jurisdiction exists when resolution of those issues requires a construction or
17 interpretation of the Copyright Act. *See, e.g., Merchant v. Levy*, 92 F.3d 51, 56 (2d
18 Cir. 1996) (holding that construction of the Copyright Act was required where
19 “[d]efendants offer[ed] a number of arguments as to why Plaintiffs’ contribution to
20 [a] song [was] legally insufficient to make them joint authors...and why [a record-
21 company owner’s] contribution sufficed to make him a joint author (for example,
22 based on the ‘work for hire’ doctrine)”; *Sullivan v. Naturalis, Inc.*, 5 F.3d 1410, 1413
23 (11th Cir. 1993) (federal subject matter jurisdiction found to apply to dispute
24 concerning oral agreement to transfer rights, because it would be “necessary for the
25 district court to decide what the parties intended with respect to the ownership and
26 use of the...copyrighted material [and then] to interpret § 204(a) of the Copyright Act
27 to assess the validity of their actions.”); *Hill & Range Songs, Inc. v. Fred Rose Music,*
28 *Inc.*, 58 F.R.D. 185, 188 (S.D.N.Y. 1972) (“While the interpretation of the contract

1 itself might not be an adequate basis to sustain federal jurisdiction, the fact that it is
2 contingent upon a determination of whether Billy Jean Williams is a ‘widow’ within
3 the meaning of the Copyright Act is sufficient to sustain federal jurisdiction.”); *see*
4 *also Jasper v. Bovina Music, Inc.*, 314 F.3d 42, 47 (2d Cir. 2002) (finding that
5 “contract interpretation case that does present a substantial issue as to whether the
6 contract qualifies as a section 204(a) writing [under the Copyright Act]” is “within
7 federal court jurisdiction.”).

8 Here, Plaintiffs’ own allegations establish that, for months, Plaintiff has
9 repeatedly and consistently asserted that its understanding of copyright law –
10 specifically, its claim that, following the *Abend* reversion, all rights in the Story
11 (rather than just domestic rights) reverted from Paramount to the Estate – is critical to
12 interpreting the 1991 Agreement. The Chieffo Letter, which is incorporated by
13 reference in the Complaint (*see Crea*, 2010 U.S. Dist. LEXIS 146525, at *25)
14 expressly states that Plaintiff’s ownership claim is not based on the language of the
15 1991 Agreement, but rather is based on the “legal state of affairs” that existed post-
16 *Abend* reversion; *i.e.*, that given its purported sole and exclusive ownership of the
17 Story post-reversion, the Estate would not have granted future production rights to
18 Paramount “without any corresponding obligation of Paramount to actually produce
19 [a] motion picture” (the actual language of the 1991 Agreement notwithstanding). *See*
20 Grossman Decl., Ex. C.

21 Far from disavowing the arguments raised in the Chieffo Letter, Plaintiff’s
22 Complaint incorporates, repeats, and builds upon those arguments, dedicating pages
23 to its interpretation of the legal effect of *Abend*; repeatedly pressing its faulty
24 interpretation that, as a result of the *Abend* reversion, the Estate regained all (and not
25 merely domestic) rights in the Story; asserting that, based upon this faulty
26 interpretation, Plaintiff had “superior bargaining position” and was free to make
27 “excessive” and “exorbitant” demands; and again concluding that, against this
28 backdrop, Plaintiff “would not have” granted Paramount future production rights

1 “without a[] corresponding obligation...to actually produce a[] motion picture” – the
 2 express language of the 1991 Agreement to the contrary. Indeed, even while
 3 attempting to disclaim its reliance on federal copyright law, throughout its brief
 4 Plaintiff repeats its (disputed) claim that, following the *Abend* reversion, Plaintiff
 5 owned all rights in and to the Story – underscoring that this issue of federal copyright
 6 law is critical to Plaintiff’s theory of the case.⁶

7 Perhaps most critically, in its Complaint, Plaintiff relies on its (disputed)
 8 interpretation of copyright law to proactively attack *Paramount*’s interpretation of the
 9 (unambiguous) language of the Agreement as “mak[ing] no sense whatsoever.”
 10 Compl. ¶ 76 n.1. As explained above, it is Paramount’s position that, based on the
 11 unambiguous language of the Agreement: (i) if Paramount exercised the Option
 12 during a contractually-specified period (which it did), it would own all Motion Picture
 13 rights in the Story, worldwide and in perpetuity; but (ii) if Paramount failed to exercise
 14 its option, it would have to quitclaim its subsisting rights – *i.e.*, the foreign rights that
 15 it retained post-*Abend* reversion – to Plaintiff, for a six-year period defined as
 16 Plaintiff’s “Reversionary Period.” But Plaintiff claims that this interpretation
 17 “make[s] no sense” because, if Paramount did not exercise the Option, “it would have
 18 had no right[s] in the first place,” and there would have been nothing to “revert” to
 19 Plaintiff during the contractual “Reversionary Period.” Compl. ¶ 76 n.1. Of course,
 20 Plaintiff’s argument ignores that, had Paramount not exercised its option, it still would
 21 have had subsisting rights to quitclaim to Plaintiff – the foreign rights that survived
 22 the *Abend* reversion. Thus, to accept Plaintiff’s argument on this crucial point of
 23 contract interpretation – which Plaintiff elected to include in its Complaint – the Court
 24 must also accept Plaintiff’s interpretation of the legal effect of the *Abend* reversion,
 25

26 ⁶ See Mtn. at 8 (“Upon Capote’s death in 1984, any and all rights that Paramount
 27 owned in connection with the Work reverted to the Capote Estate....”); 16 (“The
 28 Capote Trust also alleges that it reacquired [Paramount’s] rights pursuant to copyright
law.”); 21 (“[T]he complaint recites how Capote’s death in 1984 led to a reversion of
(all) right to the Capote Estate”) (emphases added).

1 as resulting in Paramount losing all (including foreign) rights in the Story.

2 Despite Plaintiff's self-serving efforts to retroactively recharacterize its focus
3 on the *Abend* reversion as merely "informational as background" (Mtn. at 19), the
4 Complaint's treatment of this issue is not minor or incidental. For months, Plaintiff
5 has consistently and repeatedly asserted that its interpretation of the "legal state of
6 affairs" following the *Abend* reversion is critical to interpreting the 1991 Agreement
7 (indeed, more critical than the language of the contract itself) and resolving ownership
8 of the copyright at issue. And in its Complaint, Plaintiff relies on its (disputed)
9 interpretation of that "legal state of affairs" to argue that Paramount's interpretation
10 of the 1991 Agreement "make[s] no sense whatsoever."

11 Plaintiff cannot have it both ways. It cannot urge its (disputed) allegations
12 regarding the ownership status following the *Abend* reversion as a reason for a state
13 court to accept its interpretation of the 1991 Agreement (and resolve the copyright
14 ownership issue in its favor), only to turn around and disclaim those very same
15 allegations as irrelevant when it is faced with a removal petition. Plaintiff's own
16 allegations make clear that its "right to relief depends on the resolution of a
17 substantial, disputed federal question." *Flo & Eddie, Inc. v. Bill Graham Archives*
18 *LLC*, No. CV 09-2842 SVW (PJWx), 2009 U.S. Dist. LEXIS 148204, at *10 (C.D.
19 Cal. Aug. 25, 2009) (quoting *Lippitt v. Raymond James Fin. Servs.*, 340 F.3d 1033,
20 1042 (9th Cir. 2003)). Accordingly, federal jurisdiction is proper. *Id.* at *11-12.

21 **3. Plaintiff's Efforts To Evade The Consequences Of Its Own** 22 **Allegations Are Unavailing.**

23 In an effort to distract from its own allegations concerning the significance of
24 the *Abend* reversion (and the alleged pre-1991 ownership status), Plaintiff primarily
25 argues the general point that a dispute over copyright ownership does not, by itself,
26 give rise to federal jurisdiction. Mtn., at 15-18. Of course, Plaintiff's claims do not
27 involve an allegation of ownership "by itself" – they assert an interpretation of
28

1 contract that, according to Plaintiff's own allegations, rests on construction of
2 complicated principles of copyright law.

3 None of the cases that Plaintiff relies upon involve a similar situation, in which
4 the Plaintiff itself urged an interpretation of copyright law as a critical factor in its
5 interpretation of a contract or resolution of an ownership dispute, and they are thus
6 inapposite. For example, Plaintiff relies extensively on *Shaw v. Kastner*, 151 Misc.
7 2d 654 (N.Y. Cty. 1991), a New York lower state court case (Mtn. at 16), but in that
8 case, the plaintiff made no argument that federal copyright law issues were relevant
9 to the interpretation of the contract at issue. Thus, unlike in this case, “no construction
10 of the Copyright Act [was] required for resolution of the parties’ dispute.” *Id.* at 657.⁷

11 Plaintiff also argues that, “under the facts pleaded, it is undisputed that
12 Paramount does not own any rights pursuant to copyright law; whatever rights it
13 possesses to the [Story] is pursuant to the 1991 Agreement.” Mtn., at 17. This is
14 simply false. As explained above, following the *Abend* reversion Paramount
15 continued to own certain foreign rights in the Story; and because Paramount never
16 lost those rights, it does not merely own them “pursuant to the 1991 Agreement,” as
17 Plaintiff argues.

18 Most egregiously, Plaintiff contends that it is Paramount that is trying to place
19 the effect of an *Abend* reversion at issue. Mtn., at 22 (“Essentially, what Paramount is
20 arguing is that it would be nice of the court had some knowledge of how copyright
21 renewal works”), 23 (“Paramount’s argument appears solely to address its own defense
22 to the declaratory relief claim.”). The opposite is true. Paramount has consistently
23 contended that it continues to own all motion picture rights in the Story pursuant to the
24

25 ⁷ Further, in *Shaw* the defendant tried to have it both ways, first moving to dismiss the
26 plaintiff’s federal court complaint for lack of subject matter jurisdiction and then,
27 when plaintiff voluntarily withdrew that action and refiled in state court, moving to
28 dismiss the state court action based on the federal court’s exclusive jurisdiction. *Id.* at
655. Paramount obviously has not engaged in anything resembling such
gamesmanship, which, if successful, would have left the plaintiff in *Shaw* without any
forum whatsoever.

1 unambiguous language of the 1991 Agreement. McPherson Decl., Ex. 1. It is, instead,
2 Plaintiff that is relying on extrinsic evidence – including its interpretation of the “legal
3 state of affairs” following the *Abend* reversion. And, as Plaintiff acknowledges
4 elsewhere in its brief, it is Plaintiff’s Complaint, not Paramount’s defense, that matters
5 for purposes of subject matter jurisdiction. Mtn. at 12.

6 *Effects Assocs. v. Cohen*, 817 F.2d 72 (9th Cir. 1987) is on point. In that case,
7 the district court held that a plaintiff’s claims did not “arise under” federal law,
8 because the threshold issue to be resolved was a question of state contract law –
9 whether the plaintiff had alienated its copyright interest to the defendant. *Id.* at 73.
10 The Ninth Circuit disagreed, ruling that:

11 It may well turn out that [plaintiff] had alienated its interest in the
12 copyright, in which case defendants would be entitled to prove that the
13 alleged oral promise constituted an assignment or a license. However, a
14 claim “arises under” federal law for purposes of federal question
jurisdiction on the basis of a well-pleaded complaint, not from
anticipation of possible affirmative defenses.

15 *Id.* Similarly, for purposes of determining subject matter jurisdiction here, it does not
16 matter that Paramount may ultimately prevail based on the unambiguous language of
17 the 1991 Agreement. What matters is that Plaintiff seeks a declaration that a
18 Paramount Screenplay is an infringing “derivative work” (which requires the Court
19 to perform an analysis of the works at issue that requires a construction of the
20 Copyright Act), and Plaintiff urges an interpretation of the 1991 Contract that relies
21 on its (disputed) interpretation of federal copyright law. Thus, it is Plaintiff’s
22 affirmative claims – not Paramount’s defenses – that require construction of the
23 Copyright Act.

24 **C. Plaintiff’s Complaint Was Strategically Filed in State Court.**

25 Plaintiff is aware that this Court has federal question jurisdiction over this
26 dispute, as evidenced by the fact that, prior to filing the Complaint in state court,
27 Plaintiff sent Defendants a draft complaint for copyright infringement and declaratory
28 relief – to be filed in the Central District of California. Grossman Decl., Ex. D. After

1 Plaintiff was warned of the possibility of having to pay attorneys’ fees pursuant to the
2 Copyright Act, and in an attempt to manipulate its way into a court with less subject
3 matter expertise, Plaintiff recast its claim as a state court complaint (without changing
4 the substance of the claim in any material way).

5 After threatening Paramount with a substantively-identical federal complaint,
6 and then making minor revisions to its draft complaint in a transparent attempt to
7 avoid federal jurisdiction, Plaintiff has the audacity to suggest that Paramount’s
8 Notice of Removal was filed in bad faith. However, Paramount has every right to
9 demonstrate Plaintiff’s strategic filing and artful pleading. Plaintiff claims that *Cohn*
10 *v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) “does not even come close to
11 asserting” that pre-filing claim letters can be relevant to determining whether or not
12 federal jurisdiction is proper. Mtn., at 25. However, Plaintiff’s very description of
13 that case admits that it “held that a settlement letter was relevant evidence of the
14 amount in controversy” – a factor in determining federal diversity jurisdiction. *Id.*
15 While the jurisdiction at issue here is obviously subject matter jurisdiction, that does
16 not change the fact that Plaintiff’s draft is highly relevant, and appropriate, for
17 consideration.

18 Plaintiff’s attempt to distinguish *Bright v. Bechtel Petrol., Inc.*, 780 F.2d 766,
19 769-70 (9th Cir. 1986) fares no better. Plaintiff admits that *Bright* involved a
20 plaintiff’s attempt to mischaracterize the substance and scope of the complaint in
21 order to “evade” federal jurisdiction – in a case involving highly analogous and
22 relevant facts. Mtn., at 25. Plaintiff alleges that, unlike in *Bright*, it has not “made
23 any ‘new’ arguments in this motion which contradict the complaint as filed,” and “has
24 not attempted to conceal ‘the true nature of the complaint.’” Mtn., at 26. However,
25 as explained above, that is precisely what Plaintiff is attempting here. Plaintiff has
26 been trying to misrepresent the nature of its Complaint (which seeks a declaration that
27 the Paramount Screenplay is an infringing “derivative work” under the Copyright
28

1 Act), by arguing that it has simply alleged a contract claim and that it is Paramount
2 that has raised copyright issues. Nothing could be further from the truth.

3 Plaintiff takes issue with purported “errors” in Paramount’s Notice of
4 Removal, and contends that the “absence of any valid basis for removal warrants an
5 award of attorneys’ fees and costs against Paramount.” Mtn. at 27. This is absurd.
6 First, Plaintiff ignores that, pursuant to 28 U.S.C. 1446, a Notice of Removal should
7 be a “short and plain statement of the grounds for removal,” not a full-fledged brief
8 containing all possible legal and factual arguments. This brief – which does contain
9 a full recitation of relevant facts and legal arguments – makes clear there is certainly
10 a valid basis for removal, and no award of fees and costs is warranted.

11 Second, the purported “errors” are nonexistent, but rather consist of garden-
12 variety disagreements regarding the significance of a case to the parties’ respective
13 positions. For example, Plaintiff argues that *Scholastic Ent., Inc.* “do[es] not
14 support” Paramount’s position, but rather “completely contradicts it.” Mtn. at 22.
15 But Paramount merely cited *Scholastic* for the general (and indisputable)
16 proposition that a district court must exercise jurisdiction if “the complaint requires
17 an interpretation of the Copyright Act.” Dkt. 1, Notice of Removal ¶ 13. While the
18 facts of *Scholastic* may have led to a different result than is warranted here, the
19 principles elucidated in that case nevertheless support Paramount’s position.

20 Plaintiff also alleges that *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1124 (9th Cir.
21 2010) and *Ho v. Pinsukanjana*, No. 17-cv-06520-NC, 2018 U.S. Dist. LEXIS
22 89384, at *3 (N.D. Cal. Apr. 24, 2018) are inapplicable because they did not involve
23 contracts. Mtn. at 17-18. However, *Ho* did, in fact, involve a contract (*see Ho*,
24 2018 U.S. Dist. LEXIS 89384, at *7 (holding that allegations in the cross-complaint
25 “could be relevant in determining the contractual arrangement (or lack thereof),”))
26 and, in any event, Paramount merely cited *Ho* for the undisputed proposition that
27 federal jurisdiction exists where a complaint “seeks a declaration of ownership that
28 relies on interpretation of federal copyright law.” Dkt. 1, Notice of Removal ¶ 5.

1 Similarly, while Paramount’s “short and plain statement” did not include a lengthy
2 explication regarding *JustMed*, that case also held that ownership disputes that
3 implicate federal copyright law “arise under” the Copyright Act, and thus is relevant
4 to the issue of subject matter jurisdiction.

5 Finally, Plaintiff claims that Paramount’s description of *Kodadek v. MTV*
6 *Networks, Inc.*, 152 F.3d 1209, 1212 (9th Cir. 1998) is “misleading” because that
7 case involved preemption. Mtn. at 18. However, the preemption analysis can be
8 relevant in determining jurisdiction. *See Dielsi v. Falk*, 916 F. Supp. 985, 994 (C.D.
9 Cal. 1996) (explaining the “intriguing jurisdictional puzzle” of subject matter
10 jurisdiction and preemption in the copyright context, where claims are properly
11 removed to federal court because copyright law preempts them, but “after exercising
12 its removal jurisdiction, the Court concludes that it must dismiss the claim for lack
13 of subject matter jurisdiction under 17 U.S.C. § 411(a)” because “[i]f the Court
14 simply remanded the copyright claim to state court for lack of subject matter
15 jurisdiction, [the Court’s] order would be meaningless because under 28 U.S.C.
16 § 1338, federal courts have exclusive jurisdiction over copyright claims.”).

17 In any case, whatever quibbles Plaintiff has with the authority cited in
18 Paramount’s “short and plain statement,” it is abundantly clear that removal is
19 appropriate, and that Paramount’s request for removal is certainly not baseless.

20 **IV. CONCLUSION.**

21 For the reasons stated above, there is ample basis for removal, and this
22 Court should exercise jurisdiction over Plaintiff’s claim.

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