

4-9-2021

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Recommended Citation

Katherine Goetz, Comment, *To Fee or Not to Fee: The Availability of Attorney's Fees in Declaratory Relief Actions for Copyright Abandonment Under the Copyright Act*, 62 B.C. L. REV. E. SUPP. II.-266 (2021), <http://lawdigitalcommons.bc.edu/bclr/vol62/iss9/16/>.

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TO FEE OR NOT TO FEE: THE AVAILABILITY OF ATTORNEY’S FEES IN DECLARATORY RELIEF ACTIONS FOR COPYRIGHT ABANDONMENT UNDER THE COPYRIGHT ACT

Abstract: On May 13, 2020, in *Doc’s Dream, LLC v. Dolores Press, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that a court has discretion under § 505 of the Copyright Act to award reasonable attorney’s fees in declaratory relief actions for copyright abandonment. In this matter of first impression, the Ninth Circuit reversed the U.S. District Court for the Central District of California’s holding that a declaratory relief action for copyright abandonment does not invoke the fee-shifting provision under the Copyright Act. This Comment argues that the Ninth Circuit’s holding appropriately reflects congressional intent.

INTRODUCTION

Congress established federal copyright protections under the Copyright Act of 1976 (the Act) to advance two constitutional goals: to promote creative progress and broaden public access to art and science.¹ Section 505 of the Act, among other sections, reflects these constitutional objectives.² Section 505 of

¹ See U.S. CONST. art. I, § 8, cl. 8 (stating that the purpose of the Patents and Copyrights Clause is “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”); 17 U.S.C. §§ 101–1401 (providing the Copyright Act in its entirety); *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429, 431–32 (1984) (citing *United States v. Paramount Pictures*, 334 U.S. 131 (1948)) (explaining that copyright law’s main purpose is to motivate creators to continue to create by providing temporary ownership in their creations while limiting their ownership so the public eventually has access to such works). Congress, empowered by the Constitution’s Patents and Copyrights Clause, established federal copyright protections. U.S. CONST. art. I, § 8, cl. 8. Despite this grant, the Constitution does not give citizens natural copyright or patent rights, and Congress has no obligation to impose copyright protections. See *Darden v. Peters*, 488 F.3d 277, 284 (4th Cir. 2007) (explaining that Congress is not required to create copyright protections). The only copyright protections granted to the public, therefore, are statutory. 18 AM. JUR. 2D *Copyright and Literary Property* § 1 (2021). In general, copyright is the exclusive protection of original creations that are put in a tangible form. *Copyright in General*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/help/faq/faq-general.html> [<https://perma.cc/A3ET-TM3R>]. Copyright does not need to be registered, and, as a result, it exists the moment someone creates a piece of original work. *Id.*

² U.S. CONST. art. I, § 8, cl. 8; 17 U.S.C. §§ 101–1401. Through the Copyright Act, Congress recognized the importance of providing artists limited ownership of their works but emphasized that the main objective is to promote public use of those works. See 17 U.S.C. §§ 101–1401 (providing the Copyright Act’s various chapters, including the limits it imposes on creators’ exclusive rights to their works, such as for fair use); *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016) (ex-

the Copyright Act, which grants courts discretionary fee-shifting privileges in civil actions under the Act, reflects these aims in two ways.³ First, the provision promotes creative progress by encouraging copyright holders with valid infringement claims to litigate them, thereby deterring infringement in the first place.⁴ Second, § 505 motivates the public to use and build upon art and science by protecting parties against frivolous infringement claims and discouraging parties with weak infringement claims from litigating.⁵

plaining that the overall purpose of copyright law is to promote the public use of art and science and that the Copyright Act bolsters this purpose by supporting both creators and public access to creations); *Fogerty v. Fantasy Inc.*, 510 U.S. 517, 526 (1994) (explaining that the main purpose of the Copyright Act is to advance the public's interest in art and science and award the production of art and science by providing limited ownership to creators); *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.* 499 U.S. 340, 349–50 (1991) (holding that the overarching goal of the Copyright Act is to promote the progression of arts and sciences and that rewarding copyright holders is secondary to this mission).

³ See 17 U.S.C. § 505 (providing that courts have discretion under the Copyright Act to award reasonable attorney's fees to the prevailing party in any civil action under the Act). Generally, fee-shifting statutes enable courts to award or punish one party by making the losing party in litigation cover all or part of the prevailing party's litigation costs. *Fee-Shifting*, AM. BAR ASS'N, https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/topics/fee_shifting/ [<https://perma.cc/N3PM-SPL2>]. Attorney's fees are payments made from a client to a lawyer for that lawyer's services. *Attorney's Fee*, BLACK'S LAW DICTIONARY (11th ed. 2019). Several fairness factors help courts determine the reasonableness of attorney's fees, such as the time an attorney spends on the client, the attorney's abilities and experience, and the challenges a particular case may impose. *Id.*; see MODEL RULES OF PRO. CONDUCT r. 1.5 (AM. BAR ASS'N 2020) (discussing when attorney's fees are deemed excessive or unreasonable).

⁴ See 17 U.S.C. § 505 (granting courts fee-shifting powers under the Copyright Act and thereby adding another monetary reward or punishment parties can weigh when evaluating the risks of pursuing litigation); *Fogerty*, 510 U.S. at 527 (explaining that § 505 of the Copyright Act purposefully encourages litigation following copyright infringement). The Copyright Act's fee-shifting provision encourages copyright holders with meritorious claims to litigate them by eliminating some of the fears of expensive litigation. See Ben Depoorter, *Copyright Enforcement in the Digital Age: When Remedy Is the Wrong*, 66 UCLA L. REV. 400, 403 (2019) (examining the argument that statutory damages, like fee-shifting statutes, are necessary to ensure valid claims are brought to court when a party may not otherwise be able to afford the costs). Copyright infringement “occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work” absent the copyright owner's permission. *Definitions*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/help/faq/faq-definitions.html> [<https://perma.cc/WTG4-HK4M>]. Copyright infringement claims are comprised of two elements: (1) copyright ownership and (2) a third-party's copying of substantial pieces of the copyrighted works. *Feist Publ'ns, Inc.*, 499 U.S. at 361 (citation omitted). There are several defenses to copyright infringement claims, including fair use. See 17 U.S.C. § 107 (providing the fair use provision of the Copyright Act); Clark D. Asay et al., *Is Transformative Use Eating the World?*, 61 B.C. L. REV. 905, 907 (2020) (arguing that fair use is the most important defense to copyright infringement claims). Defendants may claim fair use if they used the copyrighted piece in question for purposes such as news reporting, classroom use, teaching, or scholarship. 17 U.S.C. § 107.

⁵ See 17 U.S.C. § 505 (providing the Copyright Act's fee-shifting provision); *Kirtsaeng*, 136 S. Ct. at 1986 (explaining that the fee-shifting provision in the Copyright Act discourages parties with weak claims from litigating but also encourages parties, both copyright holders and the public, to defend themselves against frivolous copyright claims because of the added protection of recovering attorney's fees).

Although there is consensus that § 505 advances these constitutional goals, the boundaries of § 505 has been the subject of recent litigation.⁶ The U.S. Court of Appeals for the Ninth Circuit in particular recently expanded what can constitute a civil action under the Act, thereby broadening a court's fee-shifting ability.⁷ In 2020, in *Doc's Dream, LLC v. Dolores Press, Inc.*, the Ninth Circuit held, as a matter of first impression, that an action seeking a declaration that a party has abandoned its copyright constitutes a civil action under the Act.⁸ In doing so, the court acknowledged its discretionary power to award reasonable attorney's fees in these actions.⁹

Part I of this Comment provides an overview of the Copyright Act's fee-shifting provision and the relevant facts and procedural background of *Doc's Dream, LLC*.¹⁰ Part II discusses the divide between the U.S. District Court for the Central District of California and the Ninth Circuit regarding the scope of § 505 of the Copyright Act.¹¹ Finally, Part III argues that the Ninth Circuit's holding in *Doc's Dream, LLC* better reflects the congressional intent behind the Copyright Act.¹²

⁶ See 17 U.S.C. § 505 (providing the fee-shifting provision of the Copyright Act); *Fogerty*, 510 U.S. at 517–18, 526 (explaining how § 505 aims to further the Copyright Act's goals of increasing public access to creative works, which ultimately supports the overall constitutional goals of encouraging public access to the arts and sciences); see, e.g., *Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019) (holding that “full costs” in § 505 do not include expenses for jury consultants, e-discovery, or witness fees, among other things); *Kirtsaeng*, 136 S. Ct. at 1985 (holding that objective reasonableness cannot be the controlling factor in determining whether to grant attorney's fees under § 505); *Doc's Dream, LLC v. Dolores Press, Inc.*, 959 F.3d 357 (9th Cir. 2020) (considering whether copyright abandonment constitutes a civil action under § 505 of the Copyright Act).

⁷ *Doc's Dream, LLC*, 959 F.3d at 363.

⁸ *Id.*; see 17 U.S.C. § 505 (permitting courts to grant attorney's fees if the action arises under the Copyright Act). A copyright owner can abandon their ownership of a copyright, meaning that any rights the copyright owner had under the Copyright Act no longer exist. See *Micro Star v. Formgen, Inc.*, 154 F.3d 1107, 1114 (9th Cir. 1998) (explaining that copyright abandonment is a “well settled” right); *Nat'l Comics Publ'g, Inc. v. Fawcett Publ'g, Inc.*, 191 F.2d 594, 598 (2d Cir. 1951) (pioneering the idea of “copyright abandonment”). In other words, once a copyright owner decides to abandon their copyright, they permanently forfeit their right to private ownership. See Lior Jacob Strahilevitz, *The Right to Abandon*, 158 U. PA. L. REV. 355, 391 (2010) (explaining that abandoned copyrights are permanently public). If a court declares that a copyright owner has abandoned their copyright, other parties cannot be held liable for copyright infringement. See *Nat'l Comics Publ'g, Inc.*, 191 F.2d at 598 (providing the copyright abandonment doctrine); *Doc's Dream, LLC*, 959 F.3d at 358 (explaining that if a copyright holder abandons the copyright, the copyright protections are forfeited).

⁹ See 17 U.S.C. § 505 (stating that a court “may” grant attorney's fees, therefore giving the court discretion in allocating such fees); *Doc's Dream, LLC*, 959 F.3d at 363 (recognizing the court's right to grant attorney's fees in declaratory relief actions for copyright abandonment).

¹⁰ See *infra* notes 13–36 and accompanying text.

¹¹ See *infra* notes 37–57 and accompanying text.

¹² See *infra* notes 58–71 and accompanying text.

I. ATTORNEY'S FEES AND *DOC'S DREAM*

In 2020, in *Doc's Dream, LLC v. Dolores Press, Inc.*, the U.S. Court of Appeals for the Ninth Circuit held that declaratory relief actions for copyright abandonment sufficiently invoke the Copyright Act, thereby enabling courts to grant attorney's fees under § 505.¹³ Section A of this Part discusses the Copyright Act's attorney's fees provision and a court's power to award these fees.¹⁴ Section B introduces the facts and procedural history of *Doc's Dream, LLC*.¹⁵

A. *Section 505, Attorney's Fees, and the "American Rule"*

An award of reasonable attorney's fees is the exception, not the rule, in American law.¹⁶ Explicit statutory provisions that enable courts to grant attorney's fees are therefore exceedingly rare.¹⁷ Without concrete permission from

¹³ See *Doc's Dream, LLC v. Dolores Press, Inc.*, 959 F.3d 357 (9th Cir. 2020) (providing the Ninth Circuit's ruling regarding declaratory relief actions for copyright abandonment and the court's right to grant attorney's fees in such actions).

¹⁴ See *infra* notes 16–22 and accompanying text.

¹⁵ See *infra* notes 23–36 and accompanying text.

¹⁶ See *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252–53 (2010) (explaining that the American Rule provides that each party pays its own attorney's fees unless there is a statute or contract that states differently); *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975) (explaining that American law, unlike English common law, does not ordinarily enable prevailing parties to collect attorney's fees without congressional support), *superseded, in part, by statute*, Civil Rights Attorney's Fees Award Act of 1976, Pub. L. No. 94-559, 90 Stat. 2641 (1976) (codified at 42 U.S.C. § 1988(b)). The American Rule departs from the English Rule in part because of the complexities and uncertainties litigation brings. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717–18 (1967), *superseded, in part, by statute*, Lanham Act, Pub. L. 79-489, 60 Stat. 427 (1946) (codified in scattered sections of 15 U.S.C.) Under this reasoning, courts have held that parties should not be deterred from litigating or defending a claim because of an unjust fear of paying attorney's fees when the outcome of litigation is often unclear. *Id.* at 718. Therefore, the general purpose of attorney's fees provisions, such as deterring frivolous claims and encouraging meritorious claims, are not advanced. *Id.* Additionally, the American Rule helps ensure that parties with less resources are not further deterred from already costly litigation. *Id.* Ironically, this same argument is made in favor of fee-shifting statutes. See Note, *Fee Simple: A Proposal to Adopt a Two-Way Fee Shift for Low-Income Litigants*, 101 HARV. L. REV. 1231, 1238 (1988) (arguing that many fee-shifting statutes aim to lighten the burden on lower income parties, especially in cases where a party cannot afford representation or where a defendant has substantially more resources). Finally, additional litigation to decide how much attorney's fees is reasonable provides more stress on the courts and may not justify the costs. *Id.*

¹⁷ See *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 562 (1986) (stating that there are just over one hundred U.S. statutes that grant courts discretion to award reasonable attorney's fees); *Hensley v. Eckerhart*, 461 U.S. 424, 457 n.2 (1983) (Brennan, J., concurring) (explaining that statutory fee-shifting provisions are selective and do not represent litigation norms in America), *superseded, in part, by statute*, Prison Litigation Reform Act of 1995, Pub. L. No. 104-34, 110 Stat. 1321 (1996) (codified at 42 U.S.C. § 1997(e)).

statutes, or other outliers to this American Rule, courts have deemed it outside their judicial powers to allocate these fees.¹⁸

The Copyright Act is one such statute that employs a court's fee-shifting privileges by granting courts discretionary power to award reasonable attorney's fees to a prevailing party in a civil action invoking the Act.¹⁹ The Supreme Court offered several factors, such as bad faith, frivolousness, and unreasonableness, that courts should consider when deciding whether to grant attorney's fees in civil actions under the Copyright Act.²⁰ The challenge here,

¹⁸ See *Christiansburg Garment Co. v. Equal Emp. Opportunity Comm'n*, 434 U.S. 412, 417 (1978) (explaining that courts generally must rely on statutes and legislative guidance to impose attorney's fees but that there are "exceptional circumstances" where statutes are not necessary, such as when a party acts in bad faith); *Alyeska Pipeline Serv. Co.*, 421 U.S. at 247 (stating that it would be "inappropriate" for a court to award attorney's fees without congressional consent but noting that there are exceptions to this general rule). There are two main outliers—the bad faith doctrine and the common-benefit doctrine—that empower courts to grant attorney's fees despite no statutory grant to do so. See HENRY COHEN, CONG. RSCH. SERV., 94-970, AWARDS OF ATTORNEY'S FEES BY FEDERAL COURT AND FEDERAL AGENCIES 1 (2009) (explaining that these two doctrines stem from a federal court's inherent powers). The bad faith doctrine allows courts to grant attorney's fees to punish a party for acting in bad faith. *Chambers v. Nasco*, 501 U.S. 32, 50 (1991). For a court to award attorney's fees based on the bad faith doctrine, the "movant must be the prevailing party," the claim "provoking the motion must be unfounded," and "the claim or defense must have been lodged with a bad motive, such as harassment." Comment, *Nemeroff v. Abelson, Bad Faith, and Awards of Attorneys' Fees*, 128 U. PA. L. REV. 468, 472–73 (1979). The common-benefit doctrine, on the other hand, allows a court to impose attorney's fees on "a class of individuals not participating in the litigation" but who substantially benefit from that litigation. 32 AM. JUR. 2D *Federal Courts* § 191 (2021). Specifically, the doctrine allows the individual who brought the suit to recoup the litigation costs by taking the attorney's fees out of the total benefit derived and splitting the remaining benefit among the class. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392–94 (1970). The rationale behind this doctrine is to prevent the unjust enrichment that would occur when an individual successfully sued on behalf of a class of people and the benefit was divided among that class. See *id.* (providing the justification for the common-fund and substantial benefit doctrine).

¹⁹ See 17 U.S.C. § 505 (granting statutory permission to award attorney's fees in acts invoking the Copyright Act); *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 560 (9th Cir. 1996) (explaining that a court has the discretion to award attorney's fees under the Copyright Act and that determining the reasonableness of a fee must be made on a case-by-case basis). A prevailing party, for attorney's fees purposes, is a party that wins, at least in part, what that party sought in the litigation. *Hensley*, 461 U.S. at 433 (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278–79 (1st Cir. 1978)). Whether the prevailing party was the defendant or the plaintiff cannot influence the court's decision whether to award fees under the Copyright Act. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1985 (2016). In making sense of this rule, the Supreme Court has explained that defendants and plaintiffs should be encouraged equally to either defend or pursue meritorious defenses and claims. *Fogerty v Fantasy, Inc.*, 510 U.S. 517, 527 (1994).

²⁰ See *Fogerty*, 510 U.S. at 535 n.19 (adopting the factors a court must consider in determining whether to allocate attorney's fees to the prevailing party under the Copyright Act); *Glacier Films (USA), Inc. v. Turchin*, 896 F.3d 1033, 1037–38 (9th Cir. 2018) (remanding a case because the lower court misapplied the *Fogerty* factors, which the Supreme Court laid out in 1994, when determining whether to award attorney's fees). The Ninth Circuit has provided additional factors that courts should consider, such as the degree of success in the litigation and the burden the fee would impose. See *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 675 (9th Cir. 2017) (providing other factors a court could, but is not required to, consider when deciding whether to award attorney's fees, such as the extent of the prevailing party's success). For instance, in 2018, in *Williams v. Gaye*, the U.S. Court of

however, is determining when a civil action sufficiently invokes the Copyright Act to trigger a court's fee-shifting abilities in the first place.²¹ When awarding attorney's fees, a court must be cautious to stay within the Copyright Act's limited statutory authority.²²

B. Factual and Procedural Background of Doc's Dream, LLC

In 1983, Dr. Eugene Scott, a pastor at both Faith Center and the Wescott Christian Center in Glendale, California, launched the first twenty-four-seven religious broadcasting network featuring his sermons.²³ Dr. Scott reached a global audience through his broadcasts, publicly available recordings, and distribution agreement with Dolores Press.²⁴ The license agreement gave Dolores Press the right to distribute Dr. Scott's works for public viewing.²⁵ When Dr. Scott passed in 2005, his widow, Pastor Melissa Scott, took ownership of Dr. Scott's copyrighted works and maintained business relations with Dolores

Appeals for the Ninth Circuit held that the U.S. District Court for the Central District of California did not abuse its discretion when it denied a party's request for attorney's fees based in part on the degree of success obtained by that party. 895 F.3d 1106, 1133 (9th Cir. 2018). To determine whether to award attorney's fees, the district court in *Williams* measured the prevailing party's success by looking at the extent of infringement. *Williams v. Bridgeport Music, Inc.*, No. LA CV13-06004, 2016 WL 6822309, at *7 (C.D. Cal. Apr. 12, 2016), *aff'd in part, rev'd in part sub nom.* *Williams v. Gaye*, 885 F.3d 1150 (9th Cir. 2018). When measuring a prevailing party's degree of success, courts focus on the extent to which the party won or settled on the merits of a case. *Universal Dyeing & Printing, Inc. v. Lularoe, LLC*, No. 17-cv-06096, 2018 WL 4223725 at *7-8 (C.D. Cal. July 23, 2018) (differentiating between winning on the merits of a case and winning on a technical defense).

²¹ See *Doc's Dream, LLC v. Dolores Press, Inc.*, 959 F.3d 357, 360 (9th Cir. 2020) (deciding, as a matter of first impression, that declaratory relief for copyright abandonment constitutes a civil action under the Copyright Act).

²² See 17 U.S.C. § 505 (granting the courts fee-shifting powers under the Copyright Act); *Alyeska Pipeline Serv. Co.*, 421 U.S. at 247 (explaining that courts must stay within the explicit powers the Copyright Act granted to them).

²³ See *Doc's Dream, LLC*, 959 F.3d at 359. Millions of people watched Dr. Scott's outlandish and notorious commentary every night. See Glenn F. Bunting, *The Shock Jock of Televangelism: With Savvy Philanthropy and an In-Your-Face Style, Dr. Gene Scott Has Generated a Lavish Lifestyle, Powerful Friends in Los Angeles and a Fiercely Loyal Global Following*, L.A. TIMES (July 10, 1994), <https://www.latimes.com/archives/la-xpm-1994-07-10-tm-14042-story.html> [<https://perma.cc/B346-YA7K>] (describing Dr. Scott's "provocative, profanity-laced monologues" and stand-out dialogue that included phrases like "Nuke 'em in the name of Jesus" in regards to the Gulf War).

²⁴ *Doc's Dream, LLC*, 959 F.3d at 359.

²⁵ *Id.* A distribution license is a "marketing license" for a specific geographic area. *License*, BLACK'S LAW DICTIONARY, *supra* note 3. A license agreement is a grant of certain rights from the licensor, who holds the copyright, to the licensee. Schuyler Moore, *The 9 Types of Film Distribution Agreements*, FORBES (July 19, 2019), <https://www.forbes.com/sites/schuylermoore/2019/07/19/types-of-film-distribution-agreements/?sh=22d322466253> [<https://web.archive.org/web/20201119110735/https://www.forbes.com/sites/schuylermoore/2019/07/19/types-of-film-distribution-agreements/>]. Rights can include the right to sell the licensor's work. *Id.* Dolores Press is "one of the last true Christian bookstores" and sells Dr. Scott's recordings and books on its webpage. DOLORES PRESS, INC., <https://dolorespress.com/> [<https://perma.cc/49VB-2W95>].

Press.²⁶ In 2014, Minister Patrick Robinson, owner of Doc's Dream, sought permission to upload Dr. Scott's copyrighted materials online to share with his students.²⁷ Dolores Press denied the request, but Robinson published the videos anyway.²⁸ Since then, Dolores Press has filed several lawsuits alleging copyright infringement against Doc's Dream.²⁹

In 2015, Doc's Dream filed a counterclaim seeking declaratory relief that Dr. Scott had abandoned his copyrights.³⁰ A successful claim for copyright abandonment would eliminate all copyright entitlements of the previous copyright holder and, therefore, eliminate Doc's Dream's liability for copyright infringement.³¹ Unconvinced by the copyright abandonment argument, the U.S. District Court for the Central District of California granted summary judgment in favor of Dolores Press.³² Doc's Dream appealed, and the Ninth Circuit affirmed.³³

As the prevailing party, Dolores Press filed a motion for attorney's fees under § 505 of the Copyright Act.³⁴ In a matter of first impression, the U.S.

²⁶ See *Doc's Dream, LLC*, 959 F.3d at 359 (providing background on the ongoing business relationship between Melissa Scott and Dolores Press). A copyright can be transferred by will. See 17 U.S.C. § 201(d)(1) (providing a copyright holder's right to bequeath copyrights). Other rights of a copyright holder include his or her ability to distribute, sell, transfer ownership, and lease. *Id.* § 106.

²⁷ *Doc's Dream, LLC*, 959 F.3d at 359. Doc's Dream is a limited liability company in Georgia with scarce publicity regarding its function. Complaint for Copyright & Trademark Infringement at 2, *Dolores Press, Inc. v. Robinson*, 2015 U.S. Dist. LEXIS 82214, at *1 (No. 15-cv-02562) (C.D. Cal. June 23, 2015), *aff'd in part, rev'd in part, remanded in part sub nom.* *Doc's Dream, LLC v. Dolores Press, Inc.*, 678 F. App'x 541 (9th Cir. 2017).

²⁸ *Doc's Dream, LLC*, 959 F.3d at 359. Robinson's justification for moving forward with using Dr. Scott's recordings despite the clear denial of permission was to "stick it to the devil" and "get the ball rolling in this legal battle." *Id.*

²⁹ See *id.* at 358 (describing how the two parties have alleged a "litany of claims"); see *Doc's Dream, LLC v. Dolores Press, Inc.*, 766 F. App'x 467, 469 (9th Cir. 2019) (examining the several claims of copyright infringement of Dr. Scott's recordings). Defendants in the case include Patrick Robinson, Truth Seekers, Inc., Doc's Dream, LLC, and Bobbi Jones. *Doc's Dream, LLC*, 959 F.3d at 358.

³⁰ See *Doc's Dream, LLC*, 959 F.3d at 359 (outlining the history and posture of the *Doc's Dream* saga). Declaratory relief is "a unilateral request to a court to determine the legal status or ownership of a thing." *Relief*, BLACK'S LAW DICTIONARY, *supra* note 3.

³¹ See *Micro Star v. Formgen, Inc.*, 154 F.3d 1107, 1114 (9th Cir. 1998) (affirming that copyrights can be abandoned); *Nat'l Comics Publ'g, Inc. v. Fawcett Publ'g, Inc.*, 191 F.2d 594, 598 (2d Cir. 1951) (explaining that when people abandon their copyright, they no longer have rights to that copyright).

³² *Doc's Dream, LLC*, 766 F. App'x at 473.

³³ *Doc's Dream, LLC*, 959 F.3d at 359.

³⁴ *Id.* at 358; see 17 U.S.C. § 505 (providing the attorney's fees provision of the Copyright Act which Dolores Press relied on to file its motion). In the motion, Dolores Press argued that attorney's fees were warranted because Doc's Dream claim was unreasonable, filed in bad faith, and "worthy of deterrence as a meritless claim." *Doc's Dream, LLC*, 959 F.3d at 359. In part, § 505 of the Copyright Act seeks to deter parties from bringing frivolous claims by imposing additional monetary consequences on parties that do not take the time to evaluate the merits of their claims. See *Oracle Am. v. Hewlett Packard Enter. Co.*, No. 16-cv-01393, 2019 U.S. Dist. LEXIS 233432, at *9–10 (C.D. Cal.

District Court for the Central District of California denied Dolores Press's motion for attorney's fees, holding that the Copyright Act does not grant courts the discretion to award attorney's fees in an action seeking declaratory relief for copyright abandonment.³⁵ Dolores Press appealed, and, in May 2020, the Ninth Circuit vacated the district court's holding for proceedings to determine whether to award appropriate attorney's fees.³⁶

II. HOW THE COURTS' ANALYSES OF *NIMMER ON COPYRIGHT* LED TO DIFFERENT HOLDINGS

In a matter of first impression, the U.S. Court of Appeals for the Ninth Circuit's 2020 decision in *Doc's Dream, LLC v. Dolores Press, Inc.* affirmed a court's ability to award attorney's fees under the Copyright Act in declaratory relief actions seeking copyright abandonment.³⁷ Section A of this Part discusses the U.S. District Court for the Central District of California's holding on the matter.³⁸ Section B examines the Ninth Circuit's contrasting opinion.³⁹

A. *The District Court: Construction and Judicial Origin*

In considering whether to grant attorney's fees to Dolores Press, the district court held that a court can award attorney's fees in declaratory relief ac-

Nov. 12, 2019) (listing reasons that courts should consider deterrence when awarding attorney's fees under the Copyright Act).

³⁵ *Doc's Dream, LLC*, 959 F.3d at 358–60 (providing an overview of the procedural history of *Doc's Dream*). The district court focused on two arguments—that copyright abandonment does not require construction of the Act and that copyright abandonment's judicial origins exclude it from invoking § 505—to support their conclusion. *Id.* at 360.

³⁶ *Doc's Dream, LLC*, 959 F.3d at 363. The Ninth Circuit did not award attorney's fees itself but rather remanded the case to the lower court to determine whether to award Dolores Press attorney's fees. *Id.*; see *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 535 n.19 (1994) (providing the *Fogerty* factors). An award of attorney's fees is not automatic, and it is up to the court to decide whether to grant these fees. See *Lieb v. Topstone Indus.*, 788 F.2d 151, 156 (3d Cir. 1986) (explaining that attorney's fees are not awarded by default). The Ninth Circuit had jurisdiction to review the district court's denial of attorney's fees for an abuse of discretion and had the power to review the district court's legal analysis *de novo*. See *Fantasy, Inc. v. Fogerty*, 94 F.3d 553, 556 (9th Cir. 1996) (first citing *Maljack Prods. v. GoodTimes Home Video Corp.*, 81 F.3d 881, 889 (9th Cir. 1996); and then citing *Hall v. Bolger*, 768 F.2d 1148, 1150 (9th Cir. 1985)) (explaining that an appeals court will only review a district court's ruling for an abuse of discretion but that legal analysis and statutory interpretation, which guide the court's holding, can be reviewed *de novo*); *Lieb*, 788 F.2d at 154 (stating that an appeals court's standard of review of the district court's allocation of attorney's fees is limited to determining if the district court abused its power); *Advertisers Exch., Inc. v. Anderson*, 144 F.2d 907, 909 (8th Cir. 1944) (explaining that because the trial court did not abuse its discretion, the appeals court must affirm the award of attorney's fees).

³⁷ 17 U.S.C. § 505; see *Doc's Dream, LLC v. Dolores Press, Inc.*, 959 F.3d 357, 359 (9th Cir. 2020) (explaining that the Ninth Circuit has never held that declaratory relief actions for copyright abandonment under the Copyright Act allow a party to recover attorney's fees).

³⁸ See *infra* notes 41–48 and accompanying text.

³⁹ See *infra* notes 49–57 and accompanying text.

tions where adjudicating the issue requires construction of the Copyright Act.⁴⁰ The court concluded that copyright abandonment claims do not require construction of the Act.⁴¹

Due to the lack of case law on whether a court can grant § 505 attorney's fees in declaratory relief actions for copyright abandonment, the district court turned to *Nimmer on Copyright*, a prevailing copyright treatise, to make the determination.⁴² The district court focused on one of *Nimmer's* examples in particular, in which two parties disputed royalties over a shared work.⁴³ There, *Nimmer* claimed that the dispute did not arise under the Copyright Act, and, thus, a court would not be able to award attorney's fees.⁴⁴ As such, the court interpreted *Nimmer* as encouraging courts to award reasonable attorney's fees for declaratory relief actions under § 505 but only if the action requires statutory construction of the Copyright Act.⁴⁵

⁴⁰ *Doc's Dream, LLC*, 959 F.3d at 358–59.

⁴¹ *See id.* at 360 n.1 (explaining the district court's reasoning as to why a court does not have the power to award attorney's fees in this action).

⁴² *Id.* at 361; 4 MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* § 14.10 (Matthew Bender ed., rev. ed. 2019). *Nimmer on Copyright* is a treatise that is widely regarded as "authoritative" on copyright law. *Nimmer on Copyright: A Treatise on the Law of Literary, Musical and Artistic Property*, YALE L. SCH. LILLIAN GOLDMAN L. LIBR., <https://library.law.yale.edu/nimmer-copyright-treatise-law-literary-musical-and-artistic-property> [<https://perma.cc/VE4Y-LFHV>]. The Supreme Court has consistently relied on *Nimmer* in reaching its holdings. *See, e.g.*, *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1008 (2017) (relying on *Nimmer* in deciding whether cheerleading uniforms are copyrightable); *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991) (relying on *Nimmer* in deciding that a party cannot copyright a phone company's white pages).

⁴³ *Doc's Dream, LLC*, 959 F.3d at 361; 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b]. According to *Nimmer*, the classic example of when a party can recover attorney's fees is when one party sues another party for copyright infringement. *See* 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][a]. *Nimmer* also provides specific examples of when attorney's fees would be available under actions for declaratory relief. *Id.* § 14.10[B][1][b].

⁴⁴ 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b].

⁴⁵ *See Doc's Dream, LLC*, 959 F.3d at 359 (explaining the district court's reliance on the word "construction"); 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b] (using the word "construction" in discussing eligibility of attorney's fees in declaratory relief actions). The district court relied on its interpretation of several hypotheticals *Nimmer* provided, as well as *Nimmer's* use of the word "construction," to reach this conclusion. *Doc's Dream, LLC*, 959 F.3d at 359. The civil action must fall under the Copyright Act in order for a judge to have the power to grant attorney's fees under the Act. *See* 17 U.S.C. § 505 (specifying its application solely to civil actions under the Act). There is no mention of "construction" in § 505. *Id.* Instead, the district court relied on *Nimmer's* use of the term "construction." *See Doc's Dream, LLC*, 959 F.3d at 359 (claiming that the district court relied on *Nimmer's* use of construction); 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b] (using the word "construction" various times throughout the examples of when courts can grant attorney's fees under § 505). Statutory construction involves two steps. *See Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (1984) (outlining the basic rules of statutory interpretation). First, courts must look to the plain language of the statute. *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 405 (1979). If the plain language of the statute is ambiguous, the court must then turn to the surrounding context and congressional intent to determine the meaning of the statute. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (summarizing and applying the rules of statutory interpretation).

After determining that there must be construction of the Act to award attorney's fees, the district court then determined that declaratory relief actions for copyright abandonment do not involve construction of the Copyright Act.⁴⁶ First, the district court reasoned that because copyright abandonment is a judicially created doctrine, and because Congress decided not to include the doctrine in the Copyright Act, copyright abandonment does not fall under the Act.⁴⁷ Second, it held that the elements of a copyright abandonment claim—intent to abandon the copyright and an outward manifestation of that intent—do not require construction of the Copyright Act.⁴⁸

B. The Ninth Circuit Disagreed and Remanded for a New Trial

Conversely, the Ninth Circuit, also relying on *Nimmer*, held that any action involving a valid copyright and a dispute over whether the defendant infringed on that copyright invokes § 505 of the Copyright Act.⁴⁹ After reciting the same example from *Nimmer* the district court relied on, in which attorney's fees were not appropriate following a dispute over royalties, the Ninth Circuit evaluated another example as well.⁵⁰ In this example, a court could grant reasonable attorney's fees if one party sued another for a declaration that a particular work "falls outside the scope of copyright protection."⁵¹ The Ninth Circuit interpreted the sum of *Nimmer*'s hypotheticals to illustrate that when there is a dispute over the scope of a copyright, it constitutes a civil action under the Copyright Act.⁵² The court concluded that, because determining whether a

⁴⁶ *Doc's Dream, LLC*, 959 F.3d at 361.

⁴⁷ *Id.* at 362. Judge Learned Hand first pioneered the idea of "copyright abandonment" in the U.S. Court of Appeals for the Second Circuit's 1951 decision in *National Comics Publishing v. Fawcett Publishing*, 191 F.2d 594, 598 (2d Cir. 1951). The doctrine is widely accepted, and courts frequently rely on the *Fawcett Publications* analysis. Timothy K. Armstrong, *Shrinking the Commons: Termination of Copyright Licenses and Transfers for the Benefit of the Public*, 47 HARV. J. ON LEGIS. 359, 392 (2010). The district court relied on the fact that courts created the doctrine prior to the establishment of the Copyright Act, thus signifying Congress's intent not to include the phrase. *Doc's Dream, LLC*, 959 F.3d at 362. The district court also relied on the principles of property law to illustrate that abandonment is not exclusive to copyright law and that abandonment in general relies on factors outside of the Copyright Act, such as the intent of the alleged abandoner. *Id.* at 360.

⁴⁸ *Doc's Dream, LLC*, 959 F.3d at 362; see *Nat'l Comics Publ'g, Inc.*, 191 F.2d. at 598 (explaining that for a copyright owner to abandon their copyright ownership, they have to have the intent to abandon the copyright and make some outward manifestation of their intention to abandon it); see, e.g., *Hadady Corp. v. Dean Witter Reynolds, Inc.*, 739 F. Supp. 1392, 1398–99 (C.D. Cal. 1990) (illustrating a copyright abandonment case).

⁴⁹ *Doc's Dream, LLC*, 959 F.3d at 359.

⁵⁰ *Id.* at 361.

⁵¹ *Id.*; 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b].

⁵² See *Doc's Dream, LLC*, 959 F.3d at 361 (relying on *Nimmer* to hold that disputes over copyrights invoke § 505); 4 NIMMER & NIMMER, *supra* note 42, § 14.10[B][1][b] (providing various examples of when a court can grant attorney's fees).

copyright has been abandoned necessarily involves the scope of the copyright, it falls under § 505.⁵³

The Ninth Circuit then addressed the district court's holding that the Copyright Act explicitly excluded the judicially created copyright abandonment doctrine.⁵⁴ The court reasoned that the origins of copyright abandonment are immaterial to determining whether it sufficiently invokes the Act.⁵⁵ To illustrate its reasoning, the court highlighted multiple provisions of the Copyright Act that the district court relied on, including copyright attribution, copyright transfer, and copyright notice, to highlight how copyright abandonment necessarily involves construction of the Act.⁵⁶ Finally, the Ninth Circuit concluded that it is impossible to discuss a copyright holder's intention to abandon a copyright, as well as the outward manifestation of that intent, without turning to the Copyright Act and, thus, that such actions sufficiently invoke the Act.⁵⁷

III. THE NINTH CIRCUIT BETTER CAPTURED CONGRESS'S INTENT

In 2020, in *Doc's Dream, LLC v. Dolores Press Inc.*, the U.S. Court of Appeals for the Ninth Circuit ruled that courts have the power to award attorney's

⁵³ *Doc's Dream, LLC*, 959 F.3d at 361; see 17 U.S.C. § 505 (providing that any civil action under the Copyright Act invokes the fee-shifting provision).

⁵⁴ *Doc's Dream, LLC*, 959 F.3d at 362; see *Nat'l Comics Publ'g, Inc. v. Fawcett Publ'g*, 191 F.2d 594, 598 (2d Cir. 1951) (coining the term "copyright abandonment").

⁵⁵ *Doc's Dream, LLC*, 959 F.3d at 362.

⁵⁶ See *id.* (listing several of the Copyright Act's provisions that the district court relied on in coming to its conclusions). Copyright attribution discusses the right of a copyright holder to be accredited as the creator of their copyrighted material. 17 U.S.C. § 106A. Transfer of copyright refers to the copyright owner's ability to transfer the ownership to another party. *Id.* § 204. Copyright notice refers to the copyright holder's right to denote that their work is copyrighted, including adding the traditional "©" symbol. *Id.* § 401. The Ninth Circuit further acknowledged a third argument that the defendant, *Doc's Dream*, made to prevent appeal from the district court's ruling: that the action fell under the Declaratory Judgment Act rather than the Copyright Act. *Doc's Dream, LLC*, 959 F.3d at 363. Federal courts can have jurisdiction for actions under both the Declaratory Judgment Act and the Copyright Act. *Id.* The Declaratory Judgment Act alone, however, does not automatically give a federal court jurisdiction. See *id.* (explaining how the Ninth Circuit would not have had jurisdiction if it only invoked the Declaratory Judgment Act). Therefore, the Ninth Circuit responded by emphasizing that if the claim only came under the Declaratory Judgment Act, the district court would not have had jurisdiction. *Id.* The Ninth Circuit concluded that, to satisfy subject matter jurisdiction requirements and rule on this case in the first place, the district court must have considered this as a case under the Copyright Act. *Id.*

⁵⁷ *Doc's Dream, LLC*, 959 F.3d at 362; see *Nat'l Comics Publ'g, Inc.*, 191 F.2d at 598 (outlining the elements of copyright abandonment). The Ninth Circuit further acknowledged that it would be nearly impossible to evaluate a copyright abandonment claim without invoking some analysis of the Copyright Act. *Doc's Dream, LLC*, 959 F.3d at 362.

fees in declaratory relief actions for copyright abandonment.⁵⁸ The Ninth Circuit's holding was correct because it ultimately reflected congressional intent.⁵⁹

Given the rarity of fee-shifting provisions and the limited power Congress has granted courts under such provisions, courts have a duty to ensure that any judicial decision regarding attorney's fees falls within the strict bounds of its statutory allowance.⁶⁰ Although the Ninth Circuit has put to rest the debate over the plain meaning of the § 505 of the Copyright Act, analysis of whether its decision upholds Congress's intent sheds light on whether the court stayed within its judicial realm.⁶¹

The Copyright Act aims to advance the constitutional goals of promoting science and art by rewarding creators of original works and allowing the public to build upon such work.⁶² As a result, analysis of the Copyright Act must put such aims at the forefront.⁶³ Section 505 of the Act promotes these goals in two key ways.⁶⁴ First, it encourages people to advance the arts and sciences by affording them additional monetary protections should someone infringe.⁶⁵ Second, it promotes the public's use of the arts and science by protecting them from meritless infringement allegations and deterring copyright holders with weak claims from going to court.⁶⁶

⁵⁸ *Doc's Dream, LLC*, 959 F.3d at 363.

⁵⁹ See 17 U.S.C. §§ 101–1401 (providing the Copyright Act and its purposes); *Doc's Dream, LLC v. Dolores Press, Inc.*, 959 F.3d 357, 363 (9th Cir. 2020) (holding that fee-shifting is allowed in declaratory relief actions for copyright abandonment).

⁶⁰ See *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975) (explaining that prevailing parties are not usually entitled to an award of attorney's fees, that courts must respect this rule unless Congress explicitly enables fee-shifting under the circumstances, and that Congress has the exclusive power to choose which statutes enable attorney's fees provisions), *superseded, in part, by statute*, Civil Rights Attorney's Fees Award Act of 1976, Pub. L. No. 94-559, 90 Stat. 2641 (1976) (codified at 42 U.S.C. § 1988(b)); *Nat'l Res. Def. Council v. EPA*, 595 F. Supp. 65, 69 (D.D.C. 1984) (explaining that fee-shifting statutes are not the norm but that Congress has clear intent to establish outliers to the rule through statutes).

⁶¹ See *Alyeska Pipeline Serv. Co.*, 421 U.S. at 247 (explaining the importance of courts staying within their granted powers); *Doc's Dream, LLC*, 959 F.3d at 363 (ruling on the issue of what falls under the Copyright Act's § 505).

⁶² See *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016) (explaining the goals of the Copyright Act).

⁶³ See *id.* (explaining that the purpose of the Copyright Act must be considered when analyzing it).

⁶⁴ See *infra* notes 65–71 and accompanying text (explaining how § 505 promotes the goals of the Copyright Act).

⁶⁵ 4 NIMMER & NIMMER, *supra* note 42, § 14.10[A].

⁶⁶ David E. Shipley, *Discouraging Frivolous Copyright Infringement Claims: Fee-Shifting Under Rule 11 or 28 U.S.C. § 1927 as an Alternative to Awarding Attorney's Fees Under Section 505 of the Copyright Act*, 24 J. INTELL. PROP. L. 33, 34 (2016) (explaining how fee-shifting provisions can deter "frivolous claims" as well as reward prevailing parties facing such claims); Robert Aloysius Hyde & Lisa M. Sharrock, *A Decade Down the Road but Still Running Through the Jungle: A Critical Review of Post-Fogerty Fee Awards*, 52 U. KAN. L. REV. 467, 489 n.1 (2004) (citing Peter Jaszi, *505 and All That—The Defendant's Dilemma*, 55 LAW & CONTEMP. PROBS. 107, 107 (1992)) (explaining that § 505 of the Copyright Act is one of the most influential factors in determining whether someone with a potential copyright claim will bring forth litigation under the Copyright Act).

Awarding attorney's fees in declaratory relief actions seeking copyright abandonment advances the constitutional and congressional goals aforementioned.⁶⁷ First, awarding attorney's fees to the prevailing party of such actions both protects creators against infringement and deters infringers with increased litigation costs.⁶⁸ These allowances ensure that copyright infringers cannot rely on a frivolous defense of copyright abandonment, as Doc's Dream did.⁶⁹ Second, awarding attorney's fees in declaratory relief claims of copyright abandonment promotes the public's use of the arts and science by providing a valid defense for the public should a creation truly be abandoned.⁷⁰ By enabling parties to protect their creations and raise valid claims, while deterring parties from bringing fruitless claims in copyright abandonment cases, the overall purposes of the Copyright Act—balancing creators' rights with the public policy goals of promoting access and use of the arts and sciences—are furthered.⁷¹

⁶⁷ See U.S. CONST. art. I, § 8, cl. 8 (providing the constitutional goal of protecting the arts and sciences); 17 U.S.C. § 505 (maintaining and furthering Congress's intent in enacting the Copyright Act as a whole); *supra* notes 1–2, 63 and accompany text (explaining the constitutional and congressional goals of the Copyright Act).

⁶⁸ See *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 529 (1994) (citation omitted) (explaining that copyright litigation is a serious financial burden and that awarding attorney's fees may alleviate some pain of the process).

⁶⁹ Shyamkrishna Balganes, *Copyright Infringement Markets*, 113 COLUM. L. REV. 2277, 2280 (2013) (explaining the effects of costly litigation, including the costs of attorney's fees). Some creators may be discouraged to create because of the extraordinary costs of protecting their works, including litigation expenses, and awarding attorney's fees helps combat these costs. *Id.* In 2011, the average cost of infringement litigation for either party typically ranged from \$384,000 to \$2,000,000, making it nearly impossible for small companies or individuals to bring forth infringement claims. *Id.*

⁷⁰ See *Fogerty*, 510 U.S. at 527, 535 n.18 (explaining that the purpose of attorney's fees under § 505 of the Copyright Act is to discourage copyright infringement and that those who have valid copyright infringement defenses should also be encouraged to litigate or defend themselves against litigation). In 1994, in *Fogerty v. Fantasy, Inc.*, the Supreme Court analyzed whether a defendant should have equal access to § 505 as a plaintiff does. *Id.* at 527. The Court ultimately determined that defendants have just as much of a claim to attorney's fees under the Copyright Act as plaintiffs. *Id.* In doing so, the Court explained that a valid defense under the Copyright Act could lead to more creations, thus promoting art and science. *Id.*

⁷¹ See 17 U.S.C. § 505 (providing incentives for parties to bring meritorious claims with attorney's fees and deterring those with frivolous claims by creating extra costs associated with copyright litigation); *Fogerty*, 510 U.S. at 527 (explaining some of the goals of the Copyright Act including the promotion of the arts and sciences and protecting creators' rights). The implications of this case may not be widespread, however, as there are still many protections and barriers a prevailing party must overcome before a check for attorney's fees arrives in the mail. See *id.* at 518 (explaining that a court is not required to provide attorney's fees even when it is allowed to grant them under § 505). First, a court still maintains a large amount of discretion in deciding whether to award attorney's fees. See *id.* (pointing out that § 505's use of the word "may" confirms that a court is not mandated to award attorney's fees). An appeals court can only remand a decision regarding whether to reward attorney's fees if there is an abuse of discretion and, even then, the parties will have to go through an appeals process where the risk of losing even more money in attorney's fees may outweigh the benefit of winning the extra reward. *Lieb v. Topstone Indus.*, 788 F.2d 151, 154 (3d Cir. 1986). There are still standards the courts have set forth, most notably the *Fogerty* factors, dictating whether a court should award a pre-

CONCLUSION

The U.S. Court of Appeals for the Ninth Circuit effectively stayed within its judicial realm and upheld Congress's intentions when it held that attorney's fees are available in an action seeking a declaration of copyright abandonment. In so holding, the Ninth Circuit paved the way for the other circuits regarding the bounds of § 505. Moving forward, those in the Ninth Circuit and beyond must continue to promote the goals of the Copyright Act, as § 505 does, by encouraging production of arts and sciences and promoting public access to creations.

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Preferred citation: Katherine Goetz, Comment, *To Fee or Not to Fee: The Availability of Attorney's Fees in Declaratory Relief Actions for Copyright Abandonment Under the Copyright Act*, 62 B.C. L. REV. E. SUPP. II.-266 (2021), <http://lawdigitalcommons.bc.edu/bclr/vol62/iss9/16/>.

vailing party attorney's fees. *See Fogerty*, 510 U.S. at 535 n.19 (setting forth the various factors a court should consider when awarding attorney's fees under the Copyright Act).