

# The Burger Court Opinion Writing Database

*Mills Music, Inc. v. Snyder*

469 U.S. 153 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

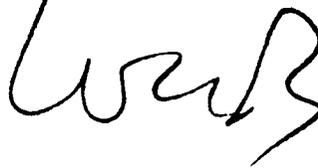
December 28, 1984

Re: No. 83-1153 - Mills Music, Inc. v. Marie Snyder  
and Ted Snyder, Jr.

Dear John,

I join.

Regards,



Justice Stevens

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44  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

October 15, 1984

No. 83-1153

Mills Music, Inc. v. Snyder

Dear Byron,

Thurgood, Harry, you and I are in  
dissent in the above. Would you be  
willing to take on the dissent?

Sincerely,

*Bill*

Justice White

cc: Justice Marshall

Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 3, 1984

No. 83-1153

Mills Music, Inc. v. Snyder

Dear John,

I'll await the dissent in the  
above.

Sincerely,



Justice Stevens

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107 . 23 1 107

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 27, 1984

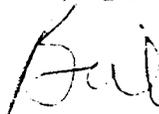
No. 83-1153

Mills Music, Inc. v. Marie Snyder  
and Ted Snyder, Jr., etc

Dear Byron,

Please join me.

Sincerely,



Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 19, 1984

Re: 83-1153 -

Mills Music, Inc. v. Snyder

Dear Bill,

I shall be glad to undertake the dissent  
in the above.

Sincerely,



Justice Brennan

cc: Justice Marshall  
Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 4, 1984

ASST. CLERK

83-1153 - Mills Music, Inc. v. Snyder

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Dear John,

In due course, I shall circulate a  
dissent in this case.

Sincerely yours,



Justice Stevens

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice White**

Circulated: DEC 20 1984

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1153

**MILLS MUSIC, INC., PETITIONER v. MARIE SNYDER  
AND TED SNYDER, JR., ETC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT**

[December —, 1984]

JUSTICE WHITE, dissenting.

I can accept the assertion that the "terminated grant" referred to in § 304(c)(6)(A) is the original grant from the Snyders to Mills. I also have no trouble with the notion that the derivative works at issue in this case were prepared "under authority of the grant," in that the Snyder-Mills grant endowed Mills, as owner of the copyright, with the authority to license the preparation of sound recordings of the Song. And it is merely an obvious rephrasing of the statutory language to say that users of these derivative works may continue to utilize them under the specific terms of the licenses issued by Mills. But these observations provide no basis for construing the statute so as to extend the benefits of the Exception to Mills, as well as to users of derivative works, after the Snyders have terminated the original grant and reclaimed ownership of the copyright.

I

The right to terminate defined in § 304(c) encompasses not only termination of the grant of copyright itself, but also termination of the grant of "any right under" that copyright. Subsection (6) of this provision reiterates this point, stating that "all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination," to the author or his heirs. A

To: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice White**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1153

MILLS MUSIC, INC., PETITIONER *v.* MARIE SNYDER  
AND TED SNYDER, JR., ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[January —, 1985]

JUSTICE WHITE, dissenting.

I can accept the assertion that the "terminated grant" referred to in § 304(c)(6)(A) is the original grant from the Snyders to Mills. I also have no trouble with the notion that the derivative works at issue in this case were prepared "under authority of the grant," in that the Snyder-Mills grant endowed Mills, as owner of the copyright, with the authority to license the preparation of sound recordings of the Song. And it is merely an obvious rephrasing of the statutory language to say that users of these derivative works may continue to utilize them under the specific terms of the licenses issued by Mills. But these observations provide no basis for construing the statute so as to extend the benefits of the Exception to Mills, as well as to users of derivative works, after the Snyders have terminated the original grant and reclaimed ownership of the copyright.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 4, 1984

Re: No. 83-1153-Mills Music v. Snyder

Dear John:

I await the dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1984

Re: No. 83-1153-Mills Music v. Snyder

Dear Byron:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 12, 1984

Re: No. 83-1153, Mills Music, Inc. v. Snyder

Dear John:

I am awaiting the dissent in this case.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 21, 1984

Re: No. 83-1153, Mills Music, Inc. v. Snyder

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 4, 1984

83-1153 Mills Music, Inc. v. Snyder

Dear John:

Please join me.

Sincerely,



Justice Stevens

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2

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

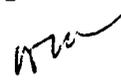
December 4, 1984

Re: No. 83-1153 Mills Music, Inc. v. Snyder

Dear John,

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1153

MILLS MUSIC, INC., PETITIONER *v.* MARIE SNYDER  
AND TED SNYDER, JR., ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[December —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

This is a controversy between a publisher, Mills Music, Inc. (Mills), and the heirs of an author, Ted Snyder (Snyder), over the division of royalty income that the sound recordings of the copyrighted song "Who's Sorry Now" (the Song) have generated. The controversy is a direct outgrowth of the General Revision of Copyright Law that Congress enacted in 1976.<sup>1</sup> The 1976 Act gave Snyder's heirs a statutory right to reacquire the copyright<sup>2</sup> that Snyder had previously granted to Mills; however, it also provided that a "derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination."<sup>3</sup> The sound recordings of the Song, which have generated the royalty income in dispute, are derivative works of that kind.<sup>4</sup> Thus, the dispute raises the question

<sup>1</sup> See 17 U. S. C. §§ 101-810. The 1976 Act generally became effective on January 1, 1978.

<sup>2</sup> *Id.*, at § 304(c)(2).

<sup>3</sup> *Id.*, at § 304(c)(6)(A). The full text of this provision is quoted *infra*, at n. 5.

<sup>4</sup> The 1976 Act defines a "derivative work" as follows:

"A 'derivative work' is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations,

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES:

10, 15, 21

Footnotes renumbered 35-43

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

Circulated: \_\_\_\_\_

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1153

MILLS MUSIC, INC., PETITIONER *v.* MARIE SNYDER  
AND TED SNYDER, JR., ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[December —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

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STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 13, 14, 22  
Footnotes renumbered 35-45

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor



From: Justice Stevens

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3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-1153

MILLS MUSIC, INC., PETITIONER *v.* MARIE SNYDER  
AND TED SNYDER, JR., ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[December —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

This is a controversy between a publisher, Mills Music, Inc. (Mills), and the heirs of an author, Ted Snyder (Snyder), over the division of royalty income that the sound recordings of the copyrighted song "Who's Sorry Now" (the Song) have generated. The controversy is a direct outgrowth of the general revision of copyright law that Congress enacted in 1976.<sup>1</sup> The 1976 Act gave Snyder's heirs a statutory right to reacquire the copyright<sup>2</sup> that Snyder had previously granted to Mills; however, it also provided that a "derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination."<sup>3</sup> The sound recordings of the Song, which have generated the royalty income in dispute, are derivative works of that kind.<sup>4</sup> Thus, the dispute raises the question

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 3, 1984

No. 83-1153 Mills Music, Inc. v. Synder

Dear John,

Please join me.

Sincerely,



Justice Stevens

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