

1 Marc Toberoff (S.B. #188547)
2 *mtoberoff@toberoffandassociates.com*
3 Jaymie Parkkinen (S.B. # 318394)
4 *jparkkinen@toberoffandassociates.com*
5 TOBEROFF & ASSOCIATES, P.C.
6 23823 Malibu Road, Suite 50-363
7 Malibu, CA 90265
8 Telephone: (310) 246-3333
9 Facsimile: (310) 246-3101

10 Alex Kozinski (S.B. # 66473)
11 *alex@kozinski.com*
12 719 Yarmouth Rd, Suite 101
13 Palos Verdes Estates, CA 90274
14 Telephone: (310) 541-5885
15 Facsimile: (310) 265-4653

16 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA**

19 SHOSH YONAY, an individual, and
20 YUVAL YONAY, an individual,

21 Plaintiffs,

22 v.

23 PARAMOUNT PICTURES
24 CORPORATION, a Delaware
25 corporation, and DOES 1-10,

26 Defendants.

Case No. 22-CV-03846

COMPLAINT FOR:

[1] DECLARATORY RELIEF

**[2] COPYRIGHT
INFRINGEMENT**

[3] INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiffs Shosh Yonay and Yuval Yonay (collectively, the “Yonays” or
2 “Plaintiffs”), the heirs of writer Ehud Yonay (the “Author”), for their complaint
3 against defendant Paramount Pictures Corporation (“Paramount”), allege as
4 follows:

5 **NATURE OF THE ACTION**

6 1. Ehud Yonay is the author of the original 1983 story entitled “Top
7 Guns,” (the “Story”) from which the 1986 motion picture “Top Gun” (the “1986
8 Film”) and the recently released 2022 sequel motion picture “Top Gun: Maverick”
9 (the “2022 Sequel”) are derived.

10 2. The iconic 1986 Film all started with Paramount securing exclusive
11 motion picture rights to Ehud Yonay’s copyrighted Story immediately after its
12 publication. In fact, the Author’s Story was duly credited on the derivative 1986
13 Film, which is widely known to have been based on the Story.

14 3. On January 23, 2018, the Yonays properly availed themselves of their
15 right to recover the copyright to the Story under the Copyright Act, 17 U.S.C. §
16 203(a), by sending Paramount a statutory notice of termination (the “Termination
17 Notice”) and thereafter filing it with the Copyright Office, effective January 24,
18 2020.

19 4. On January 24, 2020, the copyright to the Story thus reverted to the
20 Yonays under the Copyright Act, but Paramount deliberately ignored this,
21 thumbing its nose at the statute. This case arises out of Paramount’s conscious
22 failure to re-acquire the requisite film and ancillary rights to the Yonays’
23 copyrighted Story prior to the completion and release of their derivative 2022
24 Sequel.

25 5. Paramount engaged in the willful conduct alleged herein,
26 notwithstanding that it is a sophisticated multinational corporation whose core
27 business is based upon the value and enforcement of copyrights and other
28 intellectual property.

PARTIES

6. Plaintiff Shosh Yonay is an individual and citizen of, and resides in, Israel. Shosh Yonay is the widow and heir of the Author.

7. Plaintiff Yuval Yonay is an individual and citizen of, and resides in, Israel. Yuval Yonay is the son and heir of the Author.

8. Upon information and belief, Defendant Paramount is a corporation organized and existing under the laws of the State of Delaware, which has its principal place of business in the County of Los Angeles, California.

JURISDICTION AND VENUE

9. This is a civil action for copyright infringement and injunctive relief under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* (hereinafter, “the Copyright Act”) and for declaratory relief under the Declaratory Judgment Act, 18 U.S.C. § 2201.

10. This Court has original subject matter jurisdiction over the claims set forth in this complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, 28 U.S.C. §§ 1331, 1332, and 1338(a), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. Upon information and belief, this Court has personal jurisdiction over Paramount because it has its principal place of business in the State of California and in this District, and because a substantial portion of the relevant acts complained of herein occurred in the State of California and in this District.

12. Upon information and belief, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Paramount resides in this District, and pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to this action occurred in this District.

STATUTORY BACKGROUND

13. The U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Copyright Act”), provides an author with the inalienable right to recapture the

1 copyright to the author's creative material, after a lengthy waiting period, by
2 statutorily terminating without cause prior transfer(s) of such copyright.
3 Termination is carried out by simply serving advance notice of termination on the
4 original grantee or its successors and filing the notice with the U.S. Copyright
5 Office, within delineated time windows. 17 U.S.C. § 203(a).

6 14. Section 203(a) provides for the termination of post-1977 transfers of
7 rights under copyright by the author during a five (5) year period commencing
8 thirty-five (35) years after the date the rights were transferred. *Id.* § 203(a)(3). The
9 requisite notice of termination sets forth the "effective date" of termination, within
10 the five-year termination "window," when the previously transferred rights under
11 copyright will be recaptured by the author. Notice of termination may be served
12 by the author at any time between ten (10), and two (2) years before the effective
13 termination date. *Id.* § 203(a)(4)(A).

14 15. "Works for hire" are the sole exemption from the Copyright Act's
15 termination provisions. *Id.* § 203(a).

16 16. The termination right is the most important authorial right provided
17 by the Copyright Act, short of copyright itself. Congress was therefore very
18 protective of the termination right and, to that end, enacted a number of provisions
19 to prevent any waiver or encumbrance of the termination interest. For instance,
20 "[t]ermination of the [prior copyright] grant may be effected notwithstanding any
21 agreement to the contrary[.]" *Id.* § 203(a)(5).

22 17. Furthermore, "[h]armless errors in a [termination] notice that do not
23 materially affect the adequacy of the information required to serve the purposes
24 of . . . section [203(a)] of title 17, U.S.C. . . . shall not render the notice invalid."
25 37 CFR § 201.10(e)(1).

26 18. Congress anticipated that an author's exercise of his/her termination
27 right would usually result in a new license by the author to the terminated grantee
28 (such as Paramount). To that end, Congress provided "the original grantee" with

1 the exclusive opportunity to re-license an author's recaptured copyright "after the
2 notice or termination has been served," but before "the effective date of the
3 termination." *Id.* § 203(b)(4). The termination provisions thus reflect a deliberate
4 balance of competing interests.

5 19. Under the termination provisions, prior derivative works can
6 continue to be distributed just as before. 17 U.S.C. § 203(b)(1). Thus, the Yonays'
7 recovery of the U.S. copyright to the Story does not prevent Paramount or its
8 licensees from continuing to exploit prior derivative works, including the 1986
9 Film; it just requires a new license for sequel films and other derivative works
10 completed after the January 24, 2020 termination date.

11 20. In addition, because the Copyright Act has no extraterritorial
12 application, foreign rights to the Story remain with Paramount such that,
13 notwithstanding the Yonays' Termination Notice, Paramount would always
14 continue to benefit from "Top Gun." After the January 24, 2020 termination date,
15 a new U.S. license from the Yonays to Paramount of the underlying Story would
16 simply enable them to fairly participate with others in the proven market value
17 and financial rewards of the Author's creation, just as Congress intended. H.R.
18 Rep. No. 94-1476, at 124 (1976).

19 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

20 **The Chain of Title**

21 21. Ehud Yonay's Story was originally published on April 21, 1983 in
22 the May 1983 issue of *California* magazine and was registered in the U.S.
23 Copyright Office on October 3, 1983 (Reg. No. TX0001213463).

24 22. The magazine was not well known, and the subject of the Story—a
25 naval training base—was rather dry. In contrast, however, the Author's copyrighted
26 Story was written in a remarkably vivid and cinematic fashion, with references to
27 Hollywood stars and epic films such as "From Here to Eternity." Rather than
28 focusing merely on the dry historical details of the training school, the Story

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.