

Supreme Court Clarifies That Copyright Damages Are Not Limited to Three Years Before Filing of an Infringement Claim

Skadden

May 10, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Jordan Feirman

Counsel / New York
212.735.3067
jordan.feirman@skadden.com

Eliza S. Edlich

Associate / New York
212.735.2234
eliza.edlich@skadden.com

Larry F. Taylor

Law Clerk / New York
212.735.2799
larry.taylor@skadden.com

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One Manhattan West
New York, NY 10001
212.735.3000

On May 9, 2024, in *Warner Chappell Music, Inc. v. Nealy*, the U.S. Supreme Court ruled 6-3 that a copyright owner is entitled to monetary relief for timely infringement claims — *i.e.*, claims brought within the Copyright Act’s statute of limitations — no matter when the infringement occurred. This could potentially allow some plaintiffs to claim damages stretching back many years into the past.

But the Court expressly disclaimed any ruling on when copyright infringement claims accrue for statute of limitations purposes. Lower courts have historically applied one of two rules in determining when a claim accrues:

- **the “injury rule” or “occurrence rule”**: when a violation of the plaintiff’s legal right occurred, regardless of whether the plaintiff was aware of the infringement; or
- **the “discovery rule”**: the date the plaintiff discovered or should have discovered the infringing conduct.

The majority held that, assuming the discovery rule is applied, damages are not limited to the three-year period prior to filing — a limitation some courts had imposed based on certain language in a 2014 Supreme Court opinion.

However, a three-justice dissent suggested that the discovery rule applied by the majority of the circuit courts is not valid. The Court could reach that issue if it grants a recently briefed petition for *certiorari*.

What the Ruling Means

The Court’s holding confirms that there is no categorical bar to recovery of copyright infringement damages three years prior to the filing of an infringement claim. The majority clarified language from its 2014 opinion in *Petrella v. Metro-Goldwyn-Mayer*, which indicated that a plaintiff can “gain retrospective relief running only three years back from” the filing of suit.¹

The Warner Chappell decision is a boon to copyright infringement plaintiffs in jurisdictions such as the U.S. Court of Appeals for the Second Circuit that had interpreted *Petrella* to create a temporal bar to recovery of damages. Insofar as the majority of the circuit courts apply the discovery rule, copyright infringement plaintiffs presumptively will have access to a greater range of potential damages where infringing conduct stretches back numerous years prior to the filing of suit — provided that the suit is timely filed.

Nevertheless, at least three justices stand ready to directly address the validity of the discovery rule and hold that it is not valid. Such a ruling would depart from the historical practice of many courts and dramatically impact the copyright infringement landscape, significantly limiting damages in many cases.

That issue is squarely presented in the petition for *certiorari* in *Hearst Newspapers, LLC v. Martinelli* (Supreme Court Docket 23-474). The Court will decide whether to grant that petition in the near future.

¹ *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 672 (2014).

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Background on Copyright Statute of Limitations

Section 507(b) of the Copyright Act provides that “[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued” (17 U.S.C. § 507(b)). The statute, however, does not specify when copyright infringement claims “accrue” and the three-year statute of limitations begins running. Most courts have adopted the discovery rule.

In *Petrella*, the Supreme Court held that laches cannot bar a claim for copyright infringement damages brought within the three-year window under Section 507(b). But the implications of that holding for the discovery and injury rules were not clear.

On the one hand, the Court appeared to endorse the injury rule by stating that a copyright claim “accrues when an infringing act occurs” and that “a successful plaintiff can gain retrospective relief only three years back from the time of suit.” At the same time, however, the majority opinion recognized that the discovery rule is applied by the “overwhelming majority of courts,” and the Court disclaimed ruling on its validity.

In *Petrella*’s wake, litigants and courts alike attempted to square the Supreme Court’s categorical language regarding accrual with the discovery rule. For instance, the Second Circuit concluded that circuit precedent required application of the discovery rule to determine the accrual date of an infringement claim, but that damages are limited to those incurred during the three years prior to filing suit.²

Other courts held that *Petrella* does not require applying a separate damages bar based on a three-year look-back period; for example, the U.S. Court of Appeals for the Ninth Circuit has held that such an absolute bar “would eviscerate the discovery rule.”³

Background of Warner Chappell Music v. Nealy

In 2018, plaintiffs Music Specialist Inc. (MSI) and its owner, Sherman Nealy, sued defendants Warner Chappell Music, Inc.; Artist Publishing Group, LLC; and Atlantic Recording Corporation for copyright infringement. The plaintiffs claimed that the defendants began infringing copyrights in certain musical works in 2008 based on invalid licenses obtained from third parties. The plaintiffs discovered the alleged infringement in 2016.

² *Sohm v. Scholastic, Inc.*, 959 F.3d 39, 52 (2d Cir. 2020).

³ *Starz Ent., LLC v. MGM Domestic Television Distribution, LLC*, 39 F.4th 1236, 1244 (9th Cir. 2022).

The U.S. Court of Appeals for the Eleventh Circuit held that a copyright plaintiff that has a timely claim under the discovery rule may recover damages even if the infringing acts occurred more than three years before the filing of the lawsuit, rejecting the Second Circuit position. The court concluded that a damages bar would be inconsistent with *Petrella*’s preservation of the discovery rule, and further that there was no support for such a bar in the “plain text” of Section 507(b).

The Supreme Court granted *certiorari* explicitly “limited to the following question: Whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act’s statute of limitations for civil actions, 17 U. S. C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.” As stated, that question did not address whether the discovery or injury rule should apply, nor did it necessarily suggest a broad reexamination of *Petrella*.

Nevertheless, the defendants effectively argued in their briefing and at oral argument that the Copyright Act’s text requires infringement claims to be brought within three years after the infringement occurs (*i.e.*, that the injury rule should apply). In response, the plaintiffs contended that the viability of the discovery rule was not encompassed by the question presented by the Supreme Court. They argued that the Court should only decide the “limited” question presented or dismiss the writ of *certiorari* as improvidently granted.

The Supreme Court’s Ruling

In an opinion delivered by Justice Elena Kagan and joined by five other justices, the Court held that a copyright owner is entitled to recover damages for any “timely” claim — *i.e.*, a claim brought within three years of its accrual under Section 507(b). In so holding, the majority disclaimed any ruling concerning the validity of the discovery rule because that issue was “not properly presented here.” The majority “assum[ed] without deciding that a claim is timely under [Section 507(b)] if brought within three years of when the plaintiff discovered an infringement, no matter when the infringement happened.”

Even in a situation where the discovery rule might apply, the Court reasoned, there is no separate limit on damages occurring more than three years before a lawsuit’s timely filing.

The majority’s conclusion rested principally on the Copyright Act’s text. Explaining that any “separate three-year period for recovering damages” would have to “come from the Act’s remedial sections,” the majority looked to the statutory provisions

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setting forth the availability of monetary remedies (15 U.S.C. § 504(a)-(c)) and found no such limitation. These provisions state merely that an infringer is either liable for statutory damages or the owner's actual damages and the infringer's profits; they do not contain any express time limit on monetary recovery.

The majority also rejected the Second Circuit's approach while clarifying the meaning of *Petrella*. It reasoned that the Second Circuit's interpretation of the seemingly broad language in *Petrella* ignored the "context" of that case, where the plaintiff in fact had no timely claims for infringement because it had discovered the infringement long before filing suit. Accordingly, *Petrella* was "merely describ[ing] how the limitations provision works when a plaintiff has no timely claims for infringing acts more than three years old."

Moreover, the Second Circuit's recognition of the discovery rule while applying a three-year damages bar was deemed by the majority to be "essentially self-defeating" because the discovery rule's value is lost by preventing recovery of damages for older infringements.

In the dissent, Justice Neil Gorsuch, joined by Justices Clarence Thomas and Samuel Alito, argued that the text of the Copyright Act (and of other federal statutes) does not support a discovery rule. The dissent described the discovery rule as a departure from the "standard" injury rule and, unless a statute directs otherwise, it should only be applied in cases of fraud or concealment. Looking at the "standard language" of Section 507(b), the dissent found "little reason to suppose ... any departure from the usual rule."

The dissent contended that, by sidestepping whether the discovery or injury rule applies, the majority ignored the important "antecedent question" to the issue of the allowable time span for damages. Therefore, the dissent would have "dismissed [the case] as improvidently granted and awaited another [case] squarely presenting the question whether the Copyright Act authorizes the discovery rule."