

Alert | Intellectual Property Litigation

May 2024

Treble Ahead? Supreme Court Decision Sharp on Copyright Damages but Flat on the Discovery Rule

Significantly expanding the scope of monetary recovery for copyright infringement, the U.S. Supreme Court held, in a 6-3 [opinion](#) issued on May 9, 2024, that the Copyright Act's three-year statute of limitations is inapplicable to damages and thus there is no temporal limitation for timely asserted claims. In issuing this decision, however, the Court explicitly sidestepped the threshold – and arguably pivotal – question of when a copyright infringement claim “accrues” under the Copyright Act, leaving for another day the resolution of what makes a claim “timely.”

The case, *Warner Chappell Music, Inc. v. Nealy*, involved a copyright infringement claim asserted by Sherman Nealy, who recorded and released an album and several singles in the 1980s with Tony Butler through their short-lived music venture, Music Specialist, Inc. The Nealy/Butler collaboration eventually dissolved, and Nealy served prison terms for drug-related offenses from 1989 to 2008 and from 2012 to 2015. Unbeknownst to Nealy, Butler licensed works from the Music Specialist catalogue to Warner Chappell while Nealy was in prison, one of which was used in Flo Rida's hit song *In the Ayer*, which sold millions of copies and reached No. 9 on the Billboard chart.

Nealy discovered the existence of the Warner Chappell licenses after his second prison term and sued Warner Chappell for copyright infringement in 2018, alleging infringing activity as far back as 2008, 10 years before he filed suit. Nealy invoked the so-called “discovery rule” to argue that his infringement

claims were timely, alleging that he did not learn of Warner Chappell's infringement until 2016, the year after he completed his second prison term and less than three years prior to filing suit.¹

Warner Chappell did not dispute the applicability of the discovery rule in either the district court litigation or during the Eleventh Circuit appeal, focusing instead on its argument that, even if the claims asserted by Nealy many years after the infringing activity began were "timely," Nealy was time-barred from any monetary recovery beyond the Copyright Act's three-year statute of limitations (i.e., Nealy could recover damages solely for the three years immediately preceding his 2018 lawsuit). The district court agreed with Warner Chappell's arguments, but the Eleventh Circuit reversed on appeal, holding that a plaintiff with a timely claim could obtain "retrospective relief for [an] infringement" even if that infringement "occurr[ed] more than three years before the lawsuit's filing."

After its loss at the Eleventh Circuit, Warner Chappell seemingly pivoted its strategy before the Supreme Court, focusing much of its briefing on the threshold issue of claim accrual and timeliness and arguing that the Supreme Court should abrogate the "discovery rule" for copyright infringement claims. The Supreme Court declined to address this argument, however, instead modifying and narrowing the question presented by Warner Chappell to read: "Whether, under the discovery accrual rule applied by the circuit courts," a copyright plaintiff "can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit."

In answering this question in the affirmative, Justice Kagan, writing for the majority, focused on the text of the statute of limitations provision in the Copyright Act, which provides that "[n]o action shall be commenced under the provisions of this title unless it is commenced within three years after the claim accrued." Finding no time limitations with respect to the recovery of damages in this provision, the Court then noted, "[i]f any time limit on damages exists, it must come from the [Copyright] Act's remedial sections," which contain no such temporal limitations. See 17 U.S.C. § 504.

The Court therefore concluded that, as "[t]here is no time limit on monetary recovery," "a copyright owner possessing a timely claim for infringement is entitled to damages, no matter when the infringement occurred." To hold otherwise, according to the Court, would be to eviscerate the benefits of the discovery rule, making clear that, although the Court does "not resolve today which of those two rules [i.e., discovery rule or injury rule] should govern a copyright claim's timeliness," the Court "reject[s] applying a judicially invented damages limit to convert one of them into the other."

Throughout its opinion, the Court repeated the limited scope of its decision, stating explicitly that the question before the Court "incorporates an assumption: that the discovery rule governs the timeliness of copyright claims" and further that the Court has "never decided whether that assumption is valid – i.e., whether a copyright claim accrues when a plaintiff discovers or should have discovered an infringement, rather than when the infringement happened."

The very issue the Court majority took painstaking steps to table for another day became the focal point of the dissenting opinion, written by Justice Gorsuch and joined by Justices Thomas and Alito. The dissent faulted the majority for "sidestep[ping] the logically antecedent question of whether the [Copyright] Act

¹ Although the Copyright Act requires a plaintiff to file suit "within three years after the claim accrued," 17 U.S.C. § 507(b), judicial interpretations of the word "accrued" vary, with certain courts adopting the "discovery rule" and determining that a claim "accrues" when the plaintiff discovers, or with due diligence should have discovered, the infringing act and other courts deciding that the "injury rule" is applicable, meaning that a claim "accrues" when the infringement occurs.

has room for [a discovery rule],” explaining that the discovery rule is the exception to the injury rule and should apply as such – only “in cases of fraud or concealment.”

Because the limitations period generally begins to run at the time that a “plaintiff can file suit and obtain relief,” and because the Court “interprets statutes with that ‘standard rule’ in mind,” the dissent argued that the Copyright Act “almost certainly does not tolerate a discovery rule.” As a result, the dissent disagreed that Nealy was entitled to any monetary relief, since he did not allege “any fraud or concealment that would entitle him to equitable tolling,” instead declaring that “[t]he discovery rule thus has no role to play here – or, indeed, in the mine run of copyright cases.”

The dissent concluded by admonishing the majority for an opinion that “promises soon enough to make anything we might say today about the rule’s operational details a dead letter.”

Though limited in its scope, the Court’s opinion could have significant ramifications for monetary recovery in copyright infringement actions. The decision opens the door for copyright plaintiffs to seek damages going back decades and creates a potential landmine for defendants under the still-unsettled discovery rule. With this holding, fact discovery in copyright cases may become more complicated and costly as parties battle over “old infringements” (to use Justice Kagan’s term) when relevant evidence may have been long ago thrown away and fact witnesses become difficult to track down. The removal of the temporal limitation on monetary recovery may also lead to an increase in copyright infringement lawsuits, with plaintiffs looking for, and discovering, potential infringements from years and years ago.

More fundamentally, the Court’s opinion begs the question: How can the Court issue a decision allowing plaintiffs to seek damages for copyright infringement with no time limit under the discovery rule without first deciding whether the discovery rule is valid in the copyright infringement context? Should the Court take a case that squarely presents the “logically antecedent question” addressed by the dissent to resolve these uncertainties once and for all? Such a case is, in fact, primed for the Court at this very moment: *Hearst Newspapers, LLC v. Martinelli* (No. 23-474), which is currently awaiting the Court’s potential grant of *certiorari*, plainly asks the Court to answer “[w]hether the ‘discovery rule’ applies to the Copyright Act’s statute of limitations for civil claims.” Justice Gorsuch’s “dead letter” caution very well may become prophecy in the next term.

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