



assuming, but not deciding, that a discovery rule exists, scotus rejects three-year limit on copyright damages

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On May 9, 2024, the U.S. Supreme Court issued a 6-3 ruling in *Warner Chappell Music, Inc. v. Nealy*, No. 22-1078, 601 U.S. —, 2024 WL 2061137 (U.S. May 9, 2024), resolving a circuit split over whether copyright law's three-year statute of limitations bars a plaintiff from recovering all monetary damages suffered from inception even though the plaintiff discovered the wrongful conduct more than three years after the infringement took place. The Supreme Court held that damages can be recovered for all infringing acts, so long as the suit is deemed "timely"—*i.e.*, filed within three years of discovery.

Sherman Nealy, a Miami music producer, sued music publishing company Warner Chappell over claims that Flo Rida's song "In the Ayer" incorporated elements of the 1984 song "Jam the Box." Nealy claimed he never agreed to license the music, and that he was unaware of the unauthorized uses until 2016 because he had been in and out of prison from 1989 to 2008 and again from 2012 to 2015. He sued in December 2018 for damages dating back to the song's original release in 2008.

Under the Copyright Act, 17 U.S.C. § 507(b), a plaintiff must file suit "within three years after the claim accrued." Relying on *Sohm v. Scholastic Inc.*, 959 F.3d 39 (2d Cir. 2020), in which the Second Circuit held that the statute of limitations allowed plaintiffs to "gain retrospective relief running only three years back," the defendants argued that notwithstanding the date of discovery, the plaintiff could not recover damages since inception. The Eleventh Circuit disagreed, setting up a circuit split.

In a 6-3 opinion authored by Justice Elena Kagan, the Supreme Court affirmed the Eleventh Circuit's ruling and held that "[t]he Copyright Act entitles a copyright owner to recover damages for any timely claim" with no limit preventing recovery for infringement that happened beyond three years. First,

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the Court assumed without deciding that “the discovery rule governs the timeliness of copyright claims,” noting that the Court took this case on the assumption that such claims may be timely under the act’s limitations provision. “We have 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,” Justice Kagan wrote.

Based on that assumption, the Court expressly rejected the Second Circuit’s view, stating that “on top of having no textual support,” to permit a discovery rule enabling plaintiffs to sue for infringing acts that took place more than three years before suit was filed, but then limit damages only to infringements occurring within three years “is essentially self-defeating”—“tak[ing] away the value in what it has conferred, by preventing recovery of damages for those older infringements.” The Court explained that this approach “makes the discovery rule functionally equivalent to its opposite number—an accrual rule based on the timing of an infringement.” Although the Court did not decide that the discovery rule applies in copyright infringement cases, it rejected applying a “judicially invented damages limit.” Justice Kagan also dismissed the Second Circuit’s reliance on a sentence in *Petrella v. Metro-Goldwyn-Mayer Inc.*, 572 U.S. 663 (2014), which, when taken out of context, might seem to support the *Sohm* Court’s conclusion. The Court noted that “that statement merely described how the limitations provision worked in *Petrella*, where the plaintiff had long known of the defendant’s infringing conduct[.]”

The dissent, authored by Justice Neil Gorsuch and joined by Justices Clarence Thomas and Samuel Alito, noted that the Copyright Act “almost certainly does not tolerate a discovery rule,” and that the majority’s opinion “sidesteps” the question of whether the statute “has room for such a rule.” Rather than make the majority’s assumption, Justice Gorsuch would have dismissed the case as improvidently granted and waited for a more appropriate dispute to review.

The justices are currently considering whether to take up the “discovery rule” issue in another copyright dispute, *Martinelli v. Hearst Newspapers, L.L.C.*, 65 F.4th 231 (5th Cir. 2023), *petition for cert. pending*, No. 23-474 (filed Nov. 2, 2023, docketed Nov. 6, 2023).