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Supreme Court Rejects Three-Year Damages Bar in Copyright Infringement Actions

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Authors: Mark E. Avsec, Angela R. Gott, Megan C. Parker

The recent decision permits recovery of all damages in "timely filed" copyright infringement actions regardless of when the infringement occurred. The decision does not, however, answer the critical question of when an action is timely filed.

The U.S. Supreme Court held last week in *Warner Chappell Music Inc. v. Nealy* that the Copyright Act's three-year statute of limitations does *not* limit the damages recoverable for copyright infringement to the three-year period before the claim is filed. In a 6-3 decision, the Supreme Court ruled that the "Copyright Act entitles a copyright owner to recover damages for any timely claim."

The claims at issue involved sound recordings from the early 1980s, in a case brought against the publishing company by a musician who was incarcerated on and off for over 20 years. At the district court, Warner Chappell did not challenge the timeliness of Nealy's copyright infringement claim, because it was undisputed that he discovered the purported infringement only two years before filing suit (well within the Copyright Act's three-year statute of limitations) in 2018, even though the allegedly infringing acts dated back to as early as 2008. Instead, Warner Chappell argued that the statute of limitations restricted the damages he could recover to the three-year period before filing the complaint (*i.e.*, no earlier than 2015). The district court agreed.

On an interlocutory appeal, the Eleventh Circuit Court of Appeals reversed the district court's decision. It held that because Nealy's infringement claim was timely filed, he is entitled to *all* damages regardless of when the infringing acts occurred. Warner Chappell successfully petitioned the Supreme Court for review.

The Supreme Court Holds There is No Time Limit on Copyright Damages

As a preliminary matter, the Supreme Court's decision in the case first makes clear that the question of *when* a copyright claim accrues (whether when a plaintiff discovers it or when infringement took place) was *not* presented for review.

With Justice Kagan writing for the majority, the Court affirmed the Eleventh Circuit's decision, holding that a copyright owner is entitled to recover damages for *any* claim timely brought regardless of when the infringing acts occurred. The majority explained that the plain text of the Copyright Act does not contain any "separate three-year period for recovering damages" in its provisions setting forth the available monetary relief for infringement (citing 15 U.S.C. § 504(a)-(c)). Moreover, the Court reasoned that applying a three-year damages bar "takes away the value" of being able to bring claims for ongoing infringing acts upon later discovery of them.

A dissenting opinion, authored by Justice Gorsuch, appears to agree with the majority's holding regarding the damages bar, but disagrees with the majority's approach of merely *assuming*, rather than addressing head-on, whether the discovery rule (rather than the injury rule) applies to copyright infringement claims. Perhaps the current circuit split on that issue will be resolved in a future petition (such as the one currently pending in *Hearst Newspapers, L.L.C. v. Martinelli*, No. 23-474, which squarely presents that very question).

In sum, the *Warner Chappell* decision should be a welcome development to copyright owners seeking to enforce their rights against infringers because it allows for maximum recovery of damages, though it may well result in an increase in litigation concerning older infringement claims, at least in those courts that adhere to the discovery rule.

Benesch's copyright and creative content lawyers are experienced in all facets of copyright. Our copyright litigators are experienced in representing clients in disputes concerning copyrighted works. We are also skilled in helping clients resolve disputes in favor of business solutions. We are available to assist you with any copyright needs.

Mark E. Avsec at 216.363.4151 or mavsec@beneschlaw.com.

Angela R. Gott at 216.363.4671 or agott@beneschlaw.com.

Lidia C. Mowad at 216.363.4443 or lmowad@beneschlaw.com.

Megan C. Parker at 216.363.4416 or mparker@beneschlaw.com.