

Supreme Court Rules Plaintiffs can Recover Damages for Copyright Infringement Older than Three Years

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by Julia Lisi



The Supreme Court has now issued its awaited opinion in *Warner v. Nealy*, ruling that plaintiffs can recover damages for copyright infringement that is more than three years old, at least under the discovery accrual rule. We covered this case when the Court granted cert and heard oral arguments.

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Factual Background

The plaintiff in the case, Sherman Nealy, sued for infringement that began roughly ten years previously. Nealy argued that he only learned of the infringement recently, as he was in and out of prison until roughly three years before filing suit. The District Court ruled that Nealy could sue for the older infringement, but could only recover damages for the instances of infringement that occurred in the three year period leading up to his suit. The Eleventh Circuit, ruling on an interlocutory appeal, found differently and held that Nealy could recover damages for older infringement, as long as his claim was otherwise timely filed. The defendant, Warner Chappel Music, Inc., then filed a cert petition, which the Court granted.

Question Presented

The Court took up this case to settle a growing divide among the Circuit courts on how to apply the discovery rule to copyright infringement claims. Specifically, the Court addressed the question of whether the discovery rule allows plaintiffs to recover damages for infringement that occurred more than three years before a lawsuit was filed.

The Copyright Act's statute of limitations requires that infringement claims must be

brought within three years of their accrual. See 17 U.S.C. § 507(b). An antecedent question, one the Court expressly sidesteps, is how to decide when the claim accrues. One theory is the claim accrues when the infringement occurs. Another theory, one the Court assumes applies in the *Warner v. Nealy* case, is that the claim accrues when the plaintiff discovers, or should have discovered, the infringement. This is the discovery rule.

Majority Opinion

Justice Kagan wrote for the majority and was joined by Chief Justice Roberts and Justices Sotomayor, Kavanaugh, Barrett, and Jackson. The majority held that if the claim itself is otherwise timely under the discovery rule, plaintiffs can seek damages for infringement without further time limitations. Justice Kagan quickly clarified that there is no three-year damages bar in the text of the Copyright Act. The statute of limitations does not distinguish between a timely claim and timely sought damages, nor do the statute's remedial provisions impose any time limit on monetary recovery.

The Court clarified its prior opinion in *Patrella v. Metro-Goldwyn-Mayer*, the last case in which the Court examined the Copyright Act's statute of limitations. In *Patrella*, the Court determined that the defense of laches cannot bar a claim for damages within the three-year limitation period. Justice Kagan distinguished *Patrella*, explaining that the plaintiff in *Patrella* had not relied on the discovery rule *per se*. The plaintiff in *Patrella* had long known about the infringement and therefore could not rely on the discovery rule. In other words, the *Patrella* plaintiff could only sue for infringement that occurred within the last three years and therefore could only recover damages for infringement that occurred within those three years.

Dissenting Opinion

Justice Gorsuch, writing in dissent and joined by Justices Thomas and Alito, raised a much broader issue, one Justice Kagan relegated to footnotes. Oral argument, and most of Warner's briefing, centered on whether the discovery rule should apply at all to the Copyright Act. Justice Gorsuch argued the Court should not have addressed how to apply the discovery rule because the rule has no place in copyright cases. The dissent would instead be content to dismiss the present case as improvidently granted, taking up the merits of the discovery rule when properly presented to the Court.

Copyright plaintiffs may rejoice with the clarity that Justice Kagan's opinion brings because it allows plaintiffs to recover damages for timely claims. However, the majority painstakingly lays out a narrow decision, still leaving open the door for petitions to challenge *whether* the discovery rule should apply at all to copyright claims. Justice Gorsuch's dissent all but invites petitioners to do so, hinting that the merits of the discovery rule should be put before the Court. If and when the issue gets presented to the Court, it is likely that at least three Justices (those joining in dissent), would hold that the discovery rule has no application to copyright claims.