ARE Copyright Law Alert: Supreme Court Issues Ruling on Recovery of Damages Beyond the Copyright Act's Three-Year Statute of Limitations

Author(s): Douglas A. Miro, David P. Goldberg, Jamie Zipper*

On May 9, 2024, the U.S. Supreme Court issued its ruling in *Warner Chappell Music, Inc. v. Sherman Nealy*, No. 22-1078, 601 U. S. ____ (2024), addressing whether, under the discovery rule of accrual, a copyright owner claiming infringement "'can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.'" *Warner*, majority slip op., at 2.(citing *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1334 (11th Cir. 2023)). The Court held that in circuits applying the discovery rule, a copyright owner can obtain damages for an infringement of more than three years so long as the claim was timely.

Factual and Procedural Background

In 1983, Respondent Sherman Nealy and Tony Butler formed Music Specialist, Inc., a company that released recordings of various musical compositions. After Music Specialist dissolved three years later, Nealy was incarcerated from 1989 to 2008 and then again from 2012 to 2015 for cocaine distribution. While incarcerated, Nealy did not approve of any deals involving the use of Music Specialist's catalog of compositions. However, Butler, on his own, agreed to license works to Petitioner, Warner Chappell Music, Inc. In fact, Warner Chappell used one work, "Jam the Box," famously in Flo Rida's hit song "In the Ayer."

In 2018, following his release from prison, Nealy sued Warner Chappell Music for copyright infringement alleging he held the copyrights to Music Specialist's songs. Neally alleged the infringement began more than ten years before the date Nealy filed the suit, but Nealy argued that his claims were timely because he sued within three years of discovering the infringement. Chappell accepted that Nealy timely filed his suit within three years of discovery but argued that Nealy could only recover damages or profits that accrued within the past three years, pointing to the Copyright Act's three-year statute of limitations. *See* 17 U. S. C. §507(b). The District Court agreed with Chappel's interpretation barring Nealy's claim. However, on interlocutory appeal, the Eleventh Circuit reversed, finding that when claims are timely filed there is no three-year damages bar under the Copyright Act.

The Supreme Court granted certiorari and affirmed the Eleventh's Circuit's decision in an opinion written by Justice Kagan and joined by Chief Justice Roberts, and Justices Sotomayor, Kavanaugh, Barret and Jackson. Justice Gorsuch filed a dissenting Opinion, joined by Justice Thomas and Justice Alito.

Majority Opinion by Justice Kagan

Certiorari was originally granted to address the question, "[w]hether, 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." Slip op. at 4. That question, as the Court noted, assumes a copyright claim accrues when a plaintiff discovers or should have discovered an infringement, rather than when infringement happened. But as the Majority noted, that issue has never been decided, and since Warner Chappel never challenged the Eleventh Circuit's use of the discovery rule below it is not properly raised in this appeal. Thus, the Court assumed, without deciding, that the discovery rule applied, and thus confined its review to whether circuits applying the discovery rule should "superimpose a three-year limit on damages." *Warner*, majority slip op., at 4.(citing *Petrella*, 572 U. S., at 670, n. 4). The Court ultimately ruled that a three-year limit on damages should not be superimposed, reasoning that "[t]he 'time-to-sue prescription' [found in the Copyright Act] establishes no separate three-year period for recovering damages . . . ." *Warner*, majority slip op., at 5.(citing *Petrella*, 572 U. S. at 686). Thus, the Court held that when a copyright owner timely sues in a circuit court that applies the discovery rule, the owner can recover for damages occurring more than three years prior. However, the Court left up in the air whether the discovery rule itself should be applied in copyright infringement cases.

Justice Gorsuch's Dissent

In the dissenting opinion, Justice Gorsuch disagreed with the majority's decision to "sidestep[] the logically antecedent question whether the [Copyright Act] has room for . . . a [discovery] rule." *Warner*, dissent slip op., at 1. In fact, Justice Gorsuch went as far as to say, "the Act almost certainly does not tolerate a discovery rule" finding that the Court in the past has "said . . . that the rule is not 'applicable across all contexts.'" *Id.* (citing *TRW Inc. v. Andrews*, 534 U. S. 19, 27 (2001)). Furthermore, Justice Gorsuch stated that the discovery rule should only be applied "in cases of fraud or concealment," and, thus,

"has no role to play here—or, indeed, in the mine run of copyright cases." *Warner*, dissent slip op., at 2. The dissent ended by heavily criticizing the majority opinion, stating that it "would have dismissed [the case] as improvidently granted and awaited another squarely presenting the question whether the Copyright Act authorizes the discovery rule." *Id.*, dissent slip op., at 3. Gorsuch reasoned that it is "[b]etter . . . to answer a question that does matter than one that almost certainly does not" considering that if the Court were to answer whether the discovery accrual rule applies in the future, it could make anything said in the majority opinion "about the rule's operational details a dead letter." *Id.*, dissent slip op., at 1, 3.

We will continue to monitor developments and provide further updates regarding this case, and the law with respect to the discovery rule's application in Copyright cases. In the meantime, please feel free to contact us if you have questions regarding issues raised by this case.

* Douglas A. Miro is a partner, David P. Goldberg is an associate, and Jamie Zipper is a law clerk at Amster, Rothstein & Ebenstein LLP. Their practices specialize in all aspects of intellectual property, including trademark law. They can be reached at dmiro@arelaw.com, dgoldberg@arelaw.com, and jzipper@arelaw.com, respectively.