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Intellectual Property Alert

May 20, 2024

Supreme Court rules that Copyright infringement damages can be recovered beyond three years

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The Supreme Court's ruling creates potentially open-ended recovery for copyright infringement damages well beyond three years and covering the entire period of the alleged infringement.



What's the impact?

- The expansion of damages beyond the three-year statute of limitations period will have a significant impact on the amount of damages at stake for defendants in copyright infringement actions.
- The discovery burden in cases where actual damages and profits are at issue will increase to cover the entire period of alleged infringement.

On May 9, 2024, the United States Supreme Court decided *Warner Chappell Music, Inc. v. Nealy*, 144 S.Ct. 1135, Case No. 22-1078, in a 6–3 decision penned by Justice Kagan, holding that the

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Copyright Act entitles a copyright owner to recover damages beyond three years for any timely filed claim. This resolved a circuit split about whether monetary recovery for copyright infringement is limited by the Copyright Act's three-year statute of limitations period. The case opens the door to potentially open-ended recovery for copyright infringement damages well beyond three years and covering the entire period of the alleged infringement.

Balancing copyright protections and licensing activities

Plaintiff Sherman Nealy sued music publishing company Warner Chappell and others, arguing that he held copyrights to certain songs that Warner Chappell improperly licensed and interpolated into other recordings. Nealy claimed Warner Chappell's licensing activities infringed his rights as the copyright holder. Although the alleged infringement had occurred 10 years previously, Nealy invoked the "discovery rule" and claimed that his suit was timely because he had only discovered the infringing activity within the three years before filing suit.

The Copyright Act's statute of limitations

Section 507(b) of the Copyright Act allows a plaintiff to bring an infringement claim within three years after the claim has accrued. A claim accrues either (1) when an infringing act occurs or (2) under the discovery rule — when a plaintiff discovers, or should have discovered, the infringement. Here, Nealy argued his claims were timely because he discovered the infringement less than three years before he initiated the suit, and that due to being incarcerated, he could not have reasonably discovered the infringement any earlier. Warner Chappell accepted that the discovery rule governed, but argued that Nealy could only recover damages for infringements occurring within three years before he filed suit. The Supreme Court disagreed with Warner Chappell.

Supreme Court interprets copyright damages timelines

The Supreme Court assumed, without deciding, that the discovery rule applies and held that a copyright owner possessing a timely claim is entitled to damages for infringement at any time. The Copyright Act's statute of limitations establishes a three-year limitations period for *filing* suit but does not establish a three-year limitation on *recovering* damages.

Dissent questions discovery rule

Justice Gorsuch issued a dissent, joined by Justices Thomas and Alito, in which he argued that the Copyright Act "almost certainly does not tolerate a discovery rule" and that the Supreme Court should therefore have dismissed the case as improvidently granted.

The future of copyright infringement litigation

As a result of this decision, copyright litigants are likely to see higher damages awards, and businesses and creators navigating copyright law could see a potential rise in disputes invoking the discovery rule. Now that the discovery burden covers the entire period of alleged infringement, the stakes are higher for defendants, and damages awards are likely to increase significantly.

Nixon Peabody's [Intellectual Property lawyers](#) are monitoring the impact of this decision and how it will potentially influence future copyright practices. We help creators, businesses, and third-party users manage risks, seize market opportunities, and enforce intellectual property rights.

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