

**GIBSON DUNN**



**Appellate and Constitutional Law Update**

**May 9, 2024**

## **Supreme Court Holds That Copyright Act Has No Time Limit For Damages But Declines To Decide When Infringement Claims Are Timely**

*Warner Chappell Music, Inc. v. Nealy*, No. 22-1078 – Decided May 9, 2024

**Today, the Supreme Court held 6-3 that a copyright plaintiff can recover damages for any timely claim of infringement, even if the infringement occurred more than three years before the suit's filing.**

*“The Copyright Act entitles a copyright owner to recover damages for any timely claim.”*

**JUSTICE KAGAN, WRITING FOR THE COURT**

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## Background:

The Copyright Act requires that claims for copyright infringement be brought “within three years after the claim accrued.” 17 U.S.C. § 507(b). In 2018, independent record-label owner Sherman Nealy sued Warner Chappell Music, Inc. for alleged copyright infringement roughly a decade after the alleged infringement began, and almost three years after he allegedly discovered the infringement. Warner Chappell accepted that the claim accrued when the alleged infringement was discovered but argued that Nealy could only recover damages or profits for infringement occurring in the last three years, citing *Petrella v. Metro-Goldwyn-Mayer*, 572 U.S. 663, 672 (2014). The district court agreed with Warner Chappell but certified the question to the Eleventh Circuit, which reversed. The Eleventh Circuit assumed that the discovery rule governed the timeliness of the claim and held that the Copyright Act does not limit the time for collecting damages.

## Issue:

Whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. § 507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.

## Court’s Holding:

Yes. Assuming (without deciding) that a copyright infringement claim is timely if brought within three years after the plaintiff discovered the alleged infringement, the plaintiff may recover damages for any infringement, even if it occurred more than three years before a lawsuit’s filing.

## What It Means:

- Justice Kagan, writing for a six-Justice majority, based the Court’s holding on the plain text of the Copyright Act. The Court noted that the Copyright Act’s statute of limitations specifies a three-year time limit for filing an infringement claim “after the claim accrued.” 17 U.S.C. § 507(b). By contrast, the Copyright Act’s remedial provisions do not specify any time limit for recovering damages and lost profits. 17 U.S.C. § 504(a)-(c). Therefore, the Court concluded, “a copyright owner possessing a timely claim for infringement is entitled to damages, no matter when the infringement occurred.” Op. 5.
- The Court acknowledged that some language in the Court’s decision in *Petrella v. Metro-Goldwyn-Mayer*, 572 U.S. 663 (2014), could be read out of context to suggest a limit on the time a copyright plaintiff can recover retrospective relief. However, the Court explained that in the context of that case, the plaintiff had sued “only for infringements that occurred in the three years before her suit.” Op. 7.
- Importantly, the Court expressly assumed (without deciding) that Nealy’s infringement claims were timely under the discovery rule of accrual. But the Court noted that the Court has “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.” Op. 4.
- Three Justices, in an opinion written by Justice Gorsuch and joined by Justices Thomas and Alito, dissented and would have dismissed the case as improvidently granted. The

dissenters disagreed with the assumption that Nealy’s claims were valid under the discovery accrual rule because, in their view, the Copyright Act “almost certainly does not tolerate a discovery rule.” Dissenting Op. 1.

- Today’s decision, along with the dissent, likely means that the Court will soon be asked to decide whether claims for copyright infringement are timely under the discovery accrual rule. If they are not—that is, if claims for infringement must be brought within three years of the infringement itself rather than its discovery—then the import of today’s decision may be limited.

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### Gibson Dunn Appellate Honors



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The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice leaders:

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