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Supreme Court Avoids Discovery Rule Fight in Copyright Lawsuit

If You Choose Not to Decide, You Still Have Made a Choice

The Copyright Act's three-year limitation period doesn't limit damages to the three years before suit is filed. And in parts of the country, it currently doesn't require you to sue within three years of the infringement. That is where things stand after the Supreme Court's latest copyright ruling, which left the question of the viability of the discovery rule in a copyright action in limbo.

In [*Warner Chappell Music, Inc. v. Nealy*](#), plaintiff Sherman Nealy sued Warner Chappell for copyright infringement for works he allegedly wrote and performed that made their way into hits by Flo Rida, the Black Eyed Peas, and others. Most of the alleged infringing activities occurred in 2008 - more than 10 years before Nealy filed his 2018 lawsuit.

Nealy was in prison during much of the relevant time period, and he alleged that he first discovered the infringement in 2016. He sought damages for infringement that occurred in 2008. Applying the discovery rule, consistent with Eleventh Circuit precedent, the Florida trial court found Nealy's claim was timely. However, it also limited the damages window to the three-year period before he filed suit in 2018. Nealy appealed, and the Eleventh Circuit agreed that his complaint was timely under the discovery rule, and further held that he could recover damages that occurred more than three years before the lawsuit's filing. Warner Chappell then appealed to the Supreme Court.

Prior to the Supreme Court's decision, there was a split between appellate courts regarding the window of damages available to a plaintiff relying on the discovery rule: The Ninth and Eleventh Circuits allowed a plaintiff to recover damages for infringements that occurred more than three years prior to the lawsuit's filing. In contrast, the Second Circuit limited the window only to the three-year period prior to the lawsuit's filing. The Supreme Court interpreted the appeal narrowly, presenting only the issue of whether the damages window for infringement is limited to the three years prior to filing the lawsuit, and did not address the viability of the discovery rule itself. For purposes of the appeal, the Court assumed the discovery rule was applicable to Nealy's claim.

Turning to the damages window, the Court found that the Copyright Act provides "without qualification that an infringer is liable either for statutory damages or for the owners' actual damages and the infringer's profits." Thus, Judge Kagan, writing for the 6-3 majority, held that, a copyright owner possessing a timely claim for infringement is entitled to damages, no matter when the infringement occurred."

The dissent, written by Justice Gorsuch, criticized the majority for not addressing the discovery rule issue. According to Gorsuch, under the usual statutory construction rules, a claim accrues when a plaintiff has "a complete and present cause of action," and thus, "the limitations period generally begins to run at the point when the plaintiff can file suit and obtain relief." In the dissent's view, courts should limit the discovery rule to situations involving fraud or concealment. Gorsuch found that "there is little reason to suppose the Copyright Act's provisions at issue contemplate any departure from the usual rules" and that the "Act almost certainly does not tolerate a discovery rule."

The Court's holding clarifies that a plaintiff with a timely-filed lawsuit may seek damages for infringements occurring more than three years prior to the lawsuit's filing. But to determine whether a plaintiff timely filed the claim, parties will need to look to applicable circuit law, at least until the Court answers the discovery rule issue it avoided in this case.



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