

## Client Alert: Copyright Damages Can Extend Beyond 3 Years

For many years, practitioners have assumed that a plaintiff's damages in a copyright infringement action are limited to damages that accrued within three years of the filing of the lawsuit. This understanding was based on a general interpretation of Section 507(b) of the Copyright Act, which sets a three-year statute of limitations. That is no longer a correct assumption.

Today, the Supreme Court issued an opinion in *Warner Chappell Music v. Nealy*, holding that a plaintiff is entitled to recover damages for any timely infringement claim, regardless of whether the acts of infringement occurred within three years of filing. In other words, so long as the claim is timely filed, the successful plaintiff can recover damages, such as the infringer's profits, going back well beyond three years. In fact, the Supreme Court said there is no time limit:

If any time limit on damages exists, it must come from the Act's remedial sections. But those provisions likewise do not aid a long-ago infringer. They state without qualification that an infringer is liable either for statutory damages or for the owner's actual damages and the infringer's profits. *See* §504(a)-(c). There is no time limit on monetary recovery. So a copyright owner possessing a timely claim for infringement is entitled to damages, no matter when the infringement occurred.

*Warner Chappell Music Inc. v. Nealy*, No. 22-1078 (May 9, 2024) 601 U. S. \_\_\_\_\_, Slip Op. at 5.

The copyright owner, Sherman Nealy, discovered that his former business partner had licensed their music to Warner Chappell without his knowledge. The songs were created in the 1980s and had since been used in hit songs and TV shows. Nealy alleged that he held copyrights to the songs and that Warner Chappell's licensing activity had infringed his rights. The infringing activities he claimed dated back to 2008—ten years before he brought suit.

In a seven-page opinion, the Court held that Nealy may recover damages for acts beyond the three years. The Court also clarified its decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014). Specifically, *Petrella* said “§507(b)'s limitations period [] allows plaintiffs during that lengthy term to gain retrospective relief running only three years back from the date the complaint was filed.” *Id.* at 672. In *Nealy*, the Supreme Court acknowledged that this statement taken out of context might seem to impose a three-year limit on damages recovery. But it then clarified that, in making that statement, the Supreme Court “merely described how the limitations provision works when a plaintiff has no timely claims for infringement acts more than three years old.” Further, the plaintiff in *Petrella* could get damages running only three years back because “she sued only for infringements that occurred in the three years before her suit.”

In addition, *Nealy* assumed without deciding the broader question of whether the discovery accrual rule applies to copyright infringement claims. Ordinarily, a copyright claim accrues when the infringement acts happen. However, under the discovery accrual rule, the accrual of a copyright claim is delayed until the moment when a plaintiff discovers or should have discovered an infringement. The dissent argued that the Copyright Act does not tolerate a discovery rule and disagreed with the majority's decision to assume—without deciding—that the discovery accrual rule applies. As such, the validity of the discovery accrual rule is still in flux.

This decision is significant for industries that use copyrighted material, such as filmed entertainment, software, books and media, music, and video games. It will affect both plaintiff and defense strategies, and could result in substantially higher damages awards for (or at least higher damages claims by) plaintiffs.

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If you have any questions, please do not hesitate to reach out to:

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