

# SUPREME COURT RESOLVES SPLIT AMONG THE CIRCUITS: NO TIME LIMITS ON MONETARY RECOVERY FOR ANY TIMELY COPYRIGHT INFRINGEMENT CLAIM

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Copyright plaintiffs prevailed as the Supreme Court definitively expanded the scope of monetary damages available in discovery-rule copyright infringement cases. The discovery rule of accrual provides that a copyright claim accrues when the plaintiff discovers (or reasonably should have discovered) the infringement, regardless of when the infringing conduct occurred. Under the discovery rule of accrual, it is possible for a copyright holder to make claims about potentially very old infringements. But what was not clear was the ability for the damages to go back in time for those past acts of infringement.

The Supreme Court's decision in *Warner Chappell Music, Inc. v. Nealy* clarified that damages for all past acts of infringement are available under the discovery rule, so long as the lawsuit was timely filed within three years of discovery of the infringement. Before *Warner Chappell*, the federal circuits were split on this issue. Under the Second Circuit's view, damages for discovery-rule cases dating back more than three years were not permissible, despite timely infringement claims. The Ninth and Eleventh Circuits reached the opposite conclusion, holding that a copyright plaintiff may recover damages for infringement regardless of when the infringing conduct occurred, as long as the plaintiff filed suit within three years of discovering those infringements.

## The Lawsuit

Sherman Nealy, founder of Music Specialist, sued Warner Chappell Music for copyright infringement in 2018, asserting that Warner Chappell utilized works owned by Music Specialist. Nealy alleged that Warner Chappell's infringing activities dated back to 2008, roughly 10 years before he sued, but that he did not learn of Warner Chappell's infringing conduct until 2016, less than three years before he sued.

The Supreme Court expressly assumed that Nealy's infringement claims were timely under the discovery rule of accrual and focused on issue of the remedy available – whether the aggrieved party can obtain damages dating back more than three years.

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The court held that a copyright owner possessing a timely claim for infringement is entitled to damages, no matter when the infringement occurred. The court based its ruling on the plain text of the Copyright Act which specifies a three-year time limit for filing an infringement claim but does not specify any time limit for recovering damages and lost profits under the Act's remedial provisions.

The Supreme Court rejected the Second Circuit's view of a time limit on damages as "self-defeating" because, though it permitted claims older than three years to be filed, it prevented the recovery of money damages for past infringement.

### Takeaways

A copyright owner is now entitled to obtain monetary relief for any timely infringement claim, no matter when the infringement occurred. *Warner Chappell* increases the potential recovery for copyright plaintiffs. The new rule is especially beneficial for copyright holders who are unable to closely monitor their copyrights.

However, the crucial question of whether the discovery rule should actually apply at all was not addressed by the Supreme Court majority opinion. In a dissenting opinion, Justice Neil Gorsuch, joined by Justices Alito and Thomas, argued that the Supreme Court should have first addressed this logically-antecedent question, indicating that the Copyright Act likely does not permit the discovery rule except in cases of fraud or concealment. If the Supreme Court later considers and rejects the discovery rule of accrual, the impact of *Warner Chappell* will be diminished.

Hodgson Russ's intellectual property team helps clients protect their rights by registering various works for copyright protection and by prosecuting and defending copyright infringement claims. For more information, please contact our [Intellectual Property](#) and our [Intellectual Property Litigation Practice](#) Groups.

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