



LEGAL UPDATES

Is there a Damages Limitation on Timely Copyright Claims? Supreme Court says: "No."

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On May 9, 2024, the United States Supreme Court clarified that the "Copyright Act entitles a copyright owner to recover damages for any timely claim." This seemingly simple rule of law, however, rested on shaky ground as soon as it was announced.

The case is *Warner Chappell Music, Inc. v. Nealy*, a copyright dispute with origins in the 1980s. The copyright owner, Sherman Nealy, formed "Music Specialist, Inc." in 1983 with Tony Butler. They released one album and several singles. The duo broke up not long after. Nealy later served two stints in prison for drug-related offenses.

While Nealy was in prison, Butler licensed the Music Specialist catalog to defendant Warner Chappell Music without Nealy's authorization. One of the Music Specialist works was interpolated into Flo Rida's song "In the Ayer." Other works were used in songs released by the Black Eyed Peas and Kid Sister.

Nealy did not discover the unauthorized licenses until 2016, after he was released from prison. He sued Warner Chappell two years later, in 2018. The parties agreed that Nealy timely asserted his claim under the "discovery rule," which allows a plaintiff to sue for copyright infringement within three years of when he knew or with reasonable diligence should have known of the infringement. They sharply disagreed on how far back Nealy could get money damages. Nealy claimed that he could recover money damages for infringing acts dating all the way back to 2008. Warner Chappell argued that, due to the Copyright Act's three-year statute of limitations, Nealy could only recover damages for infringing acts that occurred in the three years before Nealy sued.

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This seemingly minor disagreement had a large impact on the case. If Nealy was right, he could recover damages for 10 years of infringement. If Warner Chappell was right, Nealy could only recover damages for 3 years of infringement.

The district court agreed with Warner Chappell. The Eleventh Circuit agreed with Nealy, deepening a circuit split on the issue. The Supreme Court took the case to resolve the split.

The Supreme Court sided with Nealy. In an opinion authored by Justice Kagan, the Court held that the Copyright Act's statute of limitations only sets the time for a plaintiff to sue for infringement but does not set a "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."

Justices Gorsuch, Thomas, and Alito dissented—but not about the majority's holding. Instead, the dissenting Justices thought the appeal should have been dismissed because the Court first needs to answer "the logically antecedent question" of whether the Copyright Act even allows for a discovery rule. In their view, it "almost certainly does not," a fact that "promises soon enough to make anything [the Court] might say today about the rule's operational details a dead letter." In other words, dissenting Justices saw no reason to explain how the discovery rule works when, in their view, the rule does not exist at all.

The dissent clearly had *Hearst Newspapers v. Martinelli* in mind even though it did not mention the case by name. The Court is currently deciding whether to grant review in *Hearst*. If it does, the Court will need to answer the "antecedent question" of whether the discovery rule applies to the Copyright Act's statute of limitations. Thus, the fate of the discovery rule and *Warner Chappell Music's* holding remains "In the Ayer" for now. In the meantime, the discovery rule remains in effect and *Nealy* keeps the door open for copyright holders to recover for past infringement as long as they have a timely claim.