

# Copyright Damages Issue Put to Bed, But Discovery Question Looms

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- *Holland & Knight's Thomas Brooke reviews SCOTUS copyright case*
  - *High court doesn't take on discovery rule in Nealy or Hearst*

Copyright disputes often turn on the questions of when the infringement was discovered, how it was discovered, and by whom. The Federal Copyright Act's statute of limitation provides that a claim must be brought within three years of its accrual. A judicially created "discovery rule" has allowed plaintiffs to seek recovery within three years of "discovering" alleged acts of infringement, no matter when the infringement occurred.

The US Supreme Court's May 9 decision in *Warner Chappell Music, Inc. v. Nealy* didn't reach the question of whether this discovery rule applies for copyright infringement, and the court decided not to take up a case May 20, *Hearst Newspapers LLC v. Martinelli*, that would have addressed the issue directly.

But the *Warner Chappell* case did resolve the issue of copyright damages, and how long they accrue. A 2020 decision by the US Court of Appeals for the Second Circuit, *Sohm v. Scholastic, Inc.*, had created another layer of complexity to this question by holding that plaintiffs in copyright actions could only recover damages going back three years from their complaint. This rule can be problematic if the damages occurred long before the discovery of such injury took place. Discovering an infringement that took place years ago could be problematic if no injury had occurred within three years of such revelation.

Sherman Nealy, an independent music producer sued Warner Chappell Music and Artist Publishing Group claiming the companies owe him royalties for use of his songs. He claims that the licenses for use of the music were executed while he was in prison and done without his knowledge.

Nealy brought suit in 2018, having only learned of the alleged infringement in 2016, within the three-year window created by the discovery rule. Nealy's challenge was to overcome the rule created in *Sohm v. Scholastic* holding that a plaintiff can only receive damages for infringements going back three years from the time of filing the action.

The US District Court for the Southern District of Florida allowed Nealy's claims but wouldn't allow him to recover damages for any acts that occurred more than three years before discovery, following the rule set in *Sohm*.

The US Court of Appeals for the Eleventh Circuit reversed, holding that a plaintiff with a timely claim under the discovery rule may obtain "retrospective relief for [an] infringement" even if the infringement took place more than three years earlier. This ruling was in harmony with a Ninth Circuit decision, *Starz Entertainment v. MGM*.

The US Supreme Court reviewed the split in the circuits and resolved it by holding May 9 that the Copyright Statute doesn't include a bar on damages for an otherwise timely claim. A claimant may look back well past the three-year date of discovery when assessing damages.

The Supreme Court specifically didn't take on the question of whether the discovery rule itself is valid; that is, whether a claim must be brought within three years of when the injury happened, or within three years of discovery of said claim.

The dispute between Nealy and Warner Chappell continues—the case was remanded for further consideration. This dispute, or one like it, may end up in front of the Supreme Court, as the question of whether a dispute is barred three years from infringement or three years from discovery remains open.

Even so, the May 9 holding does provide some guidance for litigants and counsel. If a party can prove infringement and can satisfy the still valid discovery rule, there is no time limit on monetary recovery.

The case is *Warner Chappell Music, Inc. v. Nealy*, US, No. 22-1078, decided 5/9/24.

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