

**PARSING WARNER CHAPPELL MUSIC, INC.
V. NEALY**

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ABSTRACT

In Warner Chappell Music, Inc. v. Nealy (2024), the Supreme Court of the United States clarified an essential element of the damage provisions applicable to a copyright infringement action. Within that resolution of the interpretation of the applicability of the statute of limitations, as it applies to the availability of damages, the Supreme Court inferentially emphasized the interaction of the remedies available under the Copyright Act of 1976 with the overarching objectives of the copyright statute.

I. INTRODUCTION

In recent terms, the Supreme Court of the United States has continued the process of shaping foundational copyright doctrines. This process is particularly pronounced in the Supreme Court’s refinement of fair use,¹ a defense to an infringement action which balances the rights of the copyright owner against unauthorized copying. While fair use implements a statutory framework,

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¹ See, e.g., *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 526 (2023) (declining to find fair use as both artists sold to the same markets); *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 40 (2021) (finding fair use as Google’s copying of the Sun Java API code took “only what was needed to allow users to put their accrued talents to work in a new and transformative program”).

mandated by the Copyright Act of 1976,² those opinions built upon expansive precedents.

In contrast, in *Warner Chappell Music, Inc. v. Nealy*,³ the Supreme Court departed from broad doctrinal development to resolve a dispute involving the calculation of damages in a copyright infringement action. While *Warner Chappell Music* answered an element of the timeliness of a damage claim by resolving a dimension of the damage calculation, the Supreme Court, at the same time, left unanswered the validity of applying the discovery rule to determine the statute of limitations for a prevailing plaintiff's ability to recover damages.⁴

Despite this constricted review of *Warner Chappell Music*, the Supreme Court identifies significant elements of a copyright infringement action which, when interpreted in the context of the overall thrust of *Warner Chappell Music*, expand the broad dimensions of remedies in the overarching objectives of copyright law to incentivize the creation of original works of authorship.⁵

The question for which the Supreme Court granted certiorari was framed as, “[w]hether, under the discovery accrual rule applied by the circuit courts and the Copyright Act’s statute of limitations for civil actions, 17 U. S. C. §507(b), a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.”⁶

In contrast, the petition for certiorari submitted by Warner Chappell Music, framed the question on which

² 17 U.S.C. § 107 (2025).

³ *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 371 (2024).

⁴ Shortly after the decision in *Warner Chappell Music*, the Supreme Court denied review to a case which squarely challenged the validity of the discovery rule. See *Martinelli v. Hearst Newspapers, LLC*, 65 F.4th 231, 233 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 2561 (2024).

⁵ 601 U.S. at 372.

⁶ *Id.* 371.

review was requested as, “[w]hether the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. 507(b), precludes retrospective relief for acts that occurred more than three years before the filing of a lawsuit.”⁷

The difference in phrasing of the question before the Supreme Court, in turn, became significant in terms of the resolution of the case before the Supreme Court and in defining its precedential significance. As explained by the Court, in the majority opinion by Justice Kagan:

That question, which the Court substituted for Warner Chappell’s, incorporates an assumption: that the discovery rule governs the timeliness of copyright claims. We have never decided whether that assumption is valid—*i.e.*, whether a copyright claim accrues when a plaintiff discovers or should have discovered an infringement, rather than when the infringement happened.⁸

This reformulation of the question before the Supreme Court was premised on the failure of Warner Chappell Music to preserve the challenge to the discovery rule in the lower courts.⁹ Accordingly, the Supreme Court declined to address the viability of the discovery rule in copyright infringement cases, underscoring the obligation of the Supreme Court to preclude reformulation of issues on appeal which were not addressed in the lower courts.¹⁰

Since the infringement action by Nealy was deemed timely filed, utilizing the discovery rule, the Supreme Court held that “[t]here is no time limit on monetary recovery. So a copyright owner possessing a timely claim for

⁷ Petition for Writ of Certiorari at I, Warner Chappell Music Inc. v. Nealy, 601 U.S. 366 (No. 22-1078).

⁸ Warner Chappell Music, 601 U.S. at 371.

⁹ *Id.*

¹⁰ *Id.*

infringement is entitled to damages, no matter when the infringement occurred.”¹¹

The important distinction is embedded in the contention of *Warner Chappell Music*, that under the discovery rule, an action may be timely, yet no damages may be awarded for the infringement based upon the Copyright Act’s three-year statute of limitations.¹² The impact of that rejected approach would have been to allow a copyright infringement action to proceed as viable under a discovery rule approach while denying monetary damages for any alleged infringement later than three years from the filing of the action.¹³

While the Supreme Court in *Warner Chappell Music* declined to rule upon the validity of the discovery rule, it did identify in direct terms the limitation of the approach used by the United States Court of Appeals for the Second Circuit in *Sohm v. Scholastic*,¹⁴ which separated a viable action from the recovery of monetary damages, using the discovery rule and by applying a measure that limited recovery to a three-year period. Other circuits have applied a similar method of calculation.¹⁵ Central to the underlying argument made by Warner Chappell Music was the Second Circuit’s decision in *Sohm*, which, in turn,

¹¹ *Id.* at 372.

¹² *See id.* at 374.

¹³ *See* 17 U.S.C. § 507(b) (“No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”).

¹⁴ *Compare* *Sohm v. Scholastic Inc.*, 959 F.3d 39, 52 (2d Cir. 2020), *with* *Warner Chappell Music*, 601 U.S. at 373.

¹⁵ *See* *Polar Bear Prod., Inc. v. Timex Corp.*, 384 F.3d 700, 706 (9th Cir. 2004) (deciding as a matter of first impression in the Circuit that damages may be awarded for infringing actions beyond the three year period from filing if reasonable diligence exercised in the discovery of the infringements); *Psihoyos v. John Wiley & Sons, Inc.*, 748 F.3d 120, 124 (2d Cir. 2014) (“We agree with our sister Circuits that the text and structure of the Copyright Act, unlike the FCRA, evince Congress’s intent to employ the discovery rule, not the injury rule.”).

interpreted the Supreme Court's decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.*¹⁶ *Petrella* involved the availability of a laches defense in a long-delayed copyright infringement action.¹⁷ *Sohm* addressed the question of whether an action filed timely under the discovery rule, rather than the actual injury rule, would be permitted a damages award beyond the three-year period of the statute of limitations as measured by the filing date of the action.¹⁸ The Second Circuit accorded *Petrella* a constricted interpretation, stating, “[d]espite not passing on the propriety of the discovery rule in *Petrella*, the Supreme Court explicitly delimited damages to the three years prior to the commencement of a copyright infringement action. Accordingly, we reverse the district court’s contrary determination.”¹⁹

That anomalous position was rejected by the Supreme Court in *Warner Chappell Music*, which refined elements of copyright infringement actions while leaving other aspects undecided.²⁰ Specifically, the validity of the discovery rule was left unresolved—an approach which Justice Gorsuch, in a dissenting opinion joined by Justice Thomas and Justice Alito, found untenable.²¹

¹⁶ See *Warner Chappell Music*, 601 U.S. at 373 (citing *Sohm*, 959 F.3d at 51–52 (discussing *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014))).

¹⁷ *Petrella*, 572 U.S. at 667.

¹⁸ 959 F.3d at 53 (“As we noted in *Psihoyos*, we apply ‘a discovery rule for copyright claims under 17 U.S.C. § 507(b)’ . . . Under that rule, ‘an infringement claim does not “accrue” until the copyright holder discovers, or with due diligence should have discovered, the infringement.’”) See *Psihoyos*, 748 F.3d at 124 (“Civil actions for copyright infringement must be ‘commenced within three years after the claim accrued.’”) (quoting 17 U.S.C. § 507(b)).

¹⁹ *Sohm*, 959 F.3d at 51.

²⁰ See *Warner Chappell Music*, 601 U.S. at 374–76.

²¹ *Id.*

The split between the circuits on the application of the discovery rule was the basis for the Supreme Court's grant of certiorari.²² As the case evolved, the Supreme Court reframed the underlying approach to reflect the strategic choices made by Warner Chappell Music in the lower courts in failing to challenge the prevailing discovery rule approach in the courts below.²³

Factually, *Warner Chappell Music* revolved around a joint music venture in which Nealy was a partner and from which the copyrighted works in question emerged.²⁴ Nealy's partner licensed the works to Warner Chappell Music without Nealy's participation or knowledge; Nealy asserted that his awareness of the transaction was delayed due to two prison terms involving drug convictions.²⁵ After Nealy became aware of the licensing transaction, he filed a copyright infringing action against Warner Chappell Music shortly before the three-year statute of limitations would have run, but nearly a decade after the allegedly infringing transaction with Warner Chappell Music occurred.²⁶

The district court certified the question of the applicability of the discovery rule to the United States Court of Appeals for the Eleventh Circuit.²⁷ In the Eleventh Circuit, the court rejected a damage bar, and in turn, this split between the circuit courts of appeal was the basis for the grant of certiorari.²⁸ On review, the Supreme Court stated: "we now affirm the Eleventh Circuit's decision."²⁹

²² *Id.* at 370–71 (majority opinion).

²³ *Id.* at 371.

²⁴ *Id.* at 368.

²⁵ *Id.* at 368–69.

²⁶ *Warner Chappell Music*, 601 U.S. at 369–70.

²⁷ *Id.* at 370.

²⁸ *Id.* at 370–71.

²⁹ *Id.* at 371.

II. PARSING WARNER CHAPPELL MUSIC V. NEARLY

In its opinion, the Supreme Court articulated a straightforward resolution to the split between the circuit courts, which was the basis for the grant of certiorari under the reformulated question on which review was granted. The outcome was premised on reasoning which was equally straightforward: nothing in the remedy provisions of the Copyright Act of 1976 imposes such a limitation.³⁰

The statute of limitations for civil actions provides that “[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”³¹ From that perspective, the precedential importance of *Warner Chappell Music* is unequivocal as a uniform standard for calculating damages for an action which is deemed timely.

The inconsistent approach between the circuits emerged from contradictory interpretations of a Supreme Court opinion involving the application of laches in a copyright action. In *Petrella v. Metro-Goldwyn-Mayer, Inc.*, the copyright owner consistently delayed bringing infringement actions involving the ongoing distribution of the underlying work.³² As damage claims were precluded by this delay in bringing an action, the plaintiff sought only injunctive relief.³³ In permitting the case to move forward, the Supreme Court articulated the standard which gave rise to inconsistent interpretations in the regarding the application of the statute of limitations in a damage action. *Petrella* identified a copyright claim as accruing “when an infringing act occurs.”³⁴ As the Supreme Court stated in

³⁰ *Id.* at 370–71.

³¹ 17 U.S.C. § 507(b).

³² 572 U.S. 663, 675 (2014).

³³ *Id.* at 674–75.

³⁴ *Id.* at 670.

Warner Chappell Music, that would preclude any claim filed more than three years before suit was filed and “[i]f that rule governed, many of Nealy’s claims would be untimely, because they alleged infringements occurring as much as ten years earlier.”³⁵

Under the discovery rule prevailing in the United States Court of Appeals for the Eleventh Circuit, the three-year statute of limitations begins to run when “‘the plaintiff discovered, or with due diligence should have discovered,’ the infringing act.”³⁶ Nealy contended that his periods of imprisonment precluded his awareness of the infringing acts and that he filed within the three-year period following his release and awareness of the allegedly infringing acts.³⁷

Warner Chappell Music accepted that the discovery rule governed but contended that a plaintiff was precluded from recovering damages for any period exceeding the three years measured from the date of filing.³⁸ That argument, accepted by the district court, was certified to the United States Court of Appeals for the Eleventh Circuit, which reversed the time limitation bar on damages.³⁹ That placed the Eleventh Circuit’s holding in conformity with the United States Court of Appeals for the Ninth Circuit, rather than the contrary rule applied by the district court.⁴⁰ The Supreme Court began its assessment of the appropriate timing for damages with the text of the statutory provision.⁴¹ As the assumption underlying the claim in *Warner Chappell Music* was the applicability of the discovery rule, the Supreme Court prefaced its analysis with the phrase: “here, we assume, upon its discovery. And

³⁵ 601 U.S. 366, 369 (2024).

³⁶ *Id.* at 369.

³⁷ *Id.* at 368–69.

³⁸ *Id.* at 370.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Warner Chappell Music*, 601 U.S. at 372.

that clock is a singular one.”⁴² From that premise, the Supreme Court identified a “time-to-sue prescription,” which “establishes no separate three-year period for recovering damages, this one running from the date of infringement.”⁴³ Further, “[i]f any time limit on damages exists, it must come from the Act’s remedial sections.”⁴⁴

The Supreme Court further held that while the validity of the discovery rule was unaddressed, “we reject applying a judicially invented damages limit to convert one of them into the other.”⁴⁵ The Supreme Court also elaborated upon the Second Circuit’s interpretation of language in *Petrella*, where the plaintiff had no infringement claims which were less than three years old, and accordingly outside of the statute of limitations.⁴⁶ The Court stated:

But we did not go beyond the case’s facts to say that even if the limitations provision allows a claim for an earlier infringement, the plaintiff may not obtain monetary relief. To the contrary: The plaintiff in *Petrella* could get damages ‘running only three years back’ from filing because she could sue for infringements occurring only within that time frame. Nealy is in a different situation.⁴⁷

That is, as the grant of certiorari in *Warner Chappell Music* identified, the plaintiff is assumed to have a timely claim. Accordingly, “[i]f Nealy’s claims are thus timely, he may obtain damages for them. The Copyright Act contains no separate time-based limit on monetary recovery.”⁴⁸

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 373.

⁴⁶ *Id.* at 374.

⁴⁷ *Warner Chappell Music*, 601 U.S. at 374.

⁴⁸ *Id.*

In terms of assessing the broader implications of the holding in *Warner Chappell Music* the opinion is inherently problematic. As framed by the Supreme Court, “[i]n this case, we assume without deciding that a claim is timely under that provision [*i.e.*, 17 U.S.C. § 507(b)] if brought within three years of when the plaintiff discovered an infringement, no matter when the infringement happened.”⁴⁹

From that premise, the Supreme Court turned to the central question presented in the appeal:

[W]hether a claim satisfying that rule is subject to another time-based limit—this one, preventing the recovery of damages for any infringement that occurred more than three years before a lawsuit’s filing. We hold that no such limit on damages exists. The Copyright Act entitles a copyright owner to recover damages for any timely claim.⁵⁰

In an earlier case, the Supreme Court evaluated the provisions of the Copyright Act which govern the award of attorney’s fees to a prevailing defendant in an infringement action, which similarly addressed the availability of remedies. In *Fogerty v. Fantasy*, a prevailing defendant had been found not to infringe the copyright in a song he had composed, the copyright of which was owned by the plaintiff record company.⁵¹ In denying Fogerty’s request for attorney’s fees, the district court applied the rule in the United States Court of Appeals for the Ninth Circuit, which formulated a “dual standard,” that is, prevailing plaintiffs were awarded attorney’s fees, while a prevailing defendant was obligated to demonstrate that the infringement action was bought frivolously or in bad faith.⁵² This “dual

⁴⁹ *Id.* at 368 (alteration in original).

⁵⁰ *Id.*

⁵¹ 510 U.S. 517, 519–20 (1994).

⁵² *Id.* at 520–21.

standard” contrasted with the standard of the United States Court of Appeals for the Third Circuit, which applied an “evenhanded approach” that utilized the same standard for both plaintiffs and defendants in copyright infringement actions.⁵³ Applying the plain text of the statute, the Supreme Court identified no distinction embedded in the statutory language to support different treatment between a prevailing plaintiff and a prevailing defendant in a copyright infringement action.⁵⁴

From the perspective of the remedy provisions of the Copyright Act, the Supreme Court interpreted the plain text of the statutory provision to identify the appropriate time frame for the calculation of damages. More broadly, the Supreme Court identified as a matter of policy implementing the Copyright Act’s remedial provisions to accord to a prevailing plaintiff the recovery which, as it interpreted the issue in *Warner Chappell Music*, provides a remedy to accompany a successful infringement action, rather than only a judgment without an accompanying monetary remedy.

III. CONCLUSION

As a precedent of the Supreme Court, *Warner Chappell Music* carries significant implications for the shaping of the calculation of damages in copyright infringement actions, while at the same time, the limitations of the case as precedent are pronounced given the deliberate narrowness of the holding based on the substituted question under review.

Initially, the Supreme Court’s elaboration on its holding in *Petrella* signaled a willingness to consider an

⁵³ *Id.* at 521.

⁵⁴ *Id.* at 523; *see also* Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, 586 U.S. 296, 306 (2019) (registration required before filing infringement action).

application of the discovery rule as opposed to the injury rule in copyright infringement cases. That elaboration does not accord a precedential effect to the discovery rule and, accordingly, does not negate the actual injury rule. Until—or unless—the Supreme Court assesses the discovery injury rule, the prevailing approach to the assessment of damages will be based on the actual injury rule and its inherent limitations. Within that framework, the objective of an incentive for the creation of a protected work of authorship is enhanced.