

## In Music Copyright Row, The Supreme Court Remixes the Three-Year Limit on Copyright Damage Claims

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On May 9, 2024, the U.S. Supreme Court held the Copyright Act entitles a copyright owner to obtain damages for a timely infringement claim, even if the infringement occurred prior to the Copyright Act's three-year statute of limitations.

Any civil action under the Copyright Act must be "commenced within three years after the claim accrued." 17 U.S.C. § 507(b). A circuit split had developed as to when a copyright infringement claim accrues. In some circuits, courts had held that a copyright infringement claim accrues when an infringing act occurs. Other circuits, including the Sixth Circuit, had held that a copyright infringement claim accrues when "the plaintiff discovers, or with due diligence should have discovered" the infringing act, known as the *discovery rule*.

In **Warner Chappell Music, Inc. v. Nealy**, No. 22-1078, Sherman Nealy, a music producer, asserted that he owned the copyright to the song "Jam the Box" by Tony Butler, elements of which Warner incorporated into the 2008 hit song "In the Ayer" by Flo Rida. Because Nealy only discovered the infringement in 2016 when he was released from incarceration, his claim was timely under the discovery rule. The district court, however, held that Nealy could only recover damages for the three years prior to filing his lawsuit. Relying on a Ninth Circuit opinion, the Eleventh Circuit reversed, holding that Nealy was entitled to damages predating the three-year limitation applied by the district court.

In an opinion authored by Justice Elena Kagan, the Supreme Court affirmed the Eleventh Circuit's decision that Nealy is entitled to recover damages for the infringement of his copyright that occurred more than three years from the time of the suit. The Court noted that the Copyright Act does not contain a separate provision limiting the time for which damages may be recovered and concluded that because Nealy's claim was timely, he may recover damages from the time of infringement.

In a dissenting opinion, Justice Neil Gorsuch asserted that the petition for certiorari should have been dismissed as improvidently granted. In the dissent's view, while the Copyright Act does not contain a separate provision placing a time limit on damages, it also does not contain the discovery rule.

If you have any questions about the impact of this ruling, please contact your Miller Canfield attorney or the authors of this alert.