

# Locke Lord QuickStudy: Supreme Court Will Hear Case ?Clarifying Extent of Damages ?Available in Copyright ?Infringement Lawsuits ?

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The United States Supreme Court granted *certiorari* to petitioner, Warner Chappell<sup>[1]</sup>, to clarify whether the Copyright Act precludes retrospective relief for infringing acts occurring more than three years before a plaintiff files a complaint. Section 507(b) of the Copyright Act permits bringing a claim if it is “commenced within three years after the claim accrued.” In interpreting the statute, several courts of appeals have adopted the “discovery rule,” which starts the 3-year statute of limitations period when the plaintiff first discovers or should have discovered the infringing act. Others, like the second circuit, follow the injury rule, where the limitation period begins at the moment of injury. Miami music producer Sherman Nealy and Music Specialist, Inc. sued Warner Chappell Music, Inc. and Artist Publishing Group, LLC in Florida federal court for copyright infringement in 2018. Plaintiffs allege defendants used their musical works based on invalid licenses to copyrights they received from third parties. The injury giving rise to the claim occurred in 2008, when a song by hip hop artist Flo Rida was released using plaintiffs’ work. The United States District Court for the Southern District of Florida ruled in favor of the defendants, finding a three-year limit on damages. In the interlocutory appeal that followed, the 11<sup>th</sup> Circuit found the Copyright Act does not include a time bar for damages.<sup>[2]</sup> Consequently, if the Supreme Court does not find a time bar to relief, plaintiffs may obtain over a decade worth of monetary relief.

Petitioners urge the Court to interpret the statutory text to mean plaintiffs can only obtain damages running three years back from the date of a timely filed complaint. Their interpretation is echoed by the Second circuit. At the other end of spectrum, Nealy and Music Specialist, Inc. point to the absence of a time bar for monetary relief, and that it is not within the judiciary’s power to create one. The Ninth and Eleventh circuits take respondents’ view. This disparity amongst the circuits could encourage forum shopping, as copyright owners wanting to enforce their ownership rights may choose to litigate in the Eleventh or Ninth Circuits to maximize their damages. On the other hand, defendants accused of copyright infringement may prefer to litigate in the Second Circuit due to the limit on retrospective relief.

Additionally, as a threshold matter, the 11<sup>th</sup> Circuit reaffirmed the discovery rule governs the timeliness of the plaintiffs’ claims. Petitioners ask the Supreme Court to strike down the discovery rule as applied to the Copyright Act, arguing that Nealy should have known his works were being infringed well before he claims to have known. In response, Nealy and Music Specialist argue that no challenge was ever made to the discovery rule below and so was not preserved on appeal. The Supreme Court has, however, noted its disfavor of a discovery rule exception to statutes of limitations in *Rotkiske v. Klemm* in 2019.<sup>[3]</sup> It is thus possible the Court addresses the rule by endorsing

or slashing it.

## Conclusion

Due to the circuit split, this case is significant for providing clarity on how far back a plaintiff may seek damages going forward.

*Locke Lord attorneys can assist you if you have any copyright questions.*

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[1] *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1330.

[2] *Nealy*, 60 F.4th at 1335.

[3] 140 S. Ct. 355, 361 (2019).

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