

# WEIL'S SCOTUS TERM IN REVIEW

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## Supreme Court Clarifies Time Period for Damages Under the Copyright Act

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Today, in *Warner Chappell Music, Inc. v. Nealy*, the Supreme Court held 6-3 that a plaintiff suing under the Copyright Act can recover damages for any timely infringement claim, no matter when the infringement occurred, rejecting the argument that damages should be strictly limited to the three years before the suit was filed.

In an opinion by Justice Kagan, the majority assumed without deciding that a Copyright Act claim accrues when the plaintiff discovers (or reasonably should have discovered) the infringement. The only question for the Court was whether a copyright plaintiff bringing a timely infringement claim can recover damages for acts that allegedly occurred more than three years before the plaintiff filed suit (even though the claim could not reasonably have been discovered at that time). Petitioner Warner Chappell Music had argued that damages are limited by the Copyright Act's three-year statute of limitations for civil actions, 17 U.S.C. 507(b).

The Court disagreed, relying on the plain text of the Copyright Act. The Court held that Section 507(b) addresses only the time to sue, so "[i]f any time limit on damages exists, it must come from the Act's remedial sections," 17 U.S.C. 504(a)–(c). And those provisions do not set any "time limit on monetary recovery." The Court reasoned that a contrary rule would not only be inconsistent with the Act's text, but also would "gut" the discovery rule by preventing a plaintiff from recovering for a timely infringement claim. The Court further explained that its earlier decision in *Petrella v. Metro-Goldwyn Mayer, Inc.*, 572 U.S. 663 (2014) did not address the question presented, because the plaintiff there "sued only for infringements that occurred in the three years before her suit."

Justice Gorsuch dissented, joined by Justices Thomas and Alito. Justice Gorsuch would have dismissed the writ of certiorari as improvidently granted and waited for another case that squarely presents the question whether the discovery rule applies under the Copyright Act in the first place. In the dissenting Justices' view, it "almost certainly does not."

The majority's ruling resolves a split between the Second and Eleventh Circuits and restores uniformity in the lower courts. But the Court left open the question of whether the discovery rule applies under the Copyright Act at all. This is an important issue the Court likely will have to decide in coming terms and that parties should be prepared to litigate.

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