

Upcoming Supreme Court IP Oral Argument: What's at Stake in
Warner Chappell Music, Inc. v. Nealy
by Ryan Morris

The Supreme Court is scheduled to hear oral argument on February 21 in *Warner Chappell Music, Inc. v. Nealy*, No. 22-1078. The case centers on the Copyright Act's statute of limitations, which provides in relevant part that "No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b). The particular issue is whether a plaintiff can recover retrospective damages going back more than three years.

The alleged copyright infringement at issue began in 2008, but respondents did not learn of the infringement until 2016. Respondents filed suit in 2018, nearly three years after learning of the infringement. Respondents sought damages not only for the three years after learning of the infringement, but also retrospectively dating back to 2008.

On appeal, the court of appeals held that the discovery rule applied—that is, a claim accrues when the plaintiff discovers or reasonably should have discovered the infringement—and respondents' action was timely under that rule. It then held that a copyright plaintiff may recover retrospective relief for infringement occurring more than three years before the lawsuit's filing so long as the plaintiff's claim is timely under the discovery rule.

Petitioners sought a writ of certiorari given the acknowledged circuit split on the issue of retrospective relief. The question presented in the cert. petition was "[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." The Supreme Court granted certiorari but, in doing so, altered the question presented to: "whether, 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."

Petitioners' primary arguments before the Supreme Court are that the discovery rule does not apply to § 507(b), the limitations period runs from the time of infringement, and accordingly retrospective relief is limited to a three-year limitations period. Petitioners contend in the alternative that, if a discovery rule does apply, it is a narrow rule reserved for

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cases of fraud, latent disease, or medical malpractice, none of which are at issue in the case, and so respondents cannot recover retrospective damages. Offering an alternative to the alternative, petitioners argue finally that if the Court does accept a broad discovery rule, the Court should nonetheless impose a three-year limitation on retrospective relief as an equitable exception to the equitable discovery rule.

Respondents contend that because petitioners primarily challenge the application of the discovery rule to § 507(b), the Court should dismiss the writ of certiorari as improvidently granted. Respondents argue that the discovery rule was not litigated below, petitioners did not challenge the rule below, the courts of appeals unanimously agree the discovery rule applies to Copyright Act claims, and the Supreme Court limited the question presented to foreclose argument about whether the discovery rule applies. Respondents argue in the alternative that the Court should decide the question actually presented by affirming the majority rule that retrospective damages are available for all timely filed claims. Respondents maintain that the majority rule is consistent with the Copyright Act and that a contrary rule is incompatible with copyright law, Supreme Court precedent, and historical practice. Respondents also contend that Petitioners' request of an equitable exception is inconsistent with Supreme Court precedent.

Petitioners still have yet to file their reply brief. But given the petitioners' choice to challenge the discovery rule, it will be interesting to see where the Court goes and whether it accepts respondents' invitation to dismiss the writ. If that were the case, then an open and acknowledged circuit split would persist.