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NOTE

Resolving the Incompatibility of Claim Accrual and Recovery in Copyright Law

Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325 (11th Cir. 2023).

*Tim Knight**

I. INTRODUCTION

Under Section 507(b) of the Copyright Act, which provides a three-year statute of limitations, courts have typically employed one of two distinct approaches to ascertain when a claim accrues in civil copyright infringement cases.¹ One of these is the “Discovery Accrual Rule,” which provides that the three-year limitation period commences once a plaintiff discovers infringement.² The other, the “Injury Accrual Rule,” provides that the three-year limitation period commences once a plaintiff has been harmed through infringement.³ An incompatibility arises because no section of the Copyright Act prescribes a specific lookback period for recovery.⁴ As such, there is an ongoing debate regarding a potential three-year lookback for assessing damages in cases where the Discovery Accrual Rule is applied.

A pronounced circuit split has arisen as a result of the tension between the Discovery Accrual Rule and the seminal United States Supreme Court case, *Petrella v. Metro-Goldwyn-Mayer, Inc.*,⁵ which left open the question of just how broad the three-year lookback is. The circuits now find themselves sharply divided over whether the *Petrella* decision that mandates a strict three-

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¹ 17 U.S.C. § 507(b). See also John Ramirez, Comment, *Discovering Injury? The Confused State of the Statute of Limitations for Federal Copyright Infringement*, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1125, 1128 (2007).

² Ramirez, *supra* note 1, at 1128.

³ *Id.*

⁴ See 17 U.S.C. § 507(b).

⁵ 572 U.S. 663, 682–83 (2014).

year lookback for recovery under the laches defense, which was designed to discourage a plaintiff from willfully postponing the assertion of their rights, also applies to cases where the claims accrued through the Discovery Accrual Rule.⁶ As to this question, the United States Court of Appeals for the Eleventh Circuit in *Nealy v. Warner Chappell Music, Inc.* recently aligned with the Ninth Circuit, holding that *Petrella* does not apply to the Discovery Accrual Rule.⁷ This resulted in a split with the Second Circuit, which contends that *Petrella* actually does extend to all copyright cases, including those that apply the Discovery Accrual Rule.⁸

The fundamental incompatibility of these rules lies in the tension between Section 507(b) of the Copyright Act, which details the limitation period for claim accrual, and the lookback period for recovery in copyright litigation.⁹ Pertinent to this incompatibility is the fact that copyright law imposes a strict three-year deadline for initiating a copyright infringement claim—the statute of limitations.¹⁰

While the Injury Accrual Rule seamlessly aligns with the three-year lookback, it is worth noting that only a minority of courts employ this approach in the context of copyright infringement cases.¹¹ The Discovery Accrual Rule presents a potential source of disharmony. A perplexing scenario arises when a plaintiff initiates a claim under the Discovery Accrual Rule with an underlying infringement that occurred beyond the three-year lookback period—a plaintiff may have a timely claim, but no remedy. This precise situation unfolded in *Nealy v. Warner Chappell Music*,¹² when a plaintiff's claim accrued under the Discovery Accrual Rule, yet the infringing act transpired far in the past.¹³

This Note, through an examination of *Nealy*, will explore the current split, focusing on the applicability of the three-year lookback for recovery when the Discovery Accrual Rule serves as the basis for claim accrual. It will examine how three circuits have interpreted the *Petrella* precedent and grappled with the potential disjunction between the timing of claim accrual and the pursuit of damages in copyright infringement cases.

Moreover, this Note critically assesses the merits of both sides of the split, offering an analysis of the arguments supporting each perspective. It

⁶ *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1131 (11th Cir. 2023). See also *Starz Ent., LLC v. MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1245–46 (9th Cir. 2022); *Sohm v. Scholastic Inc.*, 959 F.3d 39, 49–50 (2d Cir. 2020).

⁷ *Nealy*, 60 F.4th at 1334.

⁸ *Id.* at 1331. See also *Sohm*, 959 F.3d at 49–50.

⁹ 17 U.S.C. § 507(b).

¹⁰ *Id.*

¹¹ Dennis Crouch & Timothy Knight, *Beyond the Limit: The Battle Over Copyright Back-Damages in Warner Chappell Music v. Nealy*, PATENTLYO (Feb. 20, 2024), <https://patentlyo.com/patent/2024/02/copyright-damages-chappell.html> [<https://perma.cc/9WKD-H9BX>].

¹² *Nealy*, 60 F.4th at 1329.

¹³ *Id.* at 1328–29.

then advances a series of proposed approaches to reconcile this division. These proposals are analyzed with an eye for compatibility and parsimony in resolving the split.¹⁴ Ultimately, this Note argues that the Court should adopt the Discovery Accrual Rule for relief and abandon the three-year lookback for recovery.

II. FACTS AND HOLDING

In 1983, Sherman Nealy and Tony Butler incorporated their music company, Music Specialist, Inc. (“MSI”).¹⁵ For three years, Nealy and Butler co-authored all of the specific musical works at issue in this case.¹⁶ After creating an album and multiple singles, they registered their work with the Copyright Office.¹⁷ In 1986, the MSI corporation was dissolved,¹⁸ but the business did not officially cease operations until 1989 when Nealy began a thirty-year prison sentence.¹⁹

During this time, Butler formed a new music company and began licensing the works he had previously authored with Nealy without Nealy’s consent.²⁰ First, in February 2008, Atlantic Records obtained a license from Butler to use MSI’s work in Flo Rida’s song “In the Ayer.”²¹ Next, in July 2008, Artist Publishing and Warner Chappell entered into an arrangement with Butler, making them the exclusive administrators of the songs co-authored with Nealy.²² Nealy did not authorize this deal while in prison.²³ He did not have any business within the music industry and thus had no ability to learn of the deal during his confinement.²⁴ In other words, he was entirely unaware and could not have become aware of any deal while in prison.²⁵

Upon finishing his prison term in 2008, Nealy learned that a third party was distributing some of his co-authored work.²⁶ He met with the third party, but nothing consequential happened after the meeting.²⁷ Nealy then served another prison sentence from 2012 to 2015.²⁸ Following this second sentence in January 2016, a former MSI associate informed Nealy about litigation

¹⁴ Crouch & Knight, *supra* note 11.

¹⁵ *Nealy*, 60 F.4th at 1328.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 1228–29.

²⁵ *Id.*

²⁶ *Id.* It is unclear why this does not trigger the Discovery Accrual Rule. *See Ramirez, supra* note 1, at 1128.

²⁷ *Nealy*, 60 F.4th at 1328–29.

²⁸ *Id.* at 1329.

regarding Butler's licensing.²⁹ Then, on December 28, 2018, two years and 11 months after learning about the licenses, Nealy and MSI filed suit against Artist Publishing and Warner Chappell—the companies that Butler had contracted MSI's work.³⁰

MSI and Nealy brought suit in the Southern District of Florida, where they argued that Atlantic Records, Artist Publishing, and Warner Chappell infringed their copyright on several musical works.³¹ In pretrial proceedings, the parties entered a joint stipulation that this was an "ownership dispute" for the purposes of the statute of limitations of copyright claims.³² After the discovery period, the trio of defendants moved for summary judgment on all claims, which were granted in part and denied in part.³³ In the summary judgment order, the district court addressed the timeliness of MSI and Nealy's claims and ruled that the claim accrued when MSI and Nealy knew or should have known that the defendants were challenging ownership of their work.³⁴

In effect, this ruling was an application of the Discovery Accrual Rule. Thus, the district court denied the defendants' motion for summary judgment, determining that there was a genuine issue of material fact about when accrual occurred.³⁵ In a separate order, the district court certified the following question for interlocutory appeal under 28 U.S.C. § 1292(b): "Whether 'damages in a copyright action are limited to a three-year lookback period [starting] from the filing date of the complaint.'"³⁶ The Eleventh Circuit took up a slightly modified question on interlocutory appeal: "Whether the Copyright Act's statute of limitations, 17 U.S.C. § 507(b), precludes a copyright plaintiff from recovering damages for harms occurring more than three years before the plaintiff filed suit, even if the plaintiff's suit is timely under our Discovery Accrual Rule."³⁷ The Eleventh Circuit confirmed that the Discovery Accrual Rule governs copyright infringement and further confirmed that a plaintiff may recover damages for infringement that occurred more than three years before the lawsuit.³⁸

III. LEGAL BACKGROUND

This Part comprehensively explores the legal background of the statute of limitations for claim accruals in copyright law, the relief available to plaintiffs, and the emergence of the circuit split at issue. It begins by delineating the statute of limitations for claim accrual, shedding light on the

²⁹ *Id.*

³⁰ *Id.* Notably, this is within the three years after discovering the infringement.

³¹ *Id.* at 1327, 1329.

³² *Id.* at 1329.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1330.

³⁸ *Id.*

two prevailing approaches—the Discovery Accrual Rule and the Injury Accrual Rule—and their applications. Next, it delves into the three-year lookback period, focusing on the influential case of *Petrella* and explaining how this landmark decision shaped the temporal limitations on recovery and its role in copyright litigation. Lastly, it highlights the differences between the Second and Ninth Circuits while providing context for the subsequent analysis of the Eleventh Circuit’s perspective. Overall, this Part lays the foundation for the ensuing analysis by elucidating key legal principles. In doing so, it sets the stage for a comprehensive understanding of the legal landscape surrounding copyright claims by showcasing the divergent interpretations that have led to the circuit split.

A. Statute of Limitations for Claim Accrual

The Copyright Act requires 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.”³⁹ Generally, including a consistent statute of limitations rule of accrual is essential across all domains of litigation; nonetheless, it is notably absent within civil copyright law.⁴⁰ In fact, the Copyright Act makes no reference to when a claim accrues.⁴¹

Because of the ambiguity in copyright law, courts have taken it upon themselves to delineate two primary methods for determining when a claim accrues in copyright infringement cases: either upon the occurrence of the injury or when the plaintiff becomes aware of the injury.⁴² The latter method, known as the “Discovery Accrual Rule,” provides that claim accrual takes place when the plaintiff knew or reasonably should have known of the violation.⁴³ The “Injury Accrual Rule,” in contrast, provides that a claim accrues when infringement actually occurs.⁴⁴ There is a caveat for both rules, but it is more critical under the Injury Accrual Rule: A new claim accrues with each infringement.⁴⁵ A lack of court consensus exists about the applicability of either the Injury Accrual Rule or the Discovery Accrual Rule,⁴⁶ but nine circuits currently apply the Discovery Accrual Rule to copyright infringement

³⁹ 17 U.S.C. § 507(b).

⁴⁰ Rémy Y. Chang, Note, *Rejecting Auscape International v. National Geographic Society for A Uniform Civil Copyright Lawsuit Discovery Accrual Rule of Accrual*, 44 U.C. DAVIS L. REV. 1381, 1405 (2011).

⁴¹ 17 U.S.C. § 507(b).

⁴² Ramirez, *supra* note 1, at 1128; see *Webster v. Dean Guitars*, 955 F.3d 1270, 1275–76 (11th Cir. 2020).

⁴³ Ramirez, *supra* note 1, at 1128; see *Webster*, 955 F.3d at 1275–76.

⁴⁴ Ramirez, *supra* note 1, at 1128.

⁴⁵ *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 671 (2014).

⁴⁶ Chang, *supra* note 40, at 1405.

claims.⁴⁷ All the circuit courts in this split have applied the Discovery Accrual Rule for claim accrual.⁴⁸

B. The Lookback Period – A Petrella v. Metro-Goldwyn-Mayer, Inc. Analysis

The Supreme Court in *Petrella v. M.G.M.* set forth a seemingly straightforward standard for how long a plaintiff has to recover in an infringement claim, asserting that, “A successful plaintiff can gain retrospective relief only three years back from the time of suit. No recovery may be had for infringement in earlier years.”⁴⁹ In this landmark case, the daughter of the screenplay copyright holder for the film *Raging Bull* brought an infringement claim eighteen years after the infringement occurred.⁵⁰ MGM raised a laches defense to challenge the timeliness of this copyright claim because the delay was allegedly unreasonable and prejudicial.⁵¹ In the majority opinion, Justice Ginsberg articulated a rationale that the three-year limitations period prescribed in Section 507(b), coupled with the Injury Accrual Rule, served to strike a balance between the rights of copyright holders and the prevention of protracted and potentially excessive litigation.⁵²

This provision allows copyright holders to delay legal action until they can prudently assess the potential benefits and drawbacks of pursuing litigation while ensuring they do not seek compensation for periods preceding the three-year lookback.⁵³ However, entitlement to future injunctive relief should remain unaffected under this rule.⁵⁴ Consequently, the three-year period demarcates the exclusive window within which a prospective plaintiff may initiate legal proceedings, effectively creating a temporal boundary for seeking redress. *Petrella* further established a legal shield protecting defendants from liability for prior infringements occurring more than three years before the suit was filed and involving the same copyrighted work.⁵⁵ This outcome cemented a principle of finality in copyright litigation.⁵⁶

The *Petrella* decision appeared to signal the obsolescence of the Discovery Accrual Rule, as interpreted by the Second Circuit.⁵⁷ However, subsequent developments have revealed the Ninth and Eleventh Circuits’ alternative readings of *Petrella*.

⁴⁷ *Starz Ent., LLC v. MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1242 (9th Cir. 2022).

⁴⁸ Chang, *supra* note 40, at 1405.

⁴⁹ *Petrella*, 572 U.S. at 677.

⁵⁰ *Id.* at 674.

⁵¹ *Id.* at 664.

⁵² *Id.* at 682–83.

⁵³ *Id.* at 683; *id.* at 670.

⁵⁴ *Id.* at 683.

⁵⁵ *Id.* at 671.

⁵⁶ *Id.*

⁵⁷ *See Sohm v. Scholastic Inc.*, 959 F.3d 39 (2d Cir. 2020).

C. Circuit Split

In *Sohm v. Scholastic*, the Second Circuit was the first to examine the applicability of *Petrella*.⁵⁸ There, a photographer previously entered into agreements with various agencies that granted restricted rights for third parties to utilize his photographic works.⁵⁹ One of these agencies struck a deal with Scholastic, specifying the fees associated with the print runs of Sohm's photographs.⁶⁰ Twelve years later, Sohm discovered Scholastic's unauthorized use of his licensed photos in children's books, in violation of their licensing agreement.⁶¹ Sohm initiated legal action in 2016, asserting infringement.⁶²

While the Second Circuit did not rule on whether the Discovery Accrual Rule was a proper doctrine, the court explicitly limited monetary damages for copyright infringement cases to the three years preceding the filing of the lawsuit.⁶³ Thus, the Second Circuit read the plain language of *Petrella* that "explicitly dissociated the Copyright Act's statute of limitations from its time limit on damages."⁶⁴ While not explicitly endorsing the Discovery Accrual Rule as per *Petrella*, the Second Circuit adopted the Supreme Court's position that unambiguously constrained damages to the three-year lookback period.⁶⁵

In effect, it may have appeared that the Discovery Accrual Rule became obsolete for copyright claim accruals. However, that appearance stands in direct tension with *Petrella*'s nuanced perspective, which suggested that the Discovery Accrual Rule continues to serve a crucial role in delineating the moment at which a copyright infringement claim becomes actionable.⁶⁶ Additionally, the Court implied that the three-year retrospective period, measured from filing a lawsuit, remains a valuable tool for assessing the potential range of remedies available to copyright holders.⁶⁷

Two years after the Second Circuit's ruling, the Ninth Circuit issued a distinct holding that was expressly contrary to the Second Circuit: *Petrella* did not alter any law regarding the Discovery Accrual Rule.⁶⁸ In *Starz Entertainment v. M.G.M.*, Starz held an exclusive streaming license for M.G.M. content when one of M.G.M.'s films was found wrongfully available

⁵⁸ *See id.*

⁵⁹ *Id.* at 42.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 52.

⁶⁴ *Id.*

⁶⁵ *Id.* at 51.

⁶⁶ *See generally* *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014).

⁶⁷ *Sohm*, 959 F.3d at 51.

⁶⁸ Megan Duffield, Note, *Starz v. MGM: Ninth Circuit Saves Copyright Infringement's Discovery Accrual Rule at the Cost of Rejecting Second Circuit's Interpretation of Damages*, 25 TUL. J. TECH. & INTELL. PROP. 337, 342–43 (2023).

for streaming on Amazon in 2019.⁶⁹ A subsequent investigation brought to light twenty-two similar infringements involving various films.⁷⁰ M.G.M. then admitted to inappropriately licensing hundreds of films and breaching the exclusivity agreement with another 100.⁷¹ Starz brought a copyright infringement action against M.G.M. in 2020.⁷²

The Ninth Circuit firmly upheld the Discovery Accrual Rule and explicitly rejected the reasoning set forth by the Second Circuit, concluding that *Petrella* did not restrict the recovery of damages to *within* the preceding three-year timeframe.⁷³ Instead, the Ninth Circuit ruled that Starz was entitled to seek damages for all acts of infringement, irrespective of their temporal proximity to the lawsuit's initiation.⁷⁴

The Ninth Circuit's rationale against a distinct damages bar was rooted in the three-year lookback, which it deemed as "explicitly dissociated" from the Copyright Act's statute of limitations in Section 507(b).⁷⁵ This logic rested on the premise that such an approach would effectively undermine the utility of the Discovery Accrual Rule.⁷⁶ According to the Ninth Circuit, if a copyright holder cannot seek damages for infringements that they reasonably become aware of years later, then the purpose of the Discovery Accrual Rule is nullified.⁷⁷

Additionally, the Ninth Circuit introduced a moral dimension to its argument.⁷⁸ It contended that without the Discovery Accrual Rule, a plaintiff who has endured harm due to copyright infringement but remained unaware of the infringing activities until after the three-year limit had passed would be unjustly left without an avenue for seeking compensation.⁷⁹ This ethical consideration accentuated the potentially harsh and broad consequences on the rights and remedies of copyright holders if the Discovery Accrual Rule was abolished.⁸⁰

The Ninth Circuit also made a critical distinction between the legal doctrine of laches and the practical implications of applying the Discovery Accrual Rule.⁸¹ The application of the Discovery Accrual Rule recognizes the possibility that the plaintiff might be genuinely unaware of the infringement during the dormant period, which serves as a compelling reason

⁶⁹ *Starz Ent., LLC v. MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1238–40 (9th Cir. 2022).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 1239.

⁷³ *Id.* at 1242–44.

⁷⁴ *Id.*

⁷⁵ *Id.* at 1243–44.

⁷⁶ *Id.* at 1244.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Duffield*, *supra* note 68, at 342.

⁸⁰ *Id.*

⁸¹ *Starz Ent.*, 39 F.4th at 1246.

for its existence.⁸² Implementing a three-year lookback would create a disconcerting scenario in which a plaintiff could find themselves without legal recourse because while they were timely in filing suit, the damages lookback does not permit recovery.⁸³

IV. INSTANT DECISION

The central issue faced by the Eleventh Circuit in *Nealy v. Warner Chappell Music, Inc.* was whether, consistent with the Copyright Act and the precedent set by *Petrella*, the potential damages recoverable by the plaintiffs should be limited to the three years preceding the filing of their complaint.⁸⁴ In answering this question, the Eleventh Circuit firmly rejected the imposition of the three-year lookback period—a stance that neither the Copyright Act nor *Petrella* took.⁸⁵ In its decision, the Eleventh Circuit affirmed the plaintiffs’ entitlement to seek damages for infringements extending beyond the confines of the three-year lookback window, provided their claims remained timely under the Discovery Accrual Rule.⁸⁶ The Eleventh Circuit dismissed any interpretation of *Petrella* as silently eliminating the Discovery Accrual Rule and identified no statutory constraints on the remedies available for claims that were initiated in a timely fashion.⁸⁷

In acknowledging the circuit split,⁸⁸ the Eleventh Circuit aligned itself with the Ninth Circuit’s perspective.⁸⁹ Two key considerations underpinned this decision.⁹⁰ First, *Petrella* had not explicitly addressed the question of recovery time under the Discovery Accrual Rule.⁹¹ Second, the plaintiffs in the *Petrella* case had not sought relief beyond the three-year lookback.⁹² In its reasoning, the Eleventh Circuit stressed that the Discovery Accrual Rule offers a distinct safeguard against stale claims by allowing timely claims for infringements that may have actually occurred more than three years before filing the lawsuit.⁹³ Further, the circuit court found the Discovery Accrual Rule to provide a more coherent framework for determining when a copyright ownership claim accrues.⁹⁴ The Eleventh Circuit succinctly captured this notion by noting that under the Discovery Accrual Rule, “a copyright ownership claim accrues, and therefore the limitations period starts, ‘when the

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1330 (11th Cir. 2023).

⁸⁵ *Id.* at 1328.

⁸⁶ *Id.*

⁸⁷ *Id.* at 1330–35.

⁸⁸ *Id.* at 1331.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 1333.

⁹⁴ *Id.*

plaintiff learns, or should as a reasonable person have learned, that the defendant was violating his ownership rights.”⁹⁵ The court rejected the defendant’s contention that, under *Petrella*, the plaintiffs’ claims remained barred from recovering damages for infringements that transpired more than three years before the filing of the lawsuit even if the claims were timely per the Discovery Accrual Rule.⁹⁶

Moving forward, a critical examination of MSI and Nealy’s claims is warranted to determine if they could recover damages for infringements that occurred more than three years before initiating their lawsuit.⁹⁷ This analysis, conducted in light of both the Copyright Act and the Supreme Court’s decision in *Petrella*, led the court to a clear conclusion: A copyright plaintiff with a claim that adheres to the Discovery Accrual Rule’s timeliness may indeed pursue damages for infringements extending beyond the three-year temporal limit.⁹⁸

V. COMMENT

Resolving the ongoing split surrounding the Copyright Act’s statute of limitations is a critical task that requires a careful examination of the law’s purpose, the implications for different legal markets, and the available options for resolving the issue. This Part begins with an exploration of the primary purpose of the Copyright Act and its 1957 incorporation of a statute of limitations to establish a consistent framework. Next, it explores the dynamics of the legal markets affected by the split, particularly the disparities between circuits. This Part will then set forth three potential options for resolving the split along with the advantages and disadvantages of each. Finally, the key priorities and considerations that should guide the decision-making process are discussed, seeking to find a solution that balances the interests of copyright holders, promotes copyright enforcement, and maintains the integrity of copyright law in the digital age.

A. The Purpose of The Copyright Act

Before analyzing how the Supreme Court should resolve the split, it is essential to understand the Copyright Act’s purpose. In 1957, Congress included a statute of limitations in the Copyright Act.⁹⁹ Before this legislative development, judges relied on a patchwork of state statutes of limitations to gauge the timeliness of copyright infringement lawsuits, resulting in an

⁹⁵ *Id.* at 1330.

⁹⁶ *Id.* at 1331.

⁹⁷ *Id.* at 1332–33.

⁹⁸ *Id.* at 1333. It is worth noting that the *Petrella* case did not directly address the issue of recovery time under the Discovery Accrual Rule because the plaintiffs there did not seek relief for infringements occurring outside the three-year lookback window. *Id.* at 1332.

⁹⁹ *Petrella*, 572 U.S. at 669–70.

inherent lack of consistency and clarity within the legal framework.¹⁰⁰ Nevertheless, Congress's primary aim was to remove this ambiguity and institute a uniform statute of limitations, effectively addressing the persistent concerns that had long troubled the copyright corner of the legal community.¹⁰¹

In the words of Candace Sundine, "Congress sought to create a uniform statute of limitations to resolve the uncertainty regarding timeliness that 'plagued the copyright bar' and to prevent 'the forum shopping invited by disparate state limitations periods.'"¹⁰² It is imperative to recognize that while Congress established a uniform statute of limitations, it refrained from enacting any law about a recovery period, signifying legislative intent to refrain from imposing a recovery bar within the Copyright Act.¹⁰³ This distinction underscores Congress's fundamental objective in striking a balance between claim accrual limitations and the pursuit of remedies in the context of copyright infringement cases.¹⁰⁴

In *Petrella*, the Supreme Court articulated two purposes for the copyright statute of limitations.¹⁰⁵ The first was to provide a uniform time period for plaintiffs to pursue claims,¹⁰⁶ ensuring consistency and predictability in the legal system.¹⁰⁷ The second purpose was to prevent forum shopping, as statutes of limitations for copyright claims vary significantly across states, ranging from one to eight years.¹⁰⁸ Establishing a fixed, three-year limitations period under federal copyright law created a level playing field for all copyright litigants, regardless of location.

Although not explicitly addressed in *Petrella*, the Court's analysis proved instructive to examine the role of statutes of limitations in property law, particularly in adverse possession, and set the stage for a comparative analysis with copyright law. As copyright law is a type of intellectual property law, which falls under the broader umbrella of property law, exploring the rationale behind statutes of limitations in adverse possession cases can shed light on their role in copyright law. There are two main reasons for a statute of limitations in adverse possession cases.¹⁰⁹ The first is that evidence decays over time.¹¹⁰ Second, landowners face a penalty for "sleeping" on their rights,

¹⁰⁰ *Id.*

¹⁰¹ Candace Sundine, Note, *Sohm Starz Will Never Align: How the Split Between the 2nd and 9th Circuits Will Impact Damages in Copyright Cases*, 43 LOY. L.A. ENT. L. REV. 37, 43–44 (2023).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See 17 U.S.C. § 507(b).

¹⁰⁵ *Petrella*, 572 U.S. at 670.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Thomas J. Miceli & C.F. Sirmans, *An Economic Theory of Adverse Possession*, 15 INT'L REV. L. & ECON. 161, 161 (1995).

¹¹⁰ *Id.*

known as the doctrine of laches.¹¹¹ The former is compatible with copyright law, where the absence of a clear record identifying potential infringers means that evidence of infringement can degrade or vanish over time. However, in the digital age, advancements in record-keeping and tools like the wayback machine have mitigated concerns regarding the decay of evidence.¹¹² Conversely, the second rationale presents a distinct challenge for copyright holders compared to landowners. Unlike landowners, copyright holders may face challenges in actively policing their rights. These hurdles derive from the vastness of digital content and the complexities of tracking potential infringements across the Internet.¹¹³ Thus, the penalties for copyright holders sleeping on their rights may be more pronounced than landowners, given the unique challenges they face in the digital age.

Moreover, the potential for ongoing copyright infringement compounds the issue. The digital age presents a formidable challenge for potential plaintiffs, as the sheer breadth of digital content on the Internet makes it a herculean task to scour every corner of the web for potential infringers. A three-year window becomes an exceedingly brief period to undertake such a comprehensive investigation, especially when the plaintiff is no longer actively participating in their industry, as seen in *Nealy*.¹¹⁴ The complexities of identifying and pursuing copyright infringement cases in the digital age emphasizes the obstacles faced by copyright holders, which merit careful consideration and novel solutions within the legal framework.

B. Legal Markets

It is currently unclear whether the geographical locations and the surrounding legal markets play a role in the circuit split, but it is worth exploring. Notably, the Ninth Circuit includes Hollywood, and the Second Circuit includes New York, which is home to both major publishing houses.¹¹⁵ These circuits preside over a substantial caseload of copyright matters,

¹¹¹ *Id.*

¹¹² The Internet Archive Wayback Machine is a service that allows people to visit archived versions of Web sites. *Wayback Machine General Information*, INTERNET ARCHIVE, <https://help.archive.org/help/wayback-machine-general-information/#:~:text=What%20is%20the%20Wayback%20Machine,archived%20version%20of%20the%20Web> [<https://perma.cc/SC7X-BPPR>] (last visited Aug. 15, 2024). Visitors to the Wayback Machine can type in a URL, select a date range, and then begin surfing on an archived version of the Web. *Id.*

¹¹³ See Sam Castree, Comment, *Cyber-Plagiarism for Sale: The Growing Problem of Blatant Copyright Infringement in Online Digital Media Stores*, 14 TEX. REV. ENT. & SPORTS L. 25 (2012).

¹¹⁴ *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1328–29 (11th Cir. 2023).

¹¹⁵ *Top 18 Book Publishing Powerhouses in the US*, INVEN, <https://www.inven.ai/company-lists/top-18-book-publishing-companies-in-the-us> [<https://perma.cc/5SQE-ZEKW>] (last visited June 8, 2024).

showcasing distinctive legal ecosystems.¹¹⁶ The two circuits are frequently at the forefront of copyright infringement litigation, and handle most infringement matters in the broader entertainment industry.¹¹⁷

The legal industry effectively encourages plaintiffs to strategically select their preferred jurisdiction, which would be jurisdictions using the Discovery Accrual Rule and no lookback, to secure comprehensive relief. By doing so, injured copyright holders can circumvent the limitations set by circuits that adhere to the Injury Accrual Rule or ones that restrict damages to a mere three-year timeframe. This system creates a lopsided incentive that may lead to a geographical concentration of copyright claims in plaintiff-friendly jurisdictions. Adopting a uniform standard would help mitigate this issue and potentially encourage various creative industries to explore and expand into regions where they might otherwise be deprived of legal redress.

If the split remains, recovery outcomes may differ significantly based on whether a legal action is initiated in the Second or Ninth Circuit.¹¹⁸ As previously mentioned, legal scholars are particularly concerned with courts being overrun by forum shopping and venue transfers due to the existing circuit split.¹¹⁹ The resolution of the split is poised to play a pivotal role in bringing stability and consistency to the legal landscape for copyright holders and defendants alike.

C. Resolving the Split

The judgment in *Sohm* by the Second Circuit,¹²⁰ followed by the opposing rulings in *Starz* by the Ninth Circuit and *Nealy* by the Eleventh Circuit,¹²¹ has effectively created an opportunity for litigants to exploit the existing disagreement until the Supreme Court fully resolves this issue.¹²² To ensure consistency and adherence to established legal precedents, this Note advocates for the adoption of the Ninth and Eleventh Circuits' holdings by either the Supreme Court or Congress, disregarding the Second Circuit's deviation from long-standing practice.¹²³

This Note proposes three overarching methods that the Supreme Court could use to address the circuit split. First, it could broaden *Petrella*'s doctrine to apply beyond laches to all copyright claims, effectively abolishing the Discovery Accrual Rule for copyright claim accrual. Second, it could maintain the two claim accrual rules while having unlimited or unique

¹¹⁶ Duffield, *supra* note 68, at 343.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Sundine, *supra* note 101, at 61.

¹²⁰ *Sohm v. Scholastic Inc.*, 959 F.3d 39, 51 (2d Cir. 2020).

¹²¹ *Starz Ent., LLC v. MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1243-44 (9th Cir. 2022); *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1330 (11th Cir. 2023).

¹²² Sundine, *supra* note 101, at 69.

¹²³ *Id.*

recovery under either rule. Third, it could entirely abolish the Injury Accrual Rule for copyright claim accrual.

1. Option 1: Hard Core *Petrella*

In this first suggested approach, which this Note will refer to as “Hard Core *Petrella*,” the Supreme Court would strictly adhere to the principles established in the *Petrella* decision. Under this interpretation, a plaintiff would be limited to recovering damages for infringements exclusively within the three years prior to filing their claim.¹²⁴ This option wholly rejects the positions taken by the Ninth and Eleventh Circuits: that *Petrella*’s purview extended beyond laches by encompassing the broader scope of recovery limitations.¹²⁵

The ultimate consequence of this approach would be the effective nullification of the Discovery Accrual Rule in copyright infringement cases. Even if a plaintiff were to have a valid claim under the Discovery Accrual Rule, their entitlement to damages would be confined to the most recent three-year window.¹²⁶ Consequently, the injuries deemed relevant under this paradigm would be those that transpired within the preceding three years.¹²⁷

Hard Core *Petrella* would offer several advantages. First, it would create an unambiguous bright-line rule by extinguishing concerns related to forum shopping, as plaintiffs would no longer strategically select their jurisdiction based on the favorable Discovery Accrual Rule.¹²⁸ Second, the cost of discovery would likely decrease substantially. With damages restricted to a retrospective period of three years, the scope and complexity of the discovery process would be streamlined, leading to more efficient and cost-effective proceedings. Third, this approach would incentivize plaintiffs to remain vigilant about safeguarding their copyright interests, knowing they must actively address infringements to secure their claims effectively. Fourth, this option would mitigate the issue of incompatibility, providing consistency in the treatment of timely cases by ensuring that every case eligible for relief falls within the same temporal bounds.¹²⁹ Fifth, when there would be continuous infringement, plaintiffs would not walk away empty-handed, ensuring some copyright holders can still pursue some meaningful remedies in these situations.¹³⁰

However, Hard Core *Petrella* would have substantial drawbacks, too. First, accepting this proposal would run contrary to the underlying spirit of the Copyright Act, which affords an extended period of protection to copyright holders, ultimately undermining the statutory framework’s

¹²⁴ *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 677 (2014).

¹²⁵ *Starz Ent.*, 39 F.4th at 1249; *Nealy*, 60 F.4th at 1327.

¹²⁶ *Sohm v. Scholastic, Inc.*, 959 F.3d 39, 51 (2d Cir. 2020).

¹²⁷ *Id.*

¹²⁸ Sundine, *supra* note 101, at 69.

¹²⁹ *Sohm*, 959 F.3d at 50.

¹³⁰ Sundine, *supra* note 101, at 45.

fundamental principles.¹³¹ Second, while injured plaintiffs may receive some compensation for continuous copyright infringements, this approach would still place plaintiffs at risk of losing out on substantial recovery and would impose limitations that may not adequately address the harm suffered by copyright holders. Third, even diligent plaintiffs may encounter significant difficulties in the digital age due to the sheer scale and complexity of the online landscape where potential infringements can occur. This approach would disadvantage those who, despite their best efforts, remain unaware of infringements or act too late to rectify them. Fourth, the widespread use of the Discovery Accrual Rule in most courts suggests that this approach could eliminate the established legal framework associated with the Discovery Accrual Rule.¹³² The primary drawbacks of this option ultimately revolve around the inherent brevity of the three-year timeframe, which does not adequately align with the longer timeframes inherent in copyright protection.

Implementing this approach would create significant implications for enforcing copyright protections. It could be an inadvertent incentive for would-be infringers to engage in unauthorized use of copyrighted works, as their liability would effectively be limited if they managed to evade detection for just a few years.¹³³ This scenario could foster an environment where infringement becomes more rampant, allowing for the use of copyright with hope that the owner will not discover it in time. The potential result is a weakened deterrent against infringement and a challenge to the fundamental principles of copyright protection. Moreover, this approach would burden copyright holders substantially, necessitating constant vigilance in monitoring their works for potential infringements. The associated costs of ongoing monitoring efforts may prove prohibitively high, especially for individual creators who lack the financial resources compared to large media companies.¹³⁴ Consequently, this outcome could create a stark disparity in the ability to enforce copyright rights, favoring larger entities with ample legal resources while marginalizing individual creators.¹³⁵

2. Option 2: Keeping Both Rules

While a majority of courts employ the Discovery Accrual Rule,¹³⁶ there are ways to keep both it and the Injury Accrual Rule. However, keeping both without further action leads to an incompatibility. The first solution involves

¹³¹ See 17 U.S.C. § 302.

¹³² *Starz Ent., LLC v. MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1242 (9th Cir. 2022).

¹³³ *Sohm*, 959 F.3d at 51.

¹³⁴ Keli Johnson Swan, *The True Cost of Defending Against Copyright Infringement Litigation*, SCOTT & SCOTT LLP (Dec. 22, 2020), <https://scottandscottllp.com/the-true-cost-of-defending-against-copyright-infringement-litigation/> [<https://perma.cc/N48P-MXSS>].

¹³⁵ *Id.*

¹³⁶ *Starz Ent.*, 39 F.4th at 1242.

having courts that use the Discovery Accrual Rule apply an unlimited lookback, while Injury Accrual Rule courts apply the limited three-year lookback period. Although this method aligns the accrual rules with regard to the lookback period, it risks placing plaintiffs in Injury Accrual Rule jurisdictions at a disadvantage. These plaintiffs will not recover damages for infringements that occurred more than three years before filing;¹³⁷ this creates a gap where certain plaintiffs may find themselves without recourse and leads to inconsistent outcomes across jurisdictions. In its pursuit of resolution, this option introduces incompatibilities between courts and may result in inequitable treatment of plaintiffs based on their location.

The alternative is to retain both rules but allow an unlimited lookback for damages, regardless of the rule applied. This appears to be an ideal solution—courts maintain their respective claim accrual methods, and as long as the claim is timely, the plaintiff is eligible for relief. Nevertheless, this approach still leaves a gap for plaintiffs in Injury Accrual Rule jurisdictions who discover a past injury beyond the window of timeliness.¹³⁸ They are left without legal recourse and with a persistent, inherent incompatibility (albeit in a different form).

Allowing both rules to coexist may appear as a compromise, but it carries substantial drawbacks. Maintaining different lookback periods would invariably lead to forum shopping,¹³⁹ resulting in plaintiffs gravitating toward the Discovery Accrual Rule for an unlimited lookback. Meanwhile, plaintiffs in Injury Accrual Rule jurisdictions would continue to face capped damages and weakened copyright protections.

Conversely, opting for an unlimited lookback in all jurisdictions would not only fail to address the forum shopping concern but would also reintroduce the incompatibility for untimely claims. Plaintiffs bound by the Injury Accrual Rule and unaware of past infringements would have no legal recourse if the statute of limitations had expired, even if they would have damages available in light of the unlimited lookback.¹⁴⁰ This option shows that, given the nature of claim accrual rules and the lookback period, it is impossible to have them coexist without there being some incompatibility.

3. Option 3: Universal Discovery Accrual Rule

The final option would be for the Court to do away with the Injury Accrual Rule for copyright infringement and have unlimited retrospective relief. One of the primary concerns of this approach is the potential for individuals to delay asserting their rights and subsequently exploit the opportunity to file claims at their convenience. However, it is crucial to recognize that the Discovery Accrual Rule addresses this concern with its

¹³⁷ *Sohm*, 959 F.3d at 51.

¹³⁸ *Id.*

¹³⁹ Sundine, *supra* note 101, at 59–60.

¹⁴⁰ *Sohm*, 959 F.3d at 51.

“knew or should have known” standard.¹⁴¹ This standard serves to balance the extended protection for copyright holders with a requirement for reasonable diligence.

The primary advantage of the Discovery Accrual Rule is its alignment with the Copyright Act’s fundamental principles. It recognizes the expansive protection afforded to creative works under copyright law, ensuring that at any point during the copyright’s duration, a plaintiff who has been harmed—provided they knew, or reasonably should have known, about the injury—may seek redress.¹⁴² Furthermore, this protection period would serve as a crucial mechanism for human creators to shield their creative works from the potential modern challenges of enforcing their rights.

When contrasted with the previous two options, the downsides of this approach are less severe. But the clarity provided by the knew or should have known standard is not as definitive as the Injury Accrual Rule, introducing an element of ambiguity. Beyond that, the discovery process could become more invasive and financially burdensome due to the lengthy period for potential infringement; this would consequentially increase litigation costs.

Eliminating the Injury Accrual Rule in favor of a universal adoption of the Discovery Accrual Rule would significantly fortify copyright protections. However, it could still be prudent to impose reasonable caps on lookback periods and damages to address practical limitations stemming from these vast protections. These limitations would prevent potential abuses, reduce unwarranted litigation, and strike a balance between the interests of copyright holders and good-faith users.¹⁴³

The “knew or should have known” standard inherent in the Discovery Accrual Rule serves as a robust safeguard against any undue delay in asserting rights before eventually filing claims. This standard compels copyright holders to remain vigilant in monitoring potential infringements, especially if they are actively involved in their respective industries.¹⁴⁴ While *Nealy* did not explicitly endorse this aspect, the court made a subtle inference that the “should have known” standard may be less onerous for artists who have withdrawn from the industry, considering their decreased involvement.¹⁴⁵

¹⁴¹ *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1330 (11th Cir. 2023).

¹⁴² *Id.*

¹⁴³ Ramirez, *supra* note 1, at 1156.

¹⁴⁴ *Id.*

¹⁴⁵ *Nealy*, 60 F.4th at 1329.

A table providing an analysis of the three foregoing options follows:

	Hard Core <i>Petrella</i> (Injury Accrual Rule)	Keeping Both	Universal Discovery Accrual Rule
Spirit of the Copyright Act	Contrary to the spirit of the Copyright Act	Depends on rule	Aligns with the fundamental principles of the Copyright Act
Compatibility	Compatible with <i>Petrella</i> 's decision	Incompatibility between courts and rules	Compatible with Discovery Accrual Rule
Bright-line Rule	Establishes a clear bright-line rule	No bright-line rule	"Knew or should have known" standard
Forum Shopping	No forum shopping	Encourages forum shopping	No forum shopping
Cost of Discovery	Reduced costs due to a limited three-year period	Depends on rule	Potentially more invasive and costly due to expansive period
Level of Vigilance Required for Copyright Holders	Extremely high vigilance is required	Depends on rule	Moderate vigilance is required

D. Table Explanation: Key Considerations

Specific priorities must be addressed in determining which option to adopt for resolving the issue. The chart above provides six factors that weigh on the decision.

First, one must consider the spirit of the Copyright Act. Abolishing the Injury Accrual Rule best embodies the spirit of copyright law and provides robust protection for copyright holders. If Congress decides that this would be too broad, it can create a limitation period for damages. The Discovery Accrual Rule promotes copyright enforcement by ensuring that those who have suffered, and later discovered, infringement can seek redress.¹⁴⁶

Second, one must consider compatibility between the accrual rules and lookback period. Adopting the Hard Core *Petrella* or the Universal Discovery

¹⁴⁶ Ramirez, *supra* note 1, at 1157–58.

Accrual Rule options would be compatible with claim accrual and the lookback period. They would also be consistent across jurisdictions, providing clarity and consistency that could benefit all parties involved. Unfortunately, keeping both rules is an unsuitable option. The inherent incompatibility between the Discovery Accrual Rule and the Injury Accrual Rule would create a potential disarray within the legal framework, making it difficult to apply consistently and leading to disparities in outcomes depending on the chosen rule. Given the importance of maintaining a harmonious and predictable legal landscape in copyright law, keeping both rules should not be considered a viable option for addressing copyright infringement issues.

The presence of a bright-line rule is the third consideration. The strength of the Hard Core *Petrella* and Universal Discovery Accrual Rule approaches lie in their adherence to bright-line rules. This consideration most evidently favors the Hard Core *Petrella* option. Clarity and predictability are paramount in the copyright realm, so having an unambiguous rule would simplify legal proceedings and reduce uncertainty for copyright holders and potential infringers. The Hard Core *Petrella* approach offers the advantage of defining a specific time within which claims must be brought, which would streamline litigation.¹⁴⁷

The other considerations focus on forum shopping and the cost of discovery. There would not be a forum shopping concern if the court wholly adopted one rule over the other.¹⁴⁸ But if both rules continued, there would undoubtedly be forum shopping,¹⁴⁹ which is yet another reason that keeping both rules would be unsustainable. As to the discovery costs consideration, this issue is a double-edged sword. A limited timeframe would mean less costs in the discovery phase, but a shorter timeframe would mean less potential recovery for the plaintiff. Thus, this consideration favors either approach.

Lastly, it is critical to consider the level of vigilance for each approach. Information can be shared instantaneously through a variety of digital mediums in today's technologically advanced world. It is, then, more difficult to monitor one's rights and even easier for violations to occur.¹⁵⁰ There is a high probability that information will remain undetected given the sheer volume of information on the Internet.¹⁵¹ Due to the digital age, requiring individuals to constantly police the worldwide Internet for unauthorized uses of their work is unrealistic.¹⁵² For right of publicity claims, the Discovery Accrual Rule appropriately balances plaintiffs' rights against the purpose of

¹⁴⁷ *Sohm v. Scholastic, Inc.*, 959 F.3d 39, 51 (2d Cir. 2020).

¹⁴⁸ *Sundine*, *supra* note 101, at 59–60, 69.

¹⁴⁹ *Id.*

¹⁵⁰ Ritu Narula, Note, "Wait, I Didn't Even Know My Picture Was Taken!": Application of the Discovery Accrual Rule to a Right of Publicity Claim, 53 HOWARD L.J. 859, 894 (2010).

¹⁵¹ *Id.*

¹⁵² *Id.* at 895.

statutes of limitations where plaintiffs cannot immediately recognize injuries to the commercial value of their personas.¹⁵³ Therefore, the Discovery Accrual Rule for right of publicity claims protects individuals because they may be unaware and unable to recognize that an infringement on their rights has even occurred.¹⁵⁴

The Discovery Accrual Rule for right of publicity claims transfers well to copyright infringement. Take, for example, an author who has a published book. This book, distributed both in print and online, is vulnerable to various potential infringements. Present challenges to copyright protection include illicit downloads, unauthorized distribution through various platforms, and plagiarism.¹⁵⁵ Effectively policing such multifaceted infringements is practically impossible. It becomes even more daunting if the law imposes a strict three-year window for the author to discover and address infringements. In the evolving landscape of digital content and technology, the Discovery Accrual Rule emerges as a vital instrument in safeguarding copyright holders' rights.

VI. CONCLUSION

Eliminating the Injury Accrual Rule for copyright infringement claims in favor of a universal application of the Discovery Accrual Rule is the best approach for several vital reasons. It would create consistency across jurisdictions, prevent forum shopping, evenly support creators' rights nationwide, and would be most consistent with the spirit of the Copyright Act. As is, the different standards across the circuits are inherently unfair. Only keeping the Discovery Accrual Rule upholds the long protection periods enshrined in copyright law. The Discovery Accrual Rule's "knew or should have known" standard prevents plaintiffs from sleeping on their rights and belatedly filing claims, incentivizing reasonable diligence in enforcement. Thoughtful implementation of the Discovery Rule with unlimited lookback would help balance interests. It would modernize copyright for the digital era's complexities, especially as individual creators need meaningful recourse when plaintiffs discover infringement. By transitioning to the Discovery Accrual Rule for copyright infringement claim accrual, courts would maintain the Copyright Act's purpose of protecting creators' interests while guarding against undue litigation. This balanced modernization would provide needed consistency and fairness.

¹⁵³ *Id.* at 893–96.

¹⁵⁴ *Id.* at 861.

¹⁵⁵ Castree, *supra* note 113, at 28.

VII. ADDENDUM: SUPREME COURT RULING ON COPYRIGHT LOOKBACK DAMAGES AND ITS IMPLICATIONS

On May 9, 2024, after this Note was drafted, the Supreme Court issued its ruling in *Warner Chappell Music v. Nealy*.¹⁵⁶ This decision partially addressed the circuit split on lookback damages under the Discovery Accrual Rule discussed in this Note but left open broader questions about whether the Copyright Act has a Discovery Accrual Rule.¹⁵⁷

In a 6-3 decision authored by Justice Kagan, the Court affirmed the Eleventh Circuit's ruling, permitting recovery of damages for acts of copyright infringement that occurred more than three years before the filing of the lawsuit under the Discovery Accrual Rule.¹⁵⁸ This decision aligns with the analysis presented in this Note.¹⁵⁹ The Court's ruling emphasized that 17 U.S.C. § 507(b) "establishes no separate three-year period for recovering damages."¹⁶⁰ This interpretation effectively resolves the incompatibility issue highlighted in this Note between claim accrual and recovery periods.¹⁶¹ It is now no longer a concern that a plaintiff may have a timely claim but no remedy.

However, it is crucial to note that the Court explicitly assumed, without deciding, that the Discovery Accrual Rule applies to copyright claims.¹⁶² As stated in the majority opinion: "In this case, we assume without deciding that a claim is timely under that provision if brought within three years of when the plaintiff discovered an infringement, no matter when the infringement happened."¹⁶³ This caveat leaves unanswered the broader question of whether the Discovery Accrual Rule should be applied in copyright cases at all—a central focus of this Note.¹⁶⁴

The dissenting opinion, authored by Justice Gorsuch and joined by Justices Thomas and Alito, highlights the ongoing debate surrounding the Discovery Accrual Rule in copyright law.¹⁶⁵ Justice Gorsuch argued that the Court should have first addressed whether the Copyright Act permits a Discovery Accrual Rule at all, stating that the Act "almost certainly does not tolerate a discovery rule."¹⁶⁶ This skepticism toward the Discovery Accrual

¹⁵⁶ 144 S. Ct. 1135 (2024); Dennis Crouch & Timothy Knight, *Supreme Court Affirms Availability of Back-Damages Under Copyright Discovery Rule*, PATENTLYO (May 9, 2024), <https://patentlyo.com/patent/2024/02/copyright-damages-chappell.html> [<https://perma.cc/G2DE-U6YN>].

¹⁵⁷ *Warner*, 144 S. Ct. at 1140.

¹⁵⁸ *Id.*

¹⁵⁹ *See supra* Part IV.

¹⁶⁰ *Warner*, 144 S. Ct. at 1139.

¹⁶¹ *Id.*; *see supra* Part IV.

¹⁶² *Warner*, 144 S. Ct. at 1140.

¹⁶³ *Id.* at 1137.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 1140–41 (Gorsuch, J., dissenting).

¹⁶⁶ *Id.* at 1140 (Gorsuch, J., dissenting).

Rule stands in sharp contrast with the interpretation of the Copyright Act presented in this Note.¹⁶⁷

The Court's decision to sidestep the fundamental question of the Discovery Accrual Rule's applicability in copyright law means that the analysis presented in this Note remains highly relevant.¹⁶⁸ While the ruling resolves the specific issue of lookback damages under the Discovery Accrual Rule, it leaves open the question of whether this rule should be applied in copyright cases at all.¹⁶⁹ This Note's exploration of the competing interests between robust copyright protection and practical limitations on accrual rules remains pertinent. While the Supreme Court's ruling in *Warner Chappell Music v. Nealy* resolves one aspect of the circuit split discussed in this Note, the analysis and proposals presented in this Note remain relevant to the ongoing debate about the Discovery Accrual Rule.

¹⁶⁷ See *supra* Part IV.

¹⁶⁸ *Warner*, 144 S. Ct. at 1140.

¹⁶⁹ See generally *id.*