

Infringers Beware: Copyright Damages Not Limited to Three Years

Nealy v. Warner Chappell Music, Inc., No. 21-13232 (11th Cir. 2023)

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The Eleventh Circuit joins the Ninth Circuit where, despite a claim of copyright infringement having a three-year statute of limitation, a plaintiff can recover damages more than three years prior to the suit. Recently, the Eleventh Circuit weighed in on the current circuit split finding neither the Supreme Court’s decision in *Petrella v. Metro-Goldwyn-Mayer*, 572 U.S. 663 (2014), nor the Copyright Act’s statute of limitations, bars recovery for damages for infringement which occurred more than three years prior to the suit if the copyright owner discovered the infringement within those three.



Plaintiffs alleged that due to invalid licenses obtained from third parties defendants are infringing copyrights in certain musical works. The infringement allegedly began in 2008, but plaintiff was in-and-out of prison and uninvolved in the music industry until 2016 when he discovered the infringement. Plaintiff filed suit for copyright infringement in 2018 seeking damages as far back as 2008. Defendants argued that damages should be “limited to the three-year lookback period as calculated from the date of the filing of the Complaint pursuant to the Copyright Act and *Petrella*.”

Petrella held that the doctrine of laches does not bar copyright claims within the three-year statute of limitations period and that the statute “bars relief of any kind for conduct occurring prior to the three-year limitations period.” The Second Circuit agrees, strictly interpreting *Petrella* as barring any recovery outside of the three-year lookback. The Ninth Circuit disagrees, holding that *Petrella* does not limit recovery if the filing of suit was timely.

The Eleventh Circuit has joined the Ninth Circuit, noting that *Petrella* based its ruling on a claim that was brought under the *injury* rule. Under the injury rule, a claim for copyright infringement accrues and the statute of limitations begins to run once an act of infringement occurs, no matter when the plaintiff learns of it. Conversely, the Eleventh and Ninth Circuits apply the discovery rule in which the statute of limitations runs once the plaintiff learns, or reasonably should have learned, the defendant has violated his rights.

Thus, the Eleventh Circuit concluded *Petrella* did not cap damages for claims that were timely filed under the *discovery* rule, because *Petrella* did not address the discovery rule. In addition, the Eleventh Circuit concluded that the plain text of the Copyright Act only bars the ability for plaintiff to recover if he does not bring a timely action, and that it does not dictate the remedy a plaintiff may obtain if a timely action is brought. Hence, a damages claim that satisfies the statute of limitations based on the discovery rule is not limited to three years. Therefore, copyright holders seeking to enforce their rights should determine where personal jurisdiction is available in either the Ninth or Eleventh Circuits to potentially allow recovery of damages beyond three years.