We Need An Answer! *Hearst Newspapers* Calls Out the Supreme Court For Not Choosing A Copyrights Accrual Rule.

Abigail Roos*

ABSTRACT

American society highly values protecting intellectual property from infringement. The Copyright Act of 1976 (the "Copyright Act") protects a wide range of expressive and creative works. The Copyright Act grants owners of qualifying works a bundle of rights and provides for damages when those rights are infringed. However, Congress implemented a three-year statute of limitations to restrict an owner's ability to bring an infringement lawsuit. But Congress failed to specify when the statute of limitations begins, which is known as the "accrual" date. As a result, lower federal courts created two accrual rules-the injury rule and the discovery rule.

The two conflicting accrual rules generate widespread confusion and uncertainty for copyright owners and courts. Because the lower courts employ different rules, copyright infringement case outcomes lack uniformity. As a result, many copyright owners engage in forum shopping to benefit their cases. Despite renouncing forum shopping, the Supreme Court denied previous opportunities to choose a rule.

In November 2023, Hearst Newspapers petitioned the Supreme Court to hear their case, *Hearst Newspapers v. Martinelli*, but their petition was denied. This Comment argues the Supreme Court should have granted Hearst Newspapers' petition. By granting the petition and choosing an accrual rule, the Supreme Court would have created a uniform accrual period across the country and prevented plaintiffs from forum shopping. However, unlike the position of Hearst in *Hearst Newspapers*, this Comment recommends the Supreme Court choose the discovery rule because this rule provides courts with an objective standard and promotes the overarching goal of the Copyright Act, which is to promote the timely prosecution of claims while not unnecessarily punishing diligent copyright owners.

---

* J.D. Candidate, The Pennsylvania State University School of Law, 2025.

Table of Contents

I. INTRODUCTION 243
II. BACKGROUND 246
A. Early History of Copyrights 246
1. Great Britain's Statute of Anne 246
2. Beginning of U.S. Copyright Law 247
B. What Works Are Protected and What Rights Are These Works Given? 248
1. Works Protected Under the Copyright Act 248
2. Rights Granted to Copyrighted Works 249
C. Copyright Litigation and Statutory Damages 250
1. What Is Copyright Infringement? 251
2. What Does an Owner Need to Prove to Establish an Infringement? 251
3. What Types of Damages Can a Copyright Owner Receive? 252
a. Section 504. Remedies for Infringement: Damages and Profits 252
b. Section 504. Statutory Damages 253
c. Other Possible Damages Under the Copyright Act 254
D. Statute of Limitations for Copyright Damages 254
1. Brief History of the Statute of Limitations 255
2. The Current Civil Statute of Limitations 255
3. The Two Accrual Rules: The Discovery Rule and the Injury Rule 256
a. The Discovery Rule 257
b. The Injury Rule 258
E. Confusion Amongst the Courts: Which Accrual Rule Should Apply to Copyright Law? 258
1. Petrella v. Metro-Goldwyn-Mayer and the Injury Rule 259
2. Circuit Split: Confusion Amongst the Appeals Courts 260
a. Second Circuit's Confusion 260
b. The Ninth and Eleventh Circuits Disagree 261
c. The Supreme Court Did Not Choose an Accrual Rule ... 263
3. *Hearst Newspapers:* The Supreme Court Needs to Decide on a Rule 263
III. ANALYSIS 264
A. The Supreme Court Needed to Hear Hearst Newspapers 264
1. Creating A Uniform Time Frame 265
2. Preventing Forum Shopping 266
B. The Discovery Rule Provides an Objectivate Standard 267
C. Promoting Congress's Intent 268
1. Injury Rule Does Not Promote Congress's Intent 268
2. Discovery Rule Promotes Congress's Intent 269
IV. CONCLUSION 270

I. INTRODUCTION

Imagine you are a successful lawyer practicing in the United States. Because of your hard work and determination, you advanced from an associate to a managing partner at a major law firm. Before you retire, you want to help future lawyers succeed in their careers.

Interns at your law firm informed you that prospective law students are struggling with the Law School Admission Test ("LSAT"). The interns told you that, while there are many great LSAT preparation courses on the market, the courses get very expensive and not every tester can afford the fees. As a result, many students struggle to get a high score on the exam. Because you did very well on the LSAT, scoring within the 99th percentile, you decided to write an affordable LSAT preparation book.

You wanted this book to help current and future testers improve their reasoning skills before the exam.[1] The LSAT contains three multiple choice sections for every exam: Reading Comprehension, Analytical Reasoning, and Logical Reasoning.[2] You decided to split your book into three parts, one for each LSAT section.[3] To differentiate your book from other LSAT books, you created "an original organizational structure" and used "original associations, key words, phrases, and sentences."[4]

On January 30, 2018, you completed and self-published your book. Then, you decided to register your book with the United States Copyright Office ("Copyright Office"), and you received a copyright.[5] You decided to register your book with the Copyright Office because you wanted the

1. *See* Med. Educ. Dev. Servs., Inc. v. Reed Elsevier Grp., PLC, No. 05 Civ. 8665 (GEL), 2008 WL 4449412, at *1 (S.D.N.Y. Sept. 30, 2008). This fact pattern is similar to the situation in *Medical Education*. *See id.* In that case, the plaintiff's founder and president wrote a series of books "intended to teach students and NCLEX candidates how to improve their reasoning skills in the practice of nursing." *Id.*

2. *See Types of LSAT Questions*, LAW SCH. ADMISSIONS COUNCIL, INC., https://perma.cc/8DLM-3FC3 (last visited Jan. 31, 2024). The Reading Comprehension section measures a test taker's "ability to read and understand examples of long-form, complex materials that are similar to those . . . encounter[ed] in law school." *Id.* Then, the Analytical Reasoning section measures a tester's "ability to understand a structure of relationships and draw conclusions about that structure." *Id.* Lastly, the Logical Reasoning section questions a tester's "ability to analyze, critically evaluate, and complete arguments." *Id.*

3. *See* Med. Educ., 2008 WL 4449412, at *1. In *Medical Education*, one of the plaintiff's books contained three parts: the first provided methods for analyzing potential exam questions, the second gave test-taking strategies, and the third discussed nursing theories. *See id.*

4. *Id.* In *Medical Education*, the plaintiff used these words to describe their book. *See id.*

5. *See id.* This fact is similar to the situation in *Medical Education*, where the plaintiff obtained copyrights for their books. *See id.*

protections offered by the registration system.[6] Luckily for you, your book became very popular with LSAT testers, and you made a great profit.

Unbeknownst to you, another company ("COMPANY") created its own LSAT preparation book. COMPANY published their book in August 2018, a few months after you did. When writing their book, COMPANY relied on various source materials, including your book.[7]

However, unlike you, COMPANY's book did not remain successful. In its first year after publication, COMPANY's book received a healthy profit, but their profit subsequently declined. In January 2020, COMPANY declared their book out of print and received no profits after that date.[8]

Through no fault of your own, you did not discover that COMPANY violated your copyright until January 2025. When you discovered COMPANY's book, you realized they "appropriated the fundamental structure" of your book, mirrored "the order in which [the] topics [were] addressed," and "engaged in verbatim or near-verbatim copying of [your] . . . original language."[9] As a result, on March 1, 2025, you filed a copyright infringement suit against COMPANY in your federal district court.

Before the trial court judge, COMPANY conceded two important points. First, they admitted they had access to your book. Second, they admitted that their book "[was] substantially similar" to yours.[10] However, COMPANY argued that your lawsuit is "time-barred" under the statute of limitations because they "garnered no sales during the three years preceding" your action.[11] The federal circuit in which this district court sits applies the injury rule to the statute of limitations, meaning a copyright owner's cause of action accrues on the actual date of the infringement.[12] Consequently, because you filed the suit in March 2025, the court ruled that "any claims for damages or profits from sales of the allegedly

6. *See* U.S. COPYRIGHT OFF., COPYRIGHT BASICS, (last updated Sept. 2021), https://perma.cc/7H8W-K4M4 (explaining the different legal protections offered only to copyright owners).

7. *See Med. Educ.*, 2008 WL 4449412, at *2. In *Medical Education*, the defendant acknowledged that "she relied upon various source materials" in drafting her nursing preparation book. *Id.*

8. *See id.* In *Medical Education*, the defendant declared the alleged infringing books out of print on December 1, 2001, and February 3, 2002. *See id.*

9. *Id.* at *6. This fact pattern's complaint contains the exact words used in the *Medical Education* complaint. *See id.*

10. *Id.* at *3. In *Medical Education*, the defendant conceded that their "publications were substantially similar" to the plaintiff's book and that they had access to the plaintiff's books when creating their own books. *Id.*

11. *Id.* at *10. This fact pattern uses the exact defense made by the defendant in *Medical Education*. *See id.*

12. *See id.* This fact pattern uses the injury rule, as the district court in *Medical Education* did. *See id.*

infringing works that pre-date" March 1, 2022, "are time-barred."[13] Because COMPANY did not receive any profits from their book past January 2020, the court did not award you any damages.

Beyond the disappointment of losing the case, your frustration increases when you learn that most federal circuits follow a different rule for the statute of limitations.[14] The other circuits follow the discovery rule, under which a copyright owner's cause of action accrues when the owner knew or should have known the defendant violated the owner's copyright.[15] A different federal court that utilized the discovery rule might have ruled in your favor.

This Comment discusses the two judicially created copyright accrual rules-the injury rule and the discovery rule. More specifically, this Comment argues that the Supreme Court should have heard *Martinelli v. Hearst Newspapers, Inc.* ("*Hearst Newspapers*") to stop the current confusion and uncertainty surrounding the two accrual rules. However, unlike Hearst in *Hearst Newspapers*, this Comment argues the Supreme Court should adopt the discovery rule.

Part II focuses on the Copyright Act of 1976 (the "Copyright Act").[16] The Part starts by outlining the origins of American copyright law before identifying what works are protected under the Copyright Act, the rights granted to copyright owners, and the damages available to an owner for an infringement.[17] Then, Part II explores the history of the Copyright Act's statute of limitations for civil cases and explains the two judicially created accrual rules.[18] Lastly, Part II discusses four modern cases that highlight the confusion and uncertainty currently surrounding the accrual rules in civil copyright infringement cases.[19]

Part III makes two arguments: the Supreme Court should have granted *Hearst Newspapers'* petition for certiorari and then ruled in favor of the discovery rule.[20] First, Part III will argue that agreeing to hear *Hearst Newspapers* would have allowed the Supreme Court to create a uniform accrual period throughout the United States and stop copyright owners from forum shopping.[21] Then, Part III argues the Supreme Court needs to choose the discovery rule because, unlike the injury rule, the

13. *Id.* at *11. This fact pattern uses the exact language from the district court's decision in *Medical Education*. *See id.*

14. *See* Starz Ent., LLC. v. MGM Domestic Television Distrib., LLC., 39 F. 4th 1236, 1241–42 (9th Cir. 2022).

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

16. *See infra* Part II.

17. *See infra* Sections II.A–II.C.

18. *See infra* Section II.D.

19. *See infra* Section II.E.

20. *See infra* Part III.

21. *See infra* Section III.A.

discovery rule is governed by an objective standard and promotes the intention of the Copyright Act's statute of limitation.[22]

II. BACKGROUND

Appreciating the current confusion surrounding the two accrual rules in copyright law requires an understanding of the Copyright Act's history. Considering the works the Copyright Act protects, the rights it gives owners, and the damages it offers plaintiffs provides context alluding to why the Supreme Court should adopt a uniform accrual rule. In addition, an analysis of the two accrual rules will show how a copyright owner can become confused about what rule applies and how it impacts their ability to receive damages for an infringement.

A. Early History of Copyrights

Like many aspects of American law, American copyright law originated from Great Britain's copyright statute.[23] The printing press, a fifteenth-century innovation, necessitated the enactment of Great Britain's first copyright statute, known as the Statute of Anne.[24]

1. Great Britain's Statute of Anne

In 1436, Johannes Gutenberg of Germany invented the printing press, a machine capable of producing pages of text at a speed faster than handwriting.[25] While the printing press provided many benefits to society, it also allowed printers and booksellers to easily copy a written work without the owner's consent.[26]

In 1709, British writers submitted a petition to the House of Commons.[27] In their petition, the writers complained that "[infringers] . . . invaded the Properties of others, by reprinting several Books, without the Consent, and to the great Injury, of the Proprietors."[28] In response, the House of Commons enacted the Statute of Anne in April 1710, which

22. *See infra* Sections III.B–III.C.

23. *See* 1 WILLIAM F. PATRY, PATRY ON COPYRIGHTS §§ 1:1, 1:5 (2024).

24. *See id.* § 1:5; *see also* Ronan Deazley, *Commentary on: Statute of Anne (1710)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (2008), https://perma.cc/GRQ7-5ER7. The Statute's full name is *An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned*. *See* Deazley, *supra*. However, the Act is more commonly known by its short title, the Statute of Anne. *See id.*

25. *See The Gutenberg Press*, OREGON STATE UNIV. LIBRS., https://perma.cc/9N25-CFHF (last visited Sept. 29, 2023).

26. *See* The Statute of Ann. 1710, 8 Anne c. 19 (Gr. Brit.); *see also* PATRY, *supra* note 23, § 1:5.

27. *See* Deazley, *supra* note 24.

28. *Id.* (quoting *Journals of the House of Commons*, 8 House of Commons 1, 240 (1711)).

provided authors the sole right to print and reprint their works for a limited time.[29]

The Statute of Anne began the western world's movement to legally prevent copying or reproducing another's work without permission, which is now known as copyright protection law.[30] Thus, when the Congressional Committee began to write America's first copyright law in 1787, they patterned the law from Great Britain's Statute of Anne.[31]

2. Beginning of U.S. Copyright Law

The first draft of the United States Constitution did not grant Congress the power to create laws regulating intellectual property.[32] However, after the first draft did not pass, the delegates regrouped and wrote another draft in August 1787.[33] At this meeting, James Madison and Charles Pickney advocated giving Congress the ability to enact intellectual property laws.[34]

Because of Madison and Pickney's advocacy, the September 12, 1787, Constitution draft included what is now known as the Intellectual Property Clause (the "Clause").[35] The Clause granted Congress the power "[t]o promote the Progress of Science and [the] useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[36] Relying on this Clause, Congress enacted the first United States Copyright Act in 1790.[37]

The Copyright Act of 1790 (the "1790 Act") protected "the author and authors of any map, chart, book[,] or books" printed before or after its passage.[38] The 1790 Act granted the author or authors "the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book[,] or books" for 14 years.[39] Subsequently, if any of the authors remained alive, the 1790 Act gave them the option to extend their copyright protection for another 14 years.[40]

---

29. *See id.*; *see also* The Statute of Ann. 1710, 8 Anne c. 19 (Gr. Brit.).
30. *See Copyright History*, INTELL. PROP. RTS. OFF., https://perma.cc/VJB3-RU6T (last visited Oct. 14, 2023).
31. *See* PATRY, *supra* note 23, §§ 1:1, 1:18.
32. *See id.* § 1:18.
33. *See id.*
34. *See id.*
35. *See id.*
36. U.S. CONST. art. I, § 8, cl. 8.
37. *See* H.R. REP. NO. 94-1476 (1976).
38. Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124, 124 (1790) (current version at 17 U.S.C. § 102).
39. *Id.*
40. *See id.*

B. What Works Are Protected and What Rights Are These Works Given?

Over time, Congress revised and improved the copyright laws as technology improved and changed the way the laws operated.[41] The works protected by copyright laws expanded from only maps, charts, and books to include works such as motion pictures and sound recordings.[42] In addition to extending the types of works protected, Congress amended the copyright laws multiple times to grant copyright holders new rights.[43]

1. Works Protected Under the Copyright Act

While Congress passed some amendments over the years, the latest "major overhaul" of the copyright laws was the Copyright Act of 1976 (the "Copyright Act").[44] The current Copyright Act protects more works now than ever before.[45] Under the Copyright Act, a work qualifies for copyright protection if the work meets three requirements: (1) the work must be original, (2) the work must be "fixed in any tangible medium of expression . . . known [at the time of the Copyright Act's enactment] or later developed," and (3) the work must fit into one of the eight categories listed in § 102(a).[46]

Although the Supreme Court held that the "originality" requirement comes directly from the Constitution, the Copyright Act does not define "original" or "originality."[47] As a result, in *Feist Publications, Inc. v. Rural Telephone Service Company*, the Supreme Court laid out the requirements an author must meet to achieve originality.[48] Under *Feist*, authors must create their work independently, and their work must contain a "modicum of creativity."[49] As long as an author does not copy another's work, and fulfills the *Feist* requirements, the work will meet the originality requirement.[50]

Unlike "original," the Copyright Act explicitly defines what Congress meant by "fixed."[51] Under the Copyright Act, a work is "fixed"

---

41. *See* H.R. REP. NO. 94-1476.
42. *See id.*
43. *See* 17 U.S.C. § 106.
44. *See* PATRY, *supra* note 23, § 1:71. *But see* H.R. REP. NO. 94-1476 (arguing that many copyright experts believe the present law is very similar to the 1909 revisions).
45. *See* 17 U.S.C. § 102(a).
46. *Id.*
47. *See* Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 346 (1991); *see also* 17 U.S.C. § 101.
48. *See Feist*, 499 U.S. at 346.
49. *Id.*
50. *See id.* at 358.
51. *See* 17 U.S.C. § 101.

> when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.[52]

If the work is "original" and "fixed," the author can then see if their work meets the third requirement.

The third requirement specifies that a work must fall within one of the eight categories listed in § 102(a).[53] The eight categories include: "(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works."[54] If an author can successfully argue that their work fits into one of the categories, then the Copyright Act protects their work.[55]

Although Congress expanded the categories of works protected under the Copyright Act, Congress put limits on what works qualify for copyright protection.[56] Notably, the Copyright Act does not protect any "idea, procedure, process, system, method of operation, concept, principle, or discovery."[57] The works that fall into the categories listed in § 102(b) are protected by patent law rather than copyright law.[58] Therefore, even if a work is original and fixed in a tangible medium, if the work falls within § 102(b)'s categories, it will not receive copyright protections.[59]

2. Rights Granted to Copyrighted Works

When Congress passed the 1790 Act, the 1790 Act did not offer broad protections.[60] Indeed, the 1790 Act just gave copyright owners "the sole right and liberty of printing, reprinting, publishing[,] and vending such map, chart, book[,] or books" for 14 years.[61] In the modern Copyright Act,

---

52. *Id.*
53. *See* 17 U.S.C. § 102(a)(1)–(8).
54. *Id.*
55. *See id.*
56. *See* 17 U.S.C. § 102(b); *see also* H.R. REP. NO. 94-1476 (1976).
57. 17 U.S.C. § 102(b).
58. *See* Baker v. Selden, 101 U.S. 99, 102–03 (1879), *superseded by statute as stated in* Close to My Heart, Inc. v. Enthusiast Media LLC, 508 F.Supp.2d 963 (D. Utah 2007).
59. *See* 17 U.S.C. § 102(b).
60. *See* Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124, 124 (1790) (current version at 17 U.S.C. § 102).
61. *Id.*

located in 17 U.S.C. § 106, Congress expanded the list of exclusive rights.[62]

Subject to §§ 107 through 122, the Copyright Act grants a copyright owner six rights.[63] These six rights include the right:

(1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.[64]

These copyright protections are not permanent. The length of protection provided under the Copyright Act depends on whether a work was produced before or after January 1, 1978.[65] For works copyrighted before January 1, 1978, the Copyright Act protected the work for 28 years after the author received their copyright certification.[66] In contrast, the Copyright Act gives works created after January 1, 1978, or any work that exists but did not formally apply for a copyright with the Copyright Office, copyright protection that "endures for a term consisting of the life of the author and 70 years after the author's death."[67] If someone infringes on the rights granted by the Copyright Act during the span of the Copyright Act's protection, a copyright owner can file a lawsuit against the infringer.[68]

C. Copyright Litigation and Statutory Damages

The Copyright Act grants copyright owners a private right of action in federal court against alleged infringers.[69] If a court rules in an owner's favor, the owner can receive damages awards in many different forms.[70]

---

62. *See* 17 U.S.C. § 106.
63. *See id.*
64. *Id.*
65. *See id.* §§ 302(a), 304(a).
66. *See id* § 304(a).
67. *Id.* § 302(a).
68. *See id.* § 501.
69. *See Remedies for Copyright Small Claims*, U.S. COPYRIGHT OFF., [hereinafter *Remedies*] https://perma.cc/J6D9-QVY9 (last visited Feb. 18, 2024).
70. *See* 17 U.S.C. §§ 501–513.

1. What Is Copyright Infringement?

While a valid copyright owner obtains the rights discussed above, other individuals can intentionally or unintentionally violate the copyright owner's rights. The Copyright Act defines an infringer as someone who violates any of the rights listed in § 106 of the Copyright Act.[71] If an infringer violates an owner's rights, and the copyright owner registered their work with the Copyright Office, the owner is entitled to initiate a civil action against the infringer.[72] This type of civil suit is known as a claim of copyright infringement and is heard in federal court.[73]

2. What Does an Owner Need to Prove to Establish an Infringement?

When a copyright owner brings an infringement claim, the Supreme Court requires the owner to establish that (1) they hold a valid copyright and (2) the alleged infringer copied "constituent elements of the work that are original."[74] As discussed above, an owner proves they possess a valid copyright with evidence that they authored a work, or hired another person to create a work for them, that is original, fixed in a tangible medium, and included within the eight categories listed in § 102(a).[75]

After the author establishes their copyright is valid, the owner must also demonstrate that the alleged infringer copied original elements of their work.[76] To prove this element, the owner must show the alleged infringer copied and unlawfully appropriated their work.[77] The owner must prove the alleged infringer copied their work because, as a matter of

71. *See* 17 U.S.C. § 501(a). Under the Copyright Act, an infringer can include an individual, "any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity." *Id.*

72. *See* 17 U.S.C. § 501(b). While registration of a copyright with the Copyright Office is voluntary, if an owner wishes to bring a lawsuit for infringement, the work must be registered. *See* 17 U.S.C. § 411(a); *see also Copyright in General*, U.S. COPYRIGHT OFF., https://perma.cc/72DJ-NCRT (last visited Oct. 13, 2023).

73. *See Remedies*, *supra* note 69.

74. Feist Publ'ns., Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991) (citing Harper & Row Publishers, Inc. v. Nation Enters. 471 U.S. 539, 548 (1985)).

75. *See* 17 U.S.C. § 102(a). "Hired another person to create a work for them" refers to "works made for hire," which are beyond the focus of this comment. *See* U.S. COPYRIGHT OFF., CIRCULAR 30: WORKS MADE FOR HIRE (Mar. 2021), https://perma.cc/2CCN-PR3E (explaining works made for hire).

76. *See Feist*, 499 U.S. at 361.

77. *See* Rentmeester v. Nike, Inc., 883 F.3d 1111, 1117 (9th Cir. 2018). There are two ways an owner can prove an alleged infringer copied their work: direct and circumstantial evidence. *See id.* If the owner lacks direct evidence, they can circumstantially prove copying by establishing the alleged infringer had access to their work and the alleged infringer's work has substantial similarity to the protectable elements of the owner's work. *See id.* This circumstantial evidence creates a "presumption of copying" that the alleged infringer could then dispute. *Id.*

law, no copyright infringement occurs when two authors independently create their works.[78] Even if two works are strikingly similar, an alleged infringer cannot be liable for copyright infringement if the alleged infringer created their work with no knowledge or exposure to a copyright owner's work.[79] Additionally, the owner must show that the infringer unlawfully appropriated their work "because copyright law does not forbid all copying."[80] For example, the Ninth Circuit explained that because the Copyright Act does not protect ideas or concepts, a person does not infringe on an author's copyright if they copy only the work's ideas.[81]

If a copyright owner successfully proves they own a valid copyright and the infringer copied protectable elements, then the copyright owner may prevail in the suit and recover the damages listed in the Copyright Act.

3. What Types of Damages Can a Copyright Owner Receive?

After a copyright owner wins an infringement suit, the copyright owner can recover different types of damages. These damages include monetary damages, statutory damages, attorneys' fees, and injunctions.[82]

a. Section 504. Remedies for Infringement: Damages and Profits

When Congress created a damages system for copyright infringement, it wanted to fulfill two goals.[83] Congress wanted to both compensate copyright owners and provide a deterrent to potential infringers.[84] To achieve these goals, the Copyright Act holds an infringer liable "for either— (1) the copyright owner's actual damages and any additional profits of the infringer . . . or (2) statutory damages" when they infringe on a copyrighted work.[85]

By awarding actual damages and additional profits, courts aim to compensate copyright owners and stop potential infringers.[86] Actual damages compensate the copyright owner for an infringement.[87] Usually, actual damages equate to the profits lost by the owner from the infringement.[88] In addition to actual damages, § 504(a)(1) allows courts to

---

78. *See id.*
79. *See id.*; *see also* Selle v. Gibb, 741 F.2d 896, 905 (7th Cir. 1984).
80. *Rentmeester*, 883 F.3d at 1117.
81. *See id.*
82. *See* 17 U.S.C. §§ 501—513.
83. *See* 50 AM. JUR. 2D 263 *Damages for Copyright Infringement* § 1 (2024).
84. *See id.*
85. 17 U.S.C. § 504(a).
86. *See Damages for Copyright Infringement § 1*, *supra* note 83.
87. *See id.*
88. *See id.*

grant damages for any additional profits made by the infringer.[89] Congress included § 504(a)(1) damages because they wanted to stop potential infringers from being unjustly enriched.[90]

To receive actual damages and the infringer's additional profits, the Copyright Act requires the owner and the infringer to bring certain financial documents to court.[91] The copyright owner is "required to present proof only of the infringer's gross revenue."[92] Then, the burden shifts to the infringer who is "required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work."[93] Using these numbers and documents, the Court can calculate the amount of actual damages and infringer's profits that get awarded to the owner.[94]

b. Section 504. Statutory Damages

However, § 504(a) provides an alternative damage award to actual damages and the infringer's profits.[95] Under § 504(a), at any time before final judgment is rendered, a copyright owner may elect to recover "an award of statutory damages for all infringements involved in the action."[96] Additionally, the Supreme Court ruled that courts can use their discretion to award statutory damages even if the owner did not ask for them.[97] By allowing courts to exercise discretion, the Supreme Court is permitting courts to award statutory damages to achieve the dual goals of compensating copyright owners and deterring potential infringers.[98]

Generally, statutory damages awards are appropriate when a court or owner struggles to establish the amount of actual damages.[99] As a result, with statutory damages, the court can award a "sum of not less than $750 or more than $30,000 as the court considers just."[100] However, if a copyright owner proves the infringer infringed willingly, "the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000."[101] Or, if the infringer proves to the judge that they were "not aware and had no reason to believe" they infringed on a

---

89. *See* 17 U.S.C. § 504(a)(1).
90. *See Damages for Copyright Infringement § 1*, *supra* note 83.
91. *See* 17 U.S.C. § 504(b).
92. *Id.*
93. *Id.*
94. *See id.*
95. *See id.* § 504(a).
96. *Id.* § 504(c)(1).
97. *See* F. W. Woolworth Co. v. Contemp. Arts, 344 U.S. 228, 234 (1952).
98. *See Damages for Copyright Infringement § 1*, *supra* note 83.
99. *See id.* (citing Lauratex Textile Corp. v. Allton Knitting Mills, Inc., 519 F. Supp. 730, 732 (S.D.N.Y. 1981)).
100. 17 U.S.C. § 504(c)(1).
101. *Id.* § 504(c)(2).

copyright, "the court in its discretion may reduce the award of statutory damages to a sum of not less than $200."[102]

c. Other Possible Damages Under the Copyright Act

In addition to actual damages, infringer profits, and statutory damages, the Copyright Act grants copyright owners other potential forms of damages.[103] In § 505, the Copyright Act gives courts the discretion to "award a reasonable attorney's fee to the prevailing party as part of the costs."[104] However, the author must have registered the copyright with the Copyright Office to receive attorney's fees.[105]

When determining whether to grant attorneys' fees, the Supreme Court has stated that lower courts must examine different nonexclusive factors.[106] These nonexclusive factors include "frivolousness, motivation, objective unreasonableness, and the need in particular circumstances to advance considerations of compensation and deterrence."[107] Using these factors, the Copyright Act and judicial precedent grant courts the discretion to award a winning copyright owner attorney's fees.[108]

In addition to monetary awards, the copyright statute allows copyright owners to seek injunctions.[109] Courts can award copyright owners temporary or final injunctions, which legally restrain infringers from violating the copyright owner's rights.[110]

D. Statute of Limitations for Copyright Damages

While the Copyright Act provides copyright owners with different remedies, these remedies are not available indefinitely.[111] Like many other statutes authorizing civil actions, the Copyright Act imposes a statute of limitations.[112] The Copyright Act's current statute of limitations limits

---

102. *Id.*

103. *See id.* §§ 501—513.

104. *Id.* § 505.

105. *See id.* § 412; *see also* Elizabeth D. Lauzon, Annotation, *Right to Award of Attorney's Fees Under §§ 101 et seq. of Copyright Act, 17 U.S.C.A. § 505*, 174 A.L.R. Fed. 289 § 2[a] (2001).

106. *See* Kirtsaeng v. John Wiley & Sons, Inc., 579 U.S. 197, 202 (2016).

107. *Id.* (quoting Fogerty v. Fantasy, Inc. 510, U.S. 517, 534 n.19 (1994)).

108. *See id.*

109. *See* 17 U.S.C. § 502(a).

110. *See* Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC., 139 S. Ct. 881, 892 (2019); *see also* 17 U.S.C. § 502(a).

111. *See* 17 U.S.C. § 507(b).

112. *See id.* According to the Honorable Judge Richard Posner, statutes of limitations are meant to protect social interests in "certainty, accuracy, and repose." Cada v. Baxter Healthcare Corp., 920 F.2d 446, 452–53 (7th Cir. 1990). However, there is always a "tension between the judicial system's instinct to provide a remedy for every wrong and the system's recognition that the passage of time must leave some wrongs without a

cases to infringements occurring "within three years after the claim accrued."[113] However, Congress did not define *when* the three-year accrual period begins.[114] As a result, the lower federal courts are divided on how to apply the statute of limitations in copyright infringement cases.

1. Brief History of the Statute of Limitations

Throughout its history, Congress changed and adapted the limitation period for copyright infringement cases.[115] When Congress first created copyright laws, they placed a statute of limitations on "forfeitures or penalties," but not on civil actions.[116] In section two of the 1790 Act, Congress mandated that copyright owners bring criminal copyright infringement actions within a year of a violation.[117] Congress increased the criminal limitations period to two years in the 1831 Copyright Act and maintained that period in the 1870 Copyright Act.[118]

When Congress began revising the 1870 Copyright Act in the early twentieth century, culminating in the 1909 Copyright Act, congressional members discussed adding civil actions.[119] However, Congress deleted any reference to civil actions from the final Copyright Act of 1909.[120] Subsequently, Congress did not implement a statute of limitations for civil suits until 1957.[121]

2. The Current Civil Statute of Limitations

Because Congress did not give guidance to federal courts for civil suits before 1957, the lower federal courts applied the "law of the state in which the [copyright owner brought the] action."[122] However, because states did not have any copyright laws, federal courts used state statutes of

remedy." PATRY, *supra* note 23, § 20:2 (quoting Pearl v. City of Long Beach, 296 F.3d 76, 77 (2d Cir. 2002)).

113. 17 U.S.C. § 507(b). A claim accrues when "the plaintiff can file suit and obtain relief." Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014). Therefore, a copyright claim accrues when "an infringing act occurs." *Id.*

114. *See* 17 U.S.C. § 101.

115. *See* Act of May 31, 1790, ch. 15, § 2, 1 Stat. 124, 125 (1790) (current version at 17 U.S.C. § 507); *see also* Act of February 3, 1831, ch. 16, § 13, 4 Stat. 436, 439 (1831) (current version at 17 U.S.C. § 507); Act of July 8, 1870, ch. 230, § 104, 16 Stat. 198, 215 (1870) (current version at § 507).

116. PATRY, *supra* note 23, § 20:5.

117. *See* Act of May 31, 1790, ch. 15, § 2, 1 Stat. 124, 125 (1790) (current version at 17 U.S.C. § 507).

118. *See* Act of February 3, 1831, ch. 16, § 13, 4 Stat. 436, 439 (1831) (current version at 17 U.S.C. § 507); *see also* Act of July 8, 1870, ch. 230, § 104, 16 Stat. 198, 215 (1870) (current version at § 507).

119. *See* PATRY, *supra* note 23, § 20:11.

120. *See id.*

121. *See* Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 669–70 (2014).

122. S. REP. NO. 85-1014, at 1961 (1957).

limitations for a wide range of other civil suits, such as injuries to personal rights and injuries to property rights.[123] Because federal courts used different civil actions for their analyses, the statute of limitations periods for civil copyright actions ranged from one year to eight years.[124] These non-uniform statutes of limitations allowed copyright owners to engage in forum shopping.[125]

In 1957, Congress passed Public Law 85-313, which amended Title 17 of the United States Code "to provide for a statute of limitations with respect to civil actions."[126] Public Law 85-313, which remains in the modern Copyright Act, states that "[n]o civil action shall be maintained under the provisions of this title unless the same is commenced within three years after the claim accrued."[127]

Congress passed Public Law 85-313 intending to fix the two major problems with United States copyright law.[128] First, by creating a statute of limitations for civil cases, Congress thought they would harmonize federal copyright law throughout the country.[129] Second, Congress believed that creating a uniform statute of limitations would deter copyright owners from forum shopping.[130]

Even though the 1957 addition set the statute of limitations as three years nationally, the new law did not answer all the questions surrounding the accrual period.[131] The statute of limitations did not inform copyright owners or the courts *when* the three-year accrual period begins.[132] As a result, the lower federal courts developed two different accrual rules for copyright law-the discovery rule and the injury rule.[133] Because some federal circuits follow the discovery rule and others follow the injury rule, United States copyright law continues to suffer from nonuniformity and forum shopping.[134]

3. The Two Accrual Rules: The Discovery Rule and the Injury

123. *See id.*

124. *See id.* at 1962.

125. *See id.* For example, the Senate Report noted that California adopted a relatively short statute of limitations. *See id.* Therefore, those in the entertainment industry would file suits in other jurisdictions where a longer statute of limitations existed. *See id.*

126. Act of September 7, 1957, Pub. L. No. 85-313, 71 Stat. 633 (1957).

127. *Id.*; *see also* 17 U.S.C. § 507(b).

128. *See* Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014).

129. *See id.*

130. *See id.*

131. *See* 17 U.S.C. § 507(b).

132. *See id.*

133. *See* Candace Sundine, *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, 44 (2022).

134. *See id.* at 51.

Rule

Without any guidance from Congress in the Copyright Act, the lower federal courts and the Supreme Court created two distinct, and often competing, accrual rules.[135]

a. The Discovery Rule

In the 1990s, two Second Circuit cases established the discovery accrual rule.[136] In these cases, the court ruled that accrual begins when the plaintiff knew or should have known the defendant violated their ownership rights in a copyrighted work.[137] The discovery rule is objective and postpones the accrual date "until it is reasonable to expect the plaintiff to discover the injury."[138]

When reliable evidence of a copyright violation emerges, the discovery rule assigns the plaintiff the duty to pursue "that evidence and any resulting claim."[139] In discovery rule cases, the trier of fact determines whether the copyright owner knew or should have known about the infringement, depending on the "idiosyncratic circumstances of each individual case."[140]

In discovery rule jurisdictions, claims of copyright infringement can accrue only once.[141] To determine when the accrual period began under the discovery rule, the parties must prove two different time periods.[142] First, the parties must determine when the infringement occurred.[143] Then, the parties must show when the copyright owner knew or should have known of the infringement.[144]

At the moment, the "overwhelming majority of courts use [the] discovery accrual [rule] in copyright cases."[145] Many courts rely on the discovery accrual rule because modern technological advancements have "generated new industries and new methods for the reproduction and

135. *See id.* at 44.

136. *See id.*

137. *See id.*; *see also* Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325, 1330 (11th Cir. 2023).

138. Sundine, *supra* note 133, at 44. (citing William A. Graham Co. v. Haughey, 568 F.3d 425, 438 (3d Cir. 2009)).

139. KnowledgeAZ, Inc. v. Jim Walters Res., Inc., 617 F. Supp. 2d 774, 784 (S.D. Ind. 2008); *see also* Taylor v. Meirick, 712 F.2d 1112, 1118 (7th Cir. 1983).

140. Warren Freedenfeld Assocs. v. McTigue, 531 F.3d 38, 44 (1st Cir. 2008); s*ee also* PATRY, *supra* note 23, § 20:19.

141. *See Nealy*, 60 F.4th at 1330.

142. *See* Sundine, *supra* note 133, at 44.

143. *See id.*

144. *See id.*

145. Starz Ent., LLC. v. MGM Domestic Television Distrib., LLC., 39 F. 4th 1236, 1242 (9th Cir. 2022) (quoting PATRY, *supra* note 23, § 20:19).

dissemination of copyrighted works."[146] Because of these advancements, copyright infringement is now "easier to commit, harder to detect, and tougher to litigate."[147] As copyright infringement is harder to detect despite copyright owner's best efforts, the discovery rule's flexibility allows diligent copyright owners to recover damages when they knew or should have known of the infringement. Thus, the discovery rule's popularity indicates that courts are taking the modern technological advancements into consideration.[148]

b. The Injury Rule

In 2004, the Honorable Judge Stanton Kaplan established the injury rule in *Auscape International v. National Geographic Society*.[149] In *Auscape*, Judge Kaplan reasoned that Congress intended for the three-year limitations period to start from the date of infringement.[150]

Under the injury rule, a copyright claim accrues "when an infringing act occurs."[151] Unlike under the discovery rule, in which plaintiffs bundle multiple claims of infringement together, the injury rule treats every infringing act as an individual claim.[152] Essentially, "[e]ach act of infringement is a distinct harm giving rise to an independent claim for relief," and each harm is governed by the three-year limitations period.[153] "If [an] infringement occurred within three years prior to filing, the action will not be barred even if prior infringements by the same party as to the same work are barred because they occurred more than three years previously."[154] However, unlike the discovery rule, the injury accrual rule begins whether the copyright owner knew of the infringement or not.[155]

E. Confusion Amongst the Courts: Which Accrual Rule Should Apply to Copyright Law?

While the Supreme Court has heard a few copyright damages cases in its history, the Court has not defined which accrual rule applies to

146. H.R. NO. 94-1476 (1976); *see also Starz Ent.*, 39 F.4th at 1246.
147. *Starz Ent.*, 39 F.4th at 1246.
148. *See id.* at 1244.
149. *See* Sundine, *supra* note 133, at 44.
150. *See* Auscape Int'l v. Nat'l Geographic Soc'y, 409 F. Supp. 2d 235, 245 (S.D.N.Y. 2004).
151. Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014).
152. *See id.* at 671.
153. *Id.* (quoting Stone v. Williams, 970 F.2d 1043, 1049 (2d Cir. 1992)).
154. *Id.* (quoting 3 Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 12.05 (Matthew Bender, Rev. Ed.)).
155. *See* Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325, 1330 (11th Cir. 2023).

copyright law.[156] As a result, lower federal courts throughout the country are not following a uniform rule.

1. Petrella v. Metro-Goldwyn-Mayer and the Injury Rule

After retiring, boxing champion Jake LaMotta worked with his long-time friend Frank Petrella to tell the story of his boxing career.[157] The pair created multiple works, including a screenplay.[158] Originally, Frank Petrella owned the screenplay's copyright.[159] In 1976, he assigned his rights to Chartoff-Winkler Productions, Inc.[160] Two years later, a subsidiary of Metro-Goldwyn-Mayer, Inc. ("Metro") acquired the rights to the screenplay.[161] After gaining the rights to the screenplay, Metro created a copyrighted film.[162]

When Frank Petrella died in 1981, his renewal rights transferred to his children, including his daughter Paula Petrella.[163] In 1998, Paula's attorney informed Metro that Paula owned the copyright to the screenplay and therefore controlled the right to create derivative works.[164] Paula's attorneys then told Metro that their film infringed on the rights granted to Paula under the Copyright Act.[165] For the next two years, Paula and Metro's attorneys fought over the copyright ownership in a series of letters.[166]

On January 6, 2009, Paula filed a copyright infringement suit in district court.[167] Paula wanted monetary and injunctive relief for the infringements that occurred within the three years before she filed her suit.[168] Paula limited her damages to this period because she believed the statute of limitations barred her from recovering damages beyond the three years.[169] In response, Metro filed for summary judgment using the equitable doctrine of laches as an affirmative defense.[170]

156. *See* Petition for Writ of Certiorari at 2, Hearst Newspapers LLC. v. Martinelli, 65 F.4th 231 (5th Cir. 2023).
157. *See Petrella*, 572 U.S. at 673.
158. *See id.*
159. *See id.*
160. *See id.*
161. *See id.*
162. *See id.*
163. *See id.* at 673–74.
164. *See id.* at 674.
165. *See id.*
166. *See id.*
167. *See Petrella*, 572 U.S. at 674.
168. *See id.*
169. *See id.*; *see also* 17 U.S.C. § 507(b).
170. *See Petrella*, 572 U.S. at 674–75.

When formulating their opinion, the Supreme Court used the injury rule.[171] However, the Court's use of the injury rule did not mean the Court held the injury rule as the appropriate accrual rule.[172] In the opinion, the Court expressly noted in footnote four that "nine Courts of Appeals have adopted, as an alternative to the incident of injury rule, [the] discovery rule."[173] Additionally, the Court noted that it "ha[s] not passed on the question" of whether the discovery rule could apply to copyright claims.[174]

2. Circuit Split: Confusion Amongst the Appeals Courts

Because *Petrella* did not decide which accrual rule applies in copyright cases, the lower federal courts are still confused about which accrual rule applies and which Supreme Court copyright cases bind them.[175] As a result, three Federal Courts of Appeals have created a circuit split regarding the statute of limitations for copyright damages.[176]

a. Second Circuit's Confusion

In May 2016, Sohm, a professional photographer, sued Scholastic Inc. ("Scholastic") for infringing the copyrights on 89 of his photographs.[177] In its defense, Scholastic brought forth three different arguments.[178] First, Scholastic argued the Second Circuit should adopt the injury rule rather than the discovery rule.[179] Second, Scholastic argued that, following the injury rule, Sohm's claims are barred by the Copyright Act's statute of limitations provision.[180] Lastly, Scholastic argued that "Sohm's damages should be limited to those incurred within the three years before commencement of the suit."[181]

The Second Circuit declined to adopt the injury rule, reasoning that the court's precedent mandated the use of the discovery rule.[182] Despite

171. *See id.* at 670 ("A copyright claim thus arises or 'accrue[s]' when an infringing act occurs.").

172. *See id.* at 670 n.4.

173. *Id.*; *see also* PATRY, *supra* note 23, § 20:19 ("The overwhelming majority of courts use discovery accrual in copyright cases.").

174. *Petrella,* 572 U.S. at 670 n.4.

175. *See, e.g.*, Sohm v. Scholastic Inc., 959 F.3d 39, 49–51 (2d Cir. 2020), *abrogated by* Warner Chappell Music, Inc. v. Nealy, 601 U.S. 366 (2024) (holding that even though the Second Circuit followed the discovery rule, the Court was bound by judicial precedent to follow *Petrella*, an injury rule case).

176. *See id.*; Starz Ent., LLC v. MGM Domestic Television Distrib., 39 F.4th 1236, 1242–44 (9th Cir. 2022); Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325, 1327–28, 1331 (11th Cir. 2023).

177. *See Sohm*, 959 F.3d at 42.

178. *See id.* at 44, 49.

179. *See id.* at 49.

180. *See id.* at 44.

181. *Id.*

182. *See id.* at 49–50.

continuing to use the discovery rule, the Second Circuit ruled that Sohm could not recover damages that occurred more than three years prior to when he filed his copyright infringement suit.[183] To support their ruling, the Second Circuit justices looked to *Petrella*.[184] Relying on the doctrine that lower courts are bound by a Supreme Court ruling, even though *Petrella* did not address the discovery rule, the Second Circuit ruled "the Supreme Court explicitly delimited damages to the three years prior to the commencement of a copyright infringement action."[185] Therefore, the court denied the plaintiff's recovery for damages that occurred more than three years before the plaintiff filed the suit.[186]

b. The Ninth and Eleventh Circuits Disagree

A few years after the Second Circuit's decision, the Ninth and Eleventh Circuits addressed the question of "whether damages in this copyright action are limited to a three-year lookback period as calculated from" when the plaintiff filed the case.[187] Unlike the Second Circuit, the Ninth and Eleventh Circuits held that the three-year limitations period runs from the date the claim accrued but does not limit the plaintiff's damages to the three years.[188]

In 2022, the Ninth Circuit heard *Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*.[189] In *Starz*, Starz Entertainment LLC ("Starz") provided premium subscription video programming.[190] Starz entered into a licensing agreement with MGM Domestic Television Distribution, LLC ("MGM") for 585 movies and 176 television series.[191] This licensing agreement granted Starz the exclusive right to exhibit the movies and television shows within the United States for a specific period.[192] One day, a Starz employee discovered that Amazon Prime provided their users with one of the films covered by the licensing agreement during the exclusivity period.[193] Starz then sued MGM.[194]

183. *See id.* at 51.
184. *See id.*
185. *Id.*
186. *See Sohm*, 959 F.3d at 52.
187. Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325, 1328 (11th Cir. 2023); *see also* Starz Ent., LLC v. MGM Domestic Television Distrib., 39 F.4th 1236, 1239 (9th Cir. 2022) ("The key question we must answer is when does a copyright infringement claim accrue?").
188. *See Nealy*, 60 F.4th at 1328; *see also Starz Ent.*, 39 F.4th at 1244.
189. *See Starz Ent.*, 39 F.4th at 1236.
190. *See id.* at 1238.
191. *See id.*
192. *See id.*
193. *See id.*
194. *See id.* at 1239.

In its analysis, the Ninth Circuit explicitly disagreed with the Second Circuit's reasoning.[195] The Court concluded that "*Sohm* is inherently self-contradictory."[196] The Court noted that the Second Circuit utilized an injury rule Supreme Court decision to make their decision, despite stating their jurisdiction maintains the discovery rule.[197]

After disagreeing with the Second Circuit, the court ruled that an absolute three-year ban on damages "would eviscerate the discovery rule."[198] By adopting an absolute three-year ban, a copyright plaintiff who did nothing wrong "would be out of luck" because the law would deny them damages.[199] According to the Court, "[a ban] would incentivize violation of the copyright holder's exclusive rights" and thus violate "the purpose of the Copyright Act itself."[200]

A year after *Starz*, the Eleventh Circuit heard *Nealy v. Warner Chappell Music, Inc.*[201] In *Nealy*, the plaintiff alleged the defendant infringed their copyrights on musical works because the defendants "[used] the works based on invalid licenses to the copyrights that they obtained from third parties."[202] When faced with the same question as the Second and Ninth Circuits, the Eleventh Circuit ruled in accordance with the Ninth Circuit.[203] Like the Ninth Circuit, the Eleventh Circuit held the Supreme Court made their decision in *Petrella* based on the injury rule, and thus the ruling was not binding on a question of damages under the discovery rule.[204]

After dismissing *Petrella* as non-binding precedent, the Eleventh Circuit turned to the Copyright Act's text.[205] After examining the entire Copyright Act, the court ruled that the Copyright Act's damages provisions do not place a three-year limitation on damage recovery.[206] Because the plain text of the Copyright Act does "not support the existence of a separate damages bar for an otherwise timely copyright claim," the court held "a copyright plaintiff with a timely claim under the discovery rule may recover retrospective relief for [an] infringement that occurred more than three years" before the plaintiff filed their claim.[207]

195. *See id.* at 1242–44.
196. *Id.* at 1244.
197. *See id.*
198. *Id.*
199. *Starz Ent.*, 39 F.4th at 1246 (quoting Polar Bear Prods., Inc. v. Timex Corp., 384 F.3d 700, 706 (9th Cir. 2004)).
200. *Id.*
201. *See* Nealy v. Warner Chappell Music, Inc., 60 F.4th 1325, 1325 (11th Cir. 2023).
202. *Id.* at 1328.
203. *See id.* at 1331.
204. *See id.* at 1333.
205. *See id.* at 1334.
206. *See id.*
207. *Id.*

c. The Supreme Court Did Not Choose an Accrual Rule

After the Eleventh Circuit released its decision in *Nealy*, the defendants petitioned the Supreme Court through a writ of certiorari.[208] On September 29, 2023, the Supreme Court granted the writ, but on a limited basis.[209] In the October 2023 term, the Court answered the following question: "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."[210] While the Court fixed some of the confusion presented in the circuit split mentioned above, the Court did not fix the underlying issue behind the circuit split: The uncertainty and lack of uniformity surrounding copyright damages' accrual rule.[211]

3. *Hearst Newspapers:* The Supreme Court Needs to Decide on a Rule

In April 2023, the Fifth Circuit heard *Martinelli v. Hearst Newspapers, LLC.*[212] In 2015, a client commissioned Martinelli to photograph an Irish estate owned by the Guinness family.[213] In March 2017, Hearst Newspapers, LLC ("Hearst") used Martinelli's photographs in two web-only articles without permission.[214] Martinelli discovered the two infringing articles in November 2018 and February 2020, respectively.[215] As a result, Martinelli sued Hearst for copyright infringement on October 18, 2021.[216]

In its defense, Hearst argued that *Petrella* and another Supreme Court case, *Rotkiske v. Klemm*, overturned the discovery rule.[217] However, the Fifth Circuit held that *Petrella* and *Rotkiske* did not "unequivocally overrule" the discovery rule.[218] Because the Supreme Court later confirmed *Petrella* did not disturb the discovery rule, nor did its reasoning

208. *See Warner Chappell Music, Inc. v. Nealy*, SCOTUSBLOG, [hereinafter SCOTUS*BLOG*] https://perma.cc/4G8M-4XZ5 (last visited Nov. 12, 2023); *see also* Warner Chappell Music, Inc. v. Nealy, 144 S. Ct. 1135, 1138 (2024).
209. *See* SCOTUS*BLOG*, supra note 208.
210. *Id.*
211. *See* Petition for Writ of Certiorari, *supra* note 156, at 3.
212. *See* Martinelli v. Hearst Newspapers, LLC., 65 F.4th 231, 231 (5th Cir. 2023).
213. *See id.* at 233.
214. *See id.*
215. *See id.*
216. *See id.*
217. *See id.* at 234.
218. *Id.* at 237.

lead "to the conclusion that [the discovery rule] does not apply" to § 507(b), the Fifth Circuit refused to discard the discovery rule.[219]

On November 2, 2023, Hearst petitioned the Supreme Court through a writ of certiorari.[220] Hearst wanted the Court to answer the following question: "Whether the 'discovery rule' applies to the Copyright Act's statute of limitations for civil claims."[221] In its petition, Hearst argued the Fifth Circuit and the other circuits using this discovery rule "ha[d] gone astray" and "decided this important federal question in a way that conflicts with relevant decisions of" the Court.[222] Therefore, Hearst argued the Court "should grant certiorari and hold that the discovery rule does not apply to the Copyright Act's statute of limitations for civil claims."[223] However, in May 2024, the Supreme Court declined to hear *Hearst Newspapers*.[224]

III. ANALYSIS

This Comment agrees with Hearst: The Supreme Court needs to clarify which accrual rule applies to copyright law.[225] Before *Hearst Newspapers*, two previous Supreme Court cases presented the justices with the opportunity to pick an accrual rule, but the justices declined to pick one rule over the other.[226] Because the Court did not address this issue in *Nealy*, this Comment argues the Court should have heard *Hearst Newspapers*.[227] Unlike Hearst, this Comment argues that the Supreme Court should apply the discovery rule because it provides an objective standard and promotes the Copyright Act's intent.

A. The Supreme Court Needed to Hear Hearst Newspapers

By adding a statute of limitations to civil claims, legislatures balance the tension between "the judicial system's instinct to provide a remedy for every wrong and the system's recognition that the passage of time must

219. *Id.* at 238–39. The Supreme Court confirmed that *Petrella* did not disturb the discovery rule in *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC.*, 580 U.S. 328 (2017). *See id.* at 238.

220. *See* Petition for Writ of Certiorari, *supra* note 156, at (i).

221. *Id.*

222. *Id.* at 8.

223. *Id.*

224. *See* Hearst Newspapers, LLC v. Martinelli, No. 23-474, 2024 WL 2262332 (S. Ct. May 20, 2024).

225. *See* Petition for Writ of Certiorari, *supra* note 156, at (i).

226. *See id.* at 2. The two cases are *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328 (2017) and *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014). *See id.*

227. *See id.* at 3.

leave some wrongs without a remedy."[228] A lengthy limitations period may result in the loss of evidence and the fading of witnesses' memories.[229] While society may want justice for everyone, lawmakers limit many civil claims to avoid such problems. When Congress enacted copyright law's civil three-year limitation period, it wanted "(1) to render uniform and certain the time within which copyright claims could be pursued; and (2) to prevent the forum shopping," which occurs when jurisdictions have different statute of limitations periods.[230]

The Supreme Court should have heard *Hearst Newspapers* to clarify the accrual rule in copyright law. If the Supreme Court does not clarify which accrual rule applies, then copyright law will never fully achieve the goals of § 507(b).

1. Creating A Uniform Time Frame

When the Congressional Committee proposed a statute of limitations in copyright law, committee members agreed "it [was] highly desirable to provide a uniform period throughout the United States."[231] The Committee "agreed to a [three]-year uniform period" because they felt the period "represent[ed] the best balance."[232] However, the 1957 addition of § 507(b) did not inform copyright owners or courts of when the three-year period began.[233] As a result, the lower federal courts developed two different accrual rules.[234] Consequently, copyright law lacks uniformity nationally.[235]

The Supreme Court can easily restore uniformity by adopting the discovery rule. In 2014, when the Supreme Court heard *Petrella*, nine of the eleven Federal Courts of Appeals had adopted and followed the discovery rule.[236] Following *Petrella*, these courts continued to use the discovery rule.[237] With the "overwhelming majority" of United States courts already following the discovery rule, a nationally mandated discovery rule would be a simple solution to the current non-uniformity.[238]

---

228. PATRY, *supra* note 23, § 20:2 (quoting Pearl v. City of Long Beach, 296 F.3d 76, 77 (2d Cir. 2002)).
229. *See id.*
230. Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014).
231. S. REP. NO. 85-1014, at 1962 (1957).
232. Petition for Writ of Certiorari, *supra* note 156, at 22 (citing Auscape Int'l v. Nat'l Geographic Soc'y, 409 F. Supp. 2d 235, 245 (S.D.N.Y. 2004)).
233. *See Petrella*, 572 U.S. at 670.
234. *See* Sundine, *supra* note 133, at 44.
235. *See id.* at 44–48.
236. *See Petrella*, 572 U.S. at 670 n.4.
237. *See* PATRY, *supra* note 23, § 20:18.
238. *Id.* § 20:19.

2. Preventing Forum Shopping

Forum shopping occurs when courts in multiple jurisdictions have different interpretations of a single law.[239] When courts interpret laws differently, plaintiffs may perceive that the laws of some jurisdictions are more advantageous for them than the laws of other jurisdictions.[240] Plaintiffs engage in "forum shopping" when they strategically file claims in an advantageous jurisdiction to assist their cases.[241] For example, plaintiffs may choose jurisdictions where the local laws favor them, where they are popular, or where a defendant is unpopular.[242]

In addition to conferring an unfair advantage to plaintiffs, forum shopping also causes issues for both parties and for the court itself.[243] When forum shopping occurs, defendants tend to file pre-trial motions challenging the plaintiff's venue choice.[244] These pre-trial motions are time-consuming and expensive for both the courts and the parties.[245]

By enacting § 507(b), Congress believed they had created uniformity across the country and rid copyright law of forum shopping.[246] However, because Congress did not provide parties and courts with an unambiguous accrual rule, a circuit split occurred, allowing for forum shopping to continue.[247]

Throughout its history, Supreme Court decisions have renounced forum shopping.[248] As a result, the Supreme Court should have heard *Hearst Newspapers* and ruled on which accrual rule applies in copyright law. Because the majority of federal courts follow the discovery rule, the Supreme Court should rule in favor of the discovery rule to facilitate an easy transition to uniformity.[249] By creating uniformity across the country under the discovery rule, the Supreme Court will achieve Congress's second goal: ridding copyright law of forum shopping.

---

239. *See* Sundine, *supra* note 133, at 50.

240. *See id.*

241. *See id.* at 49 (citing Vivendi SA v. T-Mobile USA Inc., 586 F.3d 689, 695 (9th Cir. 2009)).

242. *See id.* Other considerations include choosing jurisdictions where juries have "habitual generosity" or where "the inconvenience and expense to the defendant resulting from litigation" will make an impact on the defendant's case. *Id.*

243. *See id.* at 51.

244. *See id.*

245. *See id.*

246. *See* S. REP. NO. 85-1014, at 1964 (1957).

247. *See* Sundine, *supra* note 133, at 49–50. A circuit split is created "[w]hen appellate courts in different districts decide differently on the same question of law." *Id.* at 50. Because only nine of 11 circuits follow the discovery rule, there is a circuit split. *See* Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 n.4. (2014).

248. *See* Sundine, *supra* note 133, at 49–50 (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64, 76–78 (1938)); *see also* Gasperini v. Ctr. For Humanities, Inc., 518 U.S. 415, 428 (1996).

249. *See* PATRY, *supra* note 23, § 20:19.

B. The Discovery Rule Provides an Objectivate Standard

Under the discovery rule, the accrual period begins when the plaintiff knew or should have known a defendant violated their ownership rights in a copyrighted work.[250] When determining whether a plaintiff should have known about a violation, triers of fact use an objective standard: "[W]hen a reasonably diligent copyright owner should have become aware of the infringement or other activity giving rise to a claim."[251] According to courts, "it is not enough that [the plaintiff] did not discover he had a cause of action."[252] Instead, "if a reasonably diligent person, similarly situated, would have made such a discovery," then the accrual period begins at that moment.[253]

In their petition for writ of certiorari, Hearst argued that the Supreme Court should not adopt the discovery rule's reasonably diligent standard.[254] Hearst asserted that, by basing the discovery rule on the knowledge of the plaintiff, a court "can never be sure exactly when . . . a plaintiff knew or should have known enough that the limitations period should have begun."[255] Therefore, Hearst argued lower courts will remain confused and copyright law will continue to struggle with a lack of uniformity.[256] As a result, Hearst argued the Supreme Court needs to adopt the injury rule.[257]

Hearst correctly stated that a court will not always "be sure exactly when . . . a plaintiff knew" of a violation.[258] However, the discovery rule includes the phrase "should have known," which counterbalances the exactness required when proving a plaintiff "knew" of a violation.[259] By utilizing the phrase "should have known," the discovery rule prevents plaintiffs from maintaining deliberate ignorance towards violations.[260]

---

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

251. PATRY, *supra* note 23, § 20:19.

252. Taylor v. Meirick, 712 F.2d 1112, 1118 (7th Cir. 1983) (citing Campbell v. Upjohn Co., 676 F.2d 1122, 1127 (6th Cir. 1982)).

253. Warren Freedenfeld Assocs. v. McTigue, 531 F.3d 38, 44 (1st Cir. 2008) (citing *Taylor*, 712 F.2d at 1118)).

254. *See* Petition for Writ of Certiorari, *supra* note 156, at 19.

255. *Id.* (quoting Hamilton v. 1st Source Bank, 928 F.2d 86, 88 (4th Cir. 1990)).

256. *See id.* at 21. For example, Hearst states that some courts examine whether the plaintiff should have known using an "inquiry notice" approach while others use the "storm warnings" approach. *Id.* at 20–21.

257. *See id.* at 22. Looking at the Senate Report for the 1957 Act, Hearst infers that Congress intended for a fixed statute of limitations, not one that "would depend on something as indefinite as when the copyright owner learned of the infringement." *Id.* (quoting Auscape Int'l v. Nat'l Geographic Soc'y, 409 F. Supp. 2d 235, 245 (S.D.N.Y. 2004)). Therefore, they argue the statute of limitations accrues at the date of infringement (the injury rule). *See id.*

258. *Id.* at 19.

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

260. *See* PATRY, *supra* note 23, § 20:19.

While plaintiffs do "not have a duty to scour the area for potentially infringing designs," courts impose a duty of diligence on copyright owners.[261]

This duty of diligence requires copyright owners to pursue reliable evidence of a copyright violation and bring any resulting claim within three years of notification.[262] For example, plaintiffs are "charged with knowledge" when a third party notifies the plaintiff's employees and the employee "had a duty" to pass on that knowledge.[263] Therefore, even if the court or defendant cannot prove exactly when the plaintiff obtained knowledge of the infringement, the discovery rule provides leeway for defendants to prove constructive knowledge.[264]

An objective standard like the discovery rule assuages Hearst's concerns that courts cannot determine the exact moment a plaintiff knew of a violation. As a result, the Supreme Court should rule that the discovery rule governs copyright law's statute of limitations accrual.

C. *Promoting Congress's Intent*

When Congress created § 507(b), it "intended to promote the timely prosecution of grievances and discourage needless delay" in bringing claims.[265] The Supreme Court should rule in favor of the discovery rule because the rule promotes the above intentions.

1. Injury Rule Does Not Promote Congress's Intent

Under the injury rule, copyright accrual begins "when an infringing act occur[ed]," regardless of whether the copyright owner knew of the infringement.[266] The injury rule instructs courts that "[e]ach act of infringement is a distinct harm giving rise to an independent claim for relief."[267] As a result, each claim is individually governed by § 507(b)'s three-year limitation period.[268] If the copyright owner does not file the claim within the three years, the court will not award the owner any damages.[269]

---

261. *Id.* (quoting Scholz Design Inc. v. Bassinger Bldg. Co., 2006 WL 3031388, at *2 (E.D. Mich. 2006)).

262. *See* KnowledgeAZ, Inc. v. Jim Walters Res., Inc., 617 F. Supp. 2d 774, 784 (S.D. Ind. 2008) (citing Taylor v. Meirick, 712 F.2d 1112, 1118 (7th Cir. 1983)).

263. PATRY, *supra* note 23, § 20:19 (citing John G. Danielson, Inc. v. Winchester-Conant Props., Inc., 186 F. Supp. 2d 1, 24 n.4 (D. Mass. 2002)).

264. *See id.*

265. Starz Ent., LLC. v. MGM Domestic Television Distrib., LLC., 39 F.4th 1236, 1240 (9th Cir. 2022) (quoting Polar Bear Prod., Inc. v. Timex Corp., 384 F.3d 700, 706 (9th Cir. 2004)).

266. Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014).

267. *Id.* at 671 (quoting Stone v. Williams, 970 F.2d 1043, 1049 (2d Cir. 1992)).

268. *See id.*

269. *See id.*; *see also* 17 U.S.C. § 507(b).

Hearst based its argument in favor of the injury rule on Senate Report No. 85-1014, which accompanied § 507(b)'s passage.[270] In the report, the Committee believed "that due to the nature of publication of works of art[,] . . . generally the person injured receives reasonably prompt notice or can easily ascertain any infringement of his rights."[271] While this sentiment possibly held true in 1957, modern technological innovations negatively impact a plaintiff's ability to find infringements.[272]

Over time, advancements, "such as personal computing and the internet[,] have [made] it more difficult for rights holders to [vigilantly] police and protect their copyrights."[273] As a result, copyright infringements are now "easier to commit, harder to detect, and tougher to litigate."[274] Under the injury rule, "a copyright plaintiff who, through no fault of its own, discovers an act of infringement more than three years after the infringement occurred would be out of luck."[275] Such an unfair result under this "harsh rule would distort the tenor of the statute."[276]

The purpose of the Copyright Act is to avoid needless delay in filing claims, not to punish reasonably diligent plaintiffs.[277] If the Supreme Court adopts the injury rule, the ruling "would incentivize violation of the copyright holder's exclusive rights" and "not protect those rights, which is the purpose of the Copyright Act itself."[278] Thus, the Supreme Court should not rule in favor of the injury rule.

2. Discovery Rule Promotes Congress's Intent

According to the Ninth Circuit, "[i]t makes little sense . . . to bar damages recovery by copyright holders who have no knowledge of the infringement."[279] At the same time, the law must avoid unjustly enriching plaintiffs who know of infringements and do not bring timely claims.[280] Unlike the injury rule, the discovery rule balances Congress's desire to avoid court delays with fairness for all parties in a copyright suit.

---

270. *See* Petition for Writ of Certiorari, *supra* note 156, at 22.

271. S. REP. NO. 85-1014, at 1962 (1957).

272. *See* Starz Ent., LLC. v. MGM Domestic Television Distrib., LLC., 39 F.4th 1236, 1246 (9th Cir. 2022).

273. *Id.* (quoting William A. Graham Co. v. Haughey, 568 F.3d 425, 437 (3d Cir. 2009)).

274. *Id.*

275. *Id.* at 1240 (quoting Polar Bear Prod., Inc. v. Timex Corp., 384 F.3d 700, 706 (9th Cir. 2004)).

276. *Id.* (quoting *Polar Bear Prod., Inc.*, 384 F.3d at 706).

277. *See id.*

278. *Id.* at 1246.

279. *Id.* at 1240. (quoting *Polar Bear Prod., Inc.*, 384 F.3d at 706).

280. *See Damages for Copyright Infringement § 1*, *supra* note 83; *see also* 17 U.S.C. § 507(b).

To balance these interests, the discovery rule assigns plaintiffs a duty of diligence.[281] This duty of diligence requires plaintiffs to bring their claim within three years of when they knew or should have known of a violation.[282] If the plaintiff waits longer than the three years, the court will not award them damages.[283] By assigning this duty of diligence, the discovery rule avoids punishing reasonably diligent plaintiffs but still deters plaintiffs from engaging in deliberate ignorance at the defendant's expense.

Because the discovery rule successfully balances Congress's interests in judicial economy and fairness for the parties, the Supreme Court should rule in favor of the discovery rule.

IV. CONCLUSION

In their petition for certiorari, *Hearst Newspapers* asked the Supreme Court to choose which accrual rule applies in civil copyright infringement cases.[284] Though the Supreme Court failed to clarify this glaring hole in United States copyright jurisprudence, the Court should eventually rectify their mistake and adopt the discovery rule nationally. In doing so, the Court will help Congress achieve its two goals of: (1) rendering the accrual period uniform across the country, and (2) preventing plaintiffs from forum shopping.[285] No matter which rule the Supreme Court ultimately chooses, the outcome of "your" case against COMPANY would remain the same across the country thanks to the newly acquired uniformity.

Still, the Supreme Court should codify the discovery rule because the rule provides federal courts with an objective standard and best promotes the Copyright Act's intent.[286] While courts will not always "be sure exactly when . . . a plaintiff knew" of an infringement, the discovery rule holds plaintiffs to a "reasonably diligent" person standard.[287] This reasonably diligent person standard ensures that diligent plaintiffs do not forfeit their damages.

---

281. *See* KnowledgeAZ, Inc. v. Jim Walters Res., Inc., 617 F. Supp. 2d 774, 784 (S.D. Ind. 2014).

282. *See id.*; *see also* Sundine, *supra* note 133, at 44.

283. *See* 17 U.S.C. § 507(b); *see also* Taylor v. Meirick, 712 F.2d 1112, 1119 (7th Cir. 1983).

284. *See* Petition for Writ of Certiorari, *supra* note 156, at (i), 3.

285. *See* Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014); *see also* Hearst Newspapers, LLC v. Martinelli, No. 23-474, 2024 WL 2262332 (S. Ct. May 20, 2024).

286. *See* PATRY, *supra* note 23, § 20:19; Starz Ent., LLC. v. MGM Domestic Television Distrib., LLC., 39 F.4th 1240, 1246 (9th Cir. 2022).

287. Petition for Writ of Certiorari, *supra* note 156, at 19 (quoting Hamilton v. 1st Source Bank, 928 F.2d 86, 88 (4th Cir. 1990)); *see also* Warren Freedenfeld Assocs. v. McTigue, 531 F.3d 38, 44 (1st Cir. 2008).

Since the Copyright Act's passage in 1976, the internet and other technological advancements have made copyright infringement "easier to commit, harder to detect, and tougher to litigate."[288] Under the injury rule, as you saw in your case against COMPANY, "a copyright plaintiff who, through no fault of its own, discovers an act of infringement more than three years after the infringement occurred would be out of luck."[289]

If the Supreme Court rules in favor of the injury rule, many injured plaintiffs will unintentionally and innocently forfeit their right to infringement damages.[290] To avoid this unfair outcome, and because the purpose of the statute of limitations is to avoid needless delay in filing claims, not to punish reasonably diligent plaintiffs, the Supreme Court needs to rule in favor of the discovery rule.[291]

288. *Starz Ent.*, 39 F.4th at 1246.

289. *Id.* at 1240. (quoting Polar Bear Prod., Inc. v. Timex Corp., 384 F.3d 700, 706 (9th Cir. 2004)).

290. *See Petrella*, 572 U.S. at 670–671 (explaining that since the injury rule states the accrual period begins "when an infringing act occurs," the copyright owner only has three years from that date to file a suit whether the copyright owner knew of the infringement or not).

291. *See Starz Ent.*, 39 F.4th at 1240 (quoting Polar Bear Prod., Inc. v. Timex Corp., 384 F.3d 700, 706 (9th Cir. 2004)).