No. 22-1078

In the Supreme Court of the United States

WARNER CHAPPELL MUSIC, INC.,
AND ARTIST PUBLISHING GROUP, LLC, PETITIONERS

v.

SHERMAN NEALY AND MUSIC SPECIALIST, INC.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Section 507(b) of the Copyright Act, 17 U.S.C. 507(b), provides 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." Interpreting that provision in *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), this Court held that laches was unavailable as a defense because the Copyright Act "itself takes account of delay" by imposing a three-year limitation on retrospective relief. *Id.* at 677. The Court reserved the question whether the courts of appeals correctly apply a "discovery rule," under which a claim accrues when the plaintiff discovers (or reasonably should have discovered) the injury. See *id.* at 670 n.4. As this Court has more recently reaffirmed, however, the discovery rule is a narrow, fraud-based exception to the standard rule that a cause of action accrues at the time of injury. See *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360-361 (2019).

The question presented, as rephrased by the Court, is 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.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are Warner Chappell Music, Inc., and Artist Publishing Group, LLC.

Petitioner Warner Chappell Music, Inc., is a wholly owned indirect subsidiary of Warner Music Group Corp., which is a publicly traded company. AI Entertainment Holdings LLC and certain of its affiliates own more than 10% of Warner Music Group Corp.'s stock.

Petitioner Artist Publishing Group, LLC, has no parent corporation, and no publicly held company owns 10% or more of its stock.

Respondents are Sherman Nealy and Music Specialist, Inc.

TABLE OF CONTENTS

Page

Table of contents—continued:

TABLE OF AUTHORITIES

Cases:

Page

Cases—continued:

In the Supreme Court of the United States

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 60 F.4th 1325. The opinion of the district court granting summary judgment in part and denying summary judgment in part (Pet. App. 18a-34a) is unreported but available at 2021 WL 2280025. The opinion of the district court certifying its order for interlocutory appeal (Pet. App. 35a-39a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 2023. The petition for a writ of certiorari was filed on May 3, 2023, and granted on September 29, 2023. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 507(b) of Title 17 of the United States Code provides in relevant part:

> No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

STATEMENT

The Copyright Act contains a simple statute of limitations for civil actions. It provides 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." 17 U.S.C. 507(b). This case concerns the availability of retrospective monetary relief for acts that allegedly occurred more than three years before the filing of a civil action. The question presented, as rephrased by the Court, is whether, under the discovery accrual rule applied by the circuit courts and the Copyright Act's statute of limitations, a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit.

The answer to that question, as with all questions of statutory interpretation, begins with the text of "the Copyright Act's statute of limitations." This Court has repeatedly declined to adopt a background rule that a limitations period does not begin to run until a plaintiff discovers his injury, no matter the reason discovery is delayed. In numerous cases, the Court has analyzed the words used by Congress and construed ambiguities in favor of the default understanding that a plaintiff's claim accrues when he has a complete and present cause of action.

In particular, it is now settled that the term "accrues" refers to the time when a plaintiff has a complete and present cause of action—which, in the copyright context, is ordinarily the time of infringement. This Court has repeatedly adopted that interpretation of "accrues," both before and after the enactment of the statute of limitations in the Copyright Act. This Court has also interpreted comparable terms, such as "arises," to start the limitations period running when a plaintiff has a complete and present cause of action, not when he discovers the injury.

What is more, this Court has interpreted the specific limitations provision at issue here in a way that logically forecloses a broad rule that claims for retrospective relief accrue only when the injury is discovered (or reasonably should have been discovered). In *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), the Court held that the equitable doctrine of laches is not a defense against infringement claims under the Copyright Act. In so holding, the Court reasoned that the Copyright Act "itself takes account of delay" because "a successful plaintiff can gain retrospective relief only three years back from the time of suit." *Id.* at 677. If the Court were to reverse course and interpret Section 507(b) to permit retrospective relief going back further, it would upset the balance between providing adequate time for plaintiffs to sue, on the one hand, and providing repose for defendants, on the other—a balance that Congress struck and this Court has already effectuated.

The question presented, as rephrased, also refers to the "discovery accrual rule applied by the circuit courts." Generally speaking, the courts of appeals apply a broad discovery rule that postpones the running of the limitations period until a plaintiff knows of his injury, regardless of the cause of that delay. But the courts of appeals disagree on various aspects of that rule. And the presumption in favor of a broad discovery rule for every federal statute of limitations, applied by a number of courts of appeals, is at odds with this Court's cases. The only discovery rule consistent with this Court's precedents is a narrower exception for discovery delayed by fraud, latent disease, or medical malpractice.

Respondents' operative complaint is devoid of any allegation of fraud, latent disease, or medical malpractice. To the contrary, respondents concede that—as is typical in copyright cases—the allegedly infringing works were widely distributed. Respondents instead argue only that they were unaware of the infringement because respondent Sherman Nealy was intermittently incarcerated. Whatever the merits of applying the narrower discovery rule to a copyright owner's claim for retrospective relief in other cases, it would plainly not be triggered here. Because respondents' claims for retrospective relief for acts that occurred more than three years before the filing of their lawsuit are time-barred, the judgment of the court of appeals should be reversed.

A. Background

The Copyright Act provides a cause of action to the "legal or beneficial owner of an exclusive right under a copyright" to "institute an action for any infringement of that particular right committed while he or she is the owner of it." 17 U.S.C. 501(b). The Act authorizes a court to grant injunctive relief, see 17 U.S.C. 502; impound and dispose of infringing articles, see 17 U.S.C. 503; and, as is relevant here, award either the plaintiff's actual damages and any additional profits attributable to the defendant's infringement, or statutory damages, see 17 U.S.C. 504.

"Until 1957, federal copyright law did not include a statute of limitations for civil suits." *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 669 (2014). Added in 1957 (with only cosmetic amendments since), the provision that is now Section 507(b) of the Copyright Act ended the practice of borrowing a limitations period from analogous state statutes. See *ibid.* It provides 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." 17 U.S.C. 507(b).

This Court had occasion to interpret the statute of limitations in Section 507(b) in *Petrella*, *supra*. The Court held that the defense of laches "cannot be invoked to preclude adjudication of a claim for damages brought within the three-year window" of the statute of limitations. 572 U.S. at 667. The Court explained that "Congress provided two controlling time prescriptions" in the Copyright Act: "the copyright term, which endures for decades, and may pass from one generation to another; and § 507(b)'s limitations period, which allows plaintiffs during that lengthy term to gain retrospective relief running only three years back from the date the complaint was filed." *Id.* at 672. The Court repeatedly described Section 507(b) in those terms. See *id.* at 670 (observing that "Congress * * * prescribed a three-year look-back limitations period for all civil claims arising under the Copyright Act"); *ibid.* (stating that "[a] copyright claim thus arises or 'accrue[s]' when an infringing act occurs" (second alteration in original)); *id.* at 671 (noting that, "[u]nder the Act's three-year provision, an infringement is actionable within three years, and only three years, of its occurrence," and adding that "the infringer is insulated from liability for earlier infringements of the same work").

In *Petrella*, the Court reasoned that permitting a copyright defendant to raise laches as a defense against an otherwise timely action would not accord with the text and structure of the Copyright Act. The Court explained that "the copyright statute of limitations, § 507(b), itself takes account of delay" and "a successful plaintiff can gain retrospective relief only three years back from the time of suit." 572 U.S. at 677. It was "[o]nly by disregarding that feature of the statute" that the court of appeals, applying the defense of laches, could "presume that infringing acts occurring before [the start of the three-year limitations period] bar all relief, monetary and injunctive, for infringement occurring on and after that date." *Ibid.*

In a footnote, the Court acknowledged that "nine courts of appeals have adopted, as an alternative to the incident of injury rule, a 'discovery rule,' which starts the limitations period when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim." *Petrella*, 572 U.S. at 670 n.4 (citation omitted). But the Court added that it "ha[s] not passed on the question" whether such a discovery rule applies. *Ibid.* And the Court recognized that "[a] claim ordinarily accrues 'when [a] plaintiff has a complete and present cause of action.'" *Id.* at 670 (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of California*, 522 U.S. 192, 201 (1997)).

The Court has since reaffirmed that Section 507(b) imposes a three-year limitation on retrospective relief. In *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, 137 S. Ct. 954 (2017), the Court held that the defense of laches is unavailable under a "similar provision" of the Patent Act because "*Petrella*'s reasoning applies" with equal force. *Id.* at 959. The Court rejected the argument that a statute of limitations "is not a *true* statute of limitations" if it "runs backward from the time of suit." *Id.* at 961. In *Petrella*, the Court explained, it "described the Copyright Act's statute of limitations in almost identical terms" as "allow[ing] plaintiffs * * * to gain retrospective relief *running only three years back from the date the complaint was filed.*" *Ibid.* (alterations in original) (quoting *Petrella*, 572 U.S. at 672). The Court reiterated that "[a] claim ordinarily accrues 'when [a] plaintiff has a complete and present cause of action'" and that the Court has not "'passed on the question' whether the Copyright Act's statute of limitations is governed by [a broad discovery] rule." *Id.* at 962 (quoting *Petrella*, 572 U.S. at 670 n.4).

B. Facts And Procedural History

1. Respondent Sherman Nealy formed respondent Music Specialist, Inc., in 1983 with a disc jockey named Tony Butler. Nealy provided the capital, while Butler provided the industry expertise. Butler wrote or cowrote all of the musical works at issue in this case, and Music Specialist released sound recordings embodying those works between 1983 and 1986. Pet. App. 3a-4a.

This case originally involved eight musical works: "Jam the Box," "I Know You Love Me," "Computer Language," "Lookout Weekend," "The Party Has Begun," "Fix It in the Mix," "Freestyle Express," and "When I Hear Music." Claims involving the last three works were dismissed by joint stipulation before summary judgment. Pet. App. 20a, 29a.

Music Specialist involuntarily dissolved in 1986 and was not reinstated until 2017. Nealy was imprisoned for drug offenses from 1989 to 2008 and again from 2012 to 2015. Pet. App. 4a-5a; C.A. Supp. App. 41, 64, 117-126.

2. In 2007, Butler formed 321 Music, LLC. In July 2008, petitioner Artist Publishing Group, LLC, entered an agreement with Butler and 321 Music. That agreement permitted Artist Publishing to administer Butler and 321 Music's entire catalog, including the musical works at issue in this case. Petitioner Warner Chappell Music, Inc., which had an administration agreement with Artist Publishing, began licensing the musical works at

issue on behalf of Artist Publishing. Pet. App. 4a; 1 C.A. App. 59-60, 167-168; 3 C.A. App. 51.

In that capacity, petitioners licensed and became the exclusive administrators of Butler and 321 Music's publishing rights in several derivative works. One of those derivative works was "In the Ayer," a musical work recorded by the famous rap artist Flo Rida. "In the Ayer" interpolated "Jam the Box," pursuant to a separate license between 321 Music and Atlantic Recording Corporation. Plaintiffs have alleged that Flo Rida's sound recording of "In the Ayer" was a "smash hit" that sold millions of copies; it reached No. 9 on the Billboard chart. Warner Chappell granted licenses to use "In the Ayer" in numerous popular television shows, including "So You Think You Can Dance." Warner Chappell similarly granted licenses for Butler and 321 Music's interests in other disputed musical compositions for use in derivative works recorded by famous artists such as the Black Eyed Peas (interpolating "Lookout Weekend"), Kid Sister (also interpolating "Lookout Weekend"), and Pitbull (interpolating "When I Hear Music"). Pet. App. 4a; 1 C.A. App. 64-69; Billboard, *Flo Rida: Chart History* <billboard.com/artist/flo-rida/chart-history/hsi> (last visited Nov. 24, 2023).

3. After Nealy was released from prison for the first time in March 2008, he confronted the owner of two companies not party to this case that were using musical works from Music Specialist's catalog under licenses from Butler. Nealy "let[] them know that [he] was home and they had [his] music." Notably, Nealy did not take any action to investigate the widespread and public uses by petitioners. Pet. App. 4a-5a; 3 C.A. App. 51-52.

Beginning in July 2008, Warner Chappell was listed in the public records of Broadcast Music, Inc. (BMI), as the administrator of all of the musical works at issue. BMI is a rights organization that collects license fees for music. Specifically, it collects income from public performances of its members' compositions; pays the resulting royalties to its members; and maintains a public database listing the writers, owners, and administrators of its members' compositions. Nealy claims not to have accessed that database, even though he was aware other entities were using musical works from Music Specialist's catalog; aware that sound recordings incorporating the disputed works were successful; and unaware of any royalty checks payable to Music Specialist for the works at issue. Pet. App. 4a-5a; 1 C.A. App. 227-228; C.A. Supp. App. 46, 53-54, 130.

At least one of the royalty statements that BMI sent Nealy for a musical work that was included in the operative version of the complaint (but that respondents have since dropped from the case) identified Warner Chappell as "publisher" and "administrator." Nealy has admitted that he received several checks before December 28, 2015—three years before this action was filed—for royalties earned during the period when Music Specialist was inactive. It is undisputed that Nealy did not investigate why he was receiving royalties for a work he had not authorized anyone to exploit. 1 C.A. App. 227-228; 2 C.A. App. 158-159; C.A. Supp. App. 46, 53-54, 268-286.

According to respondents, Nealy discovered the alleged infringement only around January 2016. He alleged that he made the discovery when an associate told him about Butler's agreement with Artist Publishing. 2 C.A. App. 50; 3 C.A. App. 37, 71.

4. On December 28, 2018—more than ten years after the alleged infringement began, and almost three years after the purported discovery of the infringement—respondents filed suit against petitioners and Atlantic in the United States District Court for the Southern District of

Florida. 1 C.A. App. 20-54. Respondents sought injunctive relief, impoundment, profits, damages, fees, and costs under the Copyright Act. *Id.* at 78-79.

The district court granted partial summary judgment to petitioners. Pet. App. 18a-34a. The district court first concluded that respondents had not established ownership of the copyrights in "Jam the Box," "I Know You Love Me," and "Computer Language." *Id.* at 19a-22a. As to the remaining two musical works, "Lookout Weekend" and "The Party Has Begun," the district court determined that there was a factual dispute as to when respondents knew, or should have known, of the alleged infringement. *Id.* at 29a-32a.[1]

As is relevant here, the district court further held that respondents could not obtain retrospective relief for acts that occurred more than three years before they filed their lawsuit. Pet. App. 26a-27a. The district court recognized that, under Eleventh Circuit precedent, it was required to apply the discovery rule to determine when respondents' claims accrued. *Id.* at 30a-32a. But the district court concluded, based on this Court's decision in *Petrella*, that the Copyright Act imposes a three-year limitation on retrospective relief. Pet. App. 26a-27a (quoting *Petrella*, 572 U.S. at 671).

The district court certified its order for interlocutory appeal under 28 U.S.C. 1292(b). Pet. App. 35a-38a. It did so because the question whether "damages in this copyright action are limited to the three-year lookback period

[1] Because the only copyright that Atlantic allegedly infringed was in "Jam the Box," the court entered summary judgment in Atlantic's favor. Pet. App. 19a-25a.

as calculated from the date of the filing of the [c]omplaint" was a controlling question of law. *Id.* at 36a.[2]

5. The court of appeals granted permission to appeal and reversed. Pet. App. 1a-17a. It held that, "when a copyright plaintiff has a timely claim under the discovery accrual rule for infringement that occurred more than three years before the lawsuit was filed, the plaintiff may recover damages for that infringement." *Id.* at 3a.

The court of appeals began by reaffirming that its precedents require the application of the discovery rule where, as here, the "'gravamen' of a copyright claim is ownership." Pet. App. 7a (quoting *Webster* v. *Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020)). The court proceeded to hold that "a copyright plaintiff may recover retrospective relief for infringement occurring more than three years before the lawsuit's filing so long as the plaintiff's claim is timely under the discovery rule." *Id.* at 10a. The court of appeals acknowledged this Court's treatment of the statute of limitations in *Petrella*, but limited it to claims that "accrue under the injury rule, not the discovery rule." *Ibid.* The court of appeals reasoned that "[this] Court's statements in *Petrella* merely describe the operation of the injury rule on the facts of that case and others like it." *Id.* at 12a. And having read the Court's decision in *Petrella* as "preserv[ing] * * * the discovery rule," the court of appeals expressed concern that it would be "inconsistent" with *Petrella* to read it to "bar damages for claims that are timely under the discovery rule." *Id.* at 14a. Limiting retrospective relief, the court concluded, would be tantamount to "gut[ting]" that rule. *Id.* at 15a.

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[2] The district court also certified the final judgment in favor of Atlantic for appeal under Federal Rule of Civil Procedure 54(b). Pet. App. 38a-39a. The court of appeals dismissed that appeal. See No. 21-12458, 2022 WL 18354071, at *1 (Dec. 15, 2022).

SUMMARY OF ARGUMENT

Under the text of Section 507(b) of the Copyright Act and a proper understanding of the discovery rule, respondents here may not seek retrospective relief for acts of infringement that occurred more than three years before they filed suit.

A. The text of Section 507(b) requires a civil action for copyright infringement to be brought "within three years after the claim accrued." That provision limits retrospective relief to acts that occurred within three years of filing suit.

1. This Court treats the text of statutes of limitations like the text of any other statute. It construes them using the traditional tools of statutory interpretation, and it reads them in light of background legal principles. This Court has recognized the "standard rule" that claims accrue "when the plaintiff has a complete and present cause of action." *Gabelli* v. *SEC*, 568 U.S. 442, 448 (2013) (citation omitted). And it has rejected a background principle that a statutory limitations period begins to run only when the plaintiff discovers (or reasonably should have discovered) his injury, regardless of the cause of that delay.

2. The "standard rule" of accrual applies to Section 507(b). Legal dictionaries and this Court's cases, from both before and after the adoption of that statute of limitations, define the term "accrues" to refer to the point at which a plaintiff has a complete and present cause of action. This Court has interpreted similar statutory language in the same way. Moreover, Congress did not explicitly codify a discovery rule in Section 507(b), despite its awareness that a copyright plaintiff might not discover infringement until after three years had elapsed.

3. A plaintiff ordinarily has a complete and present cause of action under Section 507(b) when the act of infringement occurs. The Copyright Act requires a plaintiff

to register his copyright as a precondition to suit, and at least one respondent held registrations before the alleged infringement occurred.

4. The foregoing textual analysis is consistent with—indeed, it is compelled by—this Court's decision in *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014). There, the Court held that a defendant could not raise the defense of laches in a copyright-infringement action. Essential to the Court's reasoning was its repeated observation that Section 507(b) contains a three-year limitation on retrospective relief. Abandoning that reasoning would upset the careful balance between plaintiffs and defendants that Congress struck, and this Court has effectuated, in the Copyright Act.

5. There is no sound basis for permitting retrospective relief for acts occurring more than three years before the filing of suit. The Ninth and Eleventh Circuits have concluded that such a limitation is inconsistent with the discovery rule. But the unavailability of a broad discovery rule for retrospective relief does not preclude the availability of a discovery rule for prospective relief, or a narrower discovery rule for all types of relief. And the all-purpose discovery rule generally applied by the courts of appeals rests on a textual presumption that this Court has now repudiated.

B. Properly understood, the discovery rule does not apply to respondents' claims for retrospective relief. This Court ordered the parties to address whether respondents' claims are timely under the "discovery accrual rule applied by the circuit courts and [Section 507(b)]." The only version of a discovery rule that is consistent with Section 507(b) is the narrower one applied in cases in which fraud, latent disease, or medical malpractice prevented a plaintiff from discovering his injury.

1. Courts of equity traditionally applied a discovery rule to determine the accrual of a plaintiff's claims only in cases of fraud. This Court recognized that fraud-based discovery rule in *Bailey* v. *Glover*, 88 U.S. 342 (1874), and *Holmberg* v. *Armbrecht*, 327 U.S. 392 (1946). And the Court has extended that rule to cases of latent disease and assumed its existence in cases of medical malpractice.

2. This case does not involve fraud, latent disease, or medical malpractice. Respondents have argued that they failed to bring suit within three years only because Nealy was incarcerated for part of the period at issue. And respondents' own allegations about the public nature of petitioners' alleged infringement are affirmatively inconsistent with any suggestion of fraud.

Under a proper understanding, therefore, respondents are not entitled to the benefit of the discovery rule. Respondents' claims for retrospective relief for acts that occurred more than three years before the filing of their lawsuit are time-barred.

C. Even if this Court were to assume the existence of a broader discovery rule, respondents would still not be entitled to retrospective relief for acts occurring more than three years before they filed suit. If necessary, consistent with the maxim that equity follows the law, the Court should recognize an equitable exception to the broad, judicially created discovery rule and limit retrospective relief to the three years preceding the filing of suit. This Court has crafted exceptions to judicially created rules in other contexts, and, as noted above, it has already recognized a three-year limitation on retrospective relief in this context.

Whether under the statutory text, the traditional version of the discovery rule, or a broader version, the Court should reverse the judgment of the court of appeals.

ARGUMENT

RESPONDENTS MAY NOT OBTAIN RETROSPECTIVE RELIEF FOR ACTS OCCURRING MORE THAN THREE YEARS BEFORE THE FILING OF SUIT

A. Under The Text Of Section 507(b), The Limitations Period For Retrospective Relief Ordinarily Runs From The Time Of Infringement

The Copyright Act bars plaintiffs from maintaining a civil action for copyright infringement "unless it is commenced within three years after the claim accrued." 17 U.S.C. 507(b). The traditional tools of statutory interpretation and this Court's precedents establish that, for purposes of that provision, a claim for retrospective relief ordinarily "accrues" when the defendant infringes the plaintiff's copyright.

1. A Statute Of Limitations Must Be Interpreted According To Its Text

"When interpreting limitations provisions," the Court "always * * * begin[s] by analyzing the statutory language." *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360 (2019) (internal quotation marks and citation omitted). "If the words of a statute are unambiguous, this first step of the interpretive inquiry is [the] last." *Ibid*. And "[i]f there are two plausible constructions of a statute of limitations," the Court "generally adopt[s] the construction that starts the time limit running when the cause of action accrues." *Ibid*. (internal quotation marks, citation, and alteration omitted).

"[T]he 'standard rule' is that a claim accrues 'when the plaintiff has a complete and present cause of action.'" *Gabelli* v. *SEC*, 568 U.S. 442, 448 (2013) (internal quotation marks omitted) (quoting *Wallace* v. *Kato*, 549 U.S. 384, 388 (2007)). That has been the rule since at least the nineteenth century. See *ibid*. And this Court has repeatedly recognized it in its recent cases interpreting statutes of limitations. See, *e.g.*, *Rotkiske*, 140 S. Ct. at 360-361; *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, 137 S. Ct. 954, 962 (2017); *Wallace*, 549 U.S. at 388; *Graham County Soil & Water Conservation District* v. *United States ex rel. Wilson*, 545 U.S. 409, 418-419 (2005); *Franconia Associates* v. *United States*, 536 U.S. 129, 133, 141 (2002); *TRW, Inc.* v. *Andrews*, 534 U.S. 19, 27-28 (2001).

This Court has refused to adopt a broad discovery rule as a backdrop against which all statutes of limitations are interpreted. To be sure, the Court has recognized that "lower federal courts generally apply a discovery accrual rule when a statute is silent on the issue." *TRW*, 534 U.S. at 27 (internal quotation marks and citation omitted). But the Court has pointedly "not adopted that position as [its] own." *Ibid.*; see U.S. Br. at 15-17, *Rotkiske*, *supra* (No. 18-328). Quite the contrary: the Court recently dismissed that "expansive approach to the discovery rule" as a "bad wine of recent vintage." *Rotkiske*, 140 S. Ct. at 360 (quoting *TRW*, 534 U.S. at 37 (Scalia, J., concurring in the judgment)).

2. Under Section 507(b), The Limitations Period For Retrospective Relief Begins To Run When The Plaintiff Has A Complete Cause Of Action

Section 507(b) of the Copyright Act provides 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." Because the Act does not define "accrued," courts must "ask what that term's 'ordinary, contemporary, common meaning' was when Congress enacted" the Copyright Act's statute of limitations in 1957. *Food Marketing Institute* v. *Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (citation omitted); see *Rotkiske*, 140 S. Ct. at 360. "In common parlance," the Court has explained, "a right accrues when it comes into existence": *i.e.*, "when the plaintiff has a complete and present cause of action." *Gabelli*, 568 U.S. at 448 (citations omitted).

a. Legal dictionaries define the term "accrues" to refer to the existence of a complete and present cause of action. Dictionaries contained that definition as early as the nineteenth century. See *Gabelli*, 568 U.S. at 448. For example, one legal dictionary from that era explains that "an action *accrues* when the plaintiff has a right to commence it." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 17 (1850).

Of particular relevance here, the leading legal dictionaries contemporaneous with enactment contain similar definitions. The 1957 edition of Black's Law Dictionary states that "[a] cause of action 'accrues' when a suit may be maintained thereon," specifically "on [the] date that damage is sustained." *Black's Law Dictionary* 37 (4th ed. 1957). The 1952 edition of Stroud's Judicial Dictionary explains that a cause of action "'accrues' when it becomes effective, i.e., when the resulting damage manifests itself." *Stroud's Judicial Dictionary* 32 (3d ed. 1952). And the 1948 edition of Bouvier's Law Dictionary explains that a "[c]ause of action accrues when a suit may first be legally instituted upon it." *Bouvier's Law Dictionary* 34 (Baldwin's Century ed. 1948). At the time of the enactment of what is now Section 507(b) in 1957, both legislators and members of the public would have understood a cause of action to "accrue" when it became complete.

b. That settled meaning was not confined to the pages of dictionaries. Just a decade before Congress enacted Section 507(b), the Court considered the meaning of substantially similar language in *Rawlings* v. *Ray*, 312 U.S. 96 (1941). The statute at issue there required the receiver of an insolvent bank to bring suit to recover an assessment imposed by the comptroller of the currency "within three years after the cause of action shall accrue." *Id.* at 97 (citation omitted). The parties disputed whether the limitations period should run from the date the comptroller imposed the assessment or the date the payment was due. The Court reasoned that the words "after the cause of action shall accrue" in the statute "have their usual meaning and refer to 'a complete and present cause of action.'" *Id.* at 98 (quoting *Holloway* v. *Morris*, 34 S.W.2d 750, 752 (Ark. 1931)). Applying that definition, the Court held that the cause of action "accrued" on the due date for the assessment—the point at which "suit could * * * be maintained." *Ibid.*

A little over a decade after the enactment of what is now Section 507(b), the Court again held that a cause of action for retrospective relief "accrues" at the time of injury. See *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). In that case, the Court interpreted the statute of limitations in federal antitrust law, which requires that "[a]ny action to enforce any cause of action * * * shall be forever barred unless commenced within four years after the cause of action accrued." 15 U.S.C. 15b. The Court reasoned that "[t]he basic rule is that damages are recoverable under the federal antitrust acts only if suit therefor is 'commenced within four years after the cause of action accrued,' plus any additional number of years during which the statute of limitations was tolled." *Zenith Radio*, 401 U.S. at 338 (citation omitted). The Court explained that "this has usually been understood to mean that each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act and that, as to those damages, the statute of limitations runs from the commission of the act." *Ibid.*

In more recent cases, the Court has continued to hold that a cause of action becomes complete—and a claim "accrues"—at the point at which the injury resulting from a defendant's act becomes concrete and non-speculative. In *Franconia Associates*, *supra*, the Court interpreted the statute of limitations in the Tucker Act, which requires that suits against the government be filed within six years of when they "first accrue[d]." 536 U.S. at 133 (quoting 28 U.S.C. 2501). The Court once again explained that accrual is determined by the date of injury: in this case, when the government "breached the prepayment undertaking stated in the promissory notes" at issue. *Id.* at 141-142.

So too in *Gabelli*, *supra*. There, the Court considered the general statute of limitations for civil-penalty actions, 28 U.S.C. 2462, which contains substantially similar language to the provision at issue here. 568 U.S. at 444. Specifically, that statute provides that "an action * * * shall not be entertained unless commenced within five years from the date when the claim first accrued." 28 U.S.C. 2462. Concluding that there was no textual or policy reason to deviate from the "standard rule," the Court held that, for purposes of that general limitations provision, "a claim accrues when the plaintiff has a complete and present cause of action": namely, "when a defendant's allegedly fraudulent conduct occurs." *Gabelli*, 568 U.S. at 448; see U.S. Br. at 14, *Rotkiske*, *supra* (No. 18-328).

In short, when Congress adopted a three-year limitations period running from the time a plaintiff's cause of action "accrued," it did so against a consistent background understanding of the meaning of that term.

c. The Court has interpreted statutes of limitations using terms similar to "accrues" in the same way. For example, in *Bay Area Laundry*, *supra*, the Court considered a statute of limitations that runs from "the date on which the cause of action arose." 522 U.S. at 201 (quoting 29 U.S.C. 1451(f)(1)). The Court treated that language as "incorporat[ing] the standard rule that the limitations period commences when the plaintiff has 'a complete and present cause of action.'" *Ibid.* (quoting *Rawlings*, 312 U.S. at 98). Under that "ordinarily applicable" rule, the Court concluded that the limitations period began to run when the defendant employer missed a payment to the plaintiff, a multiemployer pension plan. *Id.* at 195.

More recently, the Court adopted a similar interpretation of the phrase "the date on which the violation occurs" in the statute of limitations for actions under the Fair Debt Collection Practices Act. *Rotkiske*, 140 S. Ct. at 358 (quoting 15 U.S.C. 1692k(d)). The Court held that the word "occurs" "unambiguously sets the date of the violation as the event that starts the one-year limitations period." *Id.* at 360. The Court rejected "a general 'discovery rule' that applies to all FDCPA actions," under which "occurs" would refer to the date when a plaintiff discovers the violation. *Ibid.*; see *TRW*, 534 U.S. at 27-28.

d. Contextual evidence reinforces the conclusion that a claim has "accrued" for purposes of Section 507(b) when the plaintiff has a complete and present cause of action. To begin with, Congress knows how to enact a broad discovery rule when it wishes. See *Rotkiske*, 140 S. Ct. at 361; *TRW*, 534 U.S. at 28-29. Numerous federal statutes that were in force when Congress enacted what is now Section 507(b) provided that a limitations period would begin upon the "discovery" of a violation or injury. See, *e.g.*, 15 U.S.C. 77m (1956); 15 U.S.C. 77www(a) (1956); 15 U.S.C. 78r(c) (1956); 15 U.S.C. 78i(e) (1956); 19 U.S.C.

1621 (1956).[3] If Congress had intended to incorporate a similar discovery trigger for claims for retrospective relief in the Copyright Act, it "knew how" to do so. *Department of Homeland Security* v. *MacLean*, 135 S. Ct. 913, 921 (2015).

The foregoing interpretation also makes sense in light of Section 507(b)'s purpose and legislative history. As the Court has explained, "statutes of limitations provide certainty in the form of "security and stability [for] human affairs" and "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli*, 568 U.S. at 448 (citations omitted). With respect to Section 507(b) in particular, Congress sought to "render uniform and certain the time within which copyright claims could be pursued." *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014).

Before the enactment of what is now Section 507(b), the Copyright Act contained no statute of limitations. As a result, "an action for an infringement [was] governed by the limitations existing for the class of actions to which it belong[ed] in the state where it [was] brought." *Local Trademarks* v. *Price*, 170 F.2d 715, 717 (5th Cir. 1948). State law differed with respect to the *length* of the limitations period, but it was acknowledged that liability was limited to infringements that occurred within that period. See, *e.g.*, *Colley* v. *Canal Bank & Trust Co*., 64 F. Supp. 1016, 1019-1020 (E.D. La. 1946), aff'd, 159 F.2d 153 (5th

[3] Today, statutes explicitly incorporating a discovery rule abound. See, *e.g.*, 12 U.S.C. 1715z-4a(d); 15 U.S.C. 78u-6(h)(1)(B)(iii)(I)(bb); 15 U.S.C. 1681p; 15 U.S.C. 1711(a)(2); 15 U.S.C. 3006(c); 15 U.S.C. 6104(a); 18 U.S.C. 1030(g); 18 U.S.C. 2520(e); 18 U.S.C. 2710(c)(3); 26 U.S.C. 7431(d); 28 U.S.C. 1658(b)(1); 42 U.S.C. 9612(d)(2)(A); 50 U.S.C. 4611(k)(3).

Cir. 1947); *Reed* v. *Carusi*, 20 F. Cas. 431, 432 (C.C.D. Md. 1845). It would be bizarre if Congress, while seeking to establish uniformity and certainty, silently altered that settled principle.

The Senate Judiciary Committee explained that it chose three years as the appropriate limitations period because it would "provide an adequate opportunity for the injured party to commence his action." S. Rep. No. 1014, 85th Cong., 1st Sess. 2 (1957). It evidently agreed with the witnesses who testified that three years struck the "best balance" for copyright actions, in part because the public nature of publication ordinarily provides injured parties with "reasonably prompt notice" of their rights. *Ibid.*; see Letter from Sydney M. Kaye to the Honorable Edwin E. Willis, Chairman, *Hearing on H.R. 781 Before Subcomm. No. 3 of the House Comm. on the Judiciary* 50-51 (1955) (*Hearing on H.R. 781*) (stating that "[t]here would seem to be no reason why three years from infringement would not be a sufficient period to permit the institution of legitimate suits").

Of particular relevance here, witnesses addressed the dilemma of a plaintiff who does not discover the infringement until after three years had elapsed, but those witnesses testified that such claims would be barred absent fraud on the part of the defendant. Representative Shepard Crumpacker asked Fulton Brylawski of the Association of American Motion Pictures what would happen if someone held a limited screening of an infringing movie, then waited three years to make a general distribution. Brylawski opined that a claim based on the original showing "would be barred in three years," but a claim based on the later distribution "would be actionable." *Hearing on H.R. 781*, at 47-48. In a letter to the committee, attorney Sydney Kaye addressed a hypothetical where an infringing work was "hidden in a vault" for three years; he took the view that "[i]ndependent copyright infringements would, in such cases, occur when the books were sold, when the recordings for distribution to the public were pressed and when the motion picture film was exhibited, and the statute would run from the date of each of these acts." *Id.* at 51.[4]

Permitting a plaintiff to seek retrospective relief for acts more than three years before the filing of suit would undermine Congress' purposes. Deprived of the fixed limitation contemplated by the statutory text, defendants would be faced with expensive, time-consuming, and difficult litigation to defend against claims based on years-old uses of copyrighted works, potentially without access to evidence and witnesses.[5] Publishing rights may have changed hands multiple times, and royalties would have been disbursed to clients, including songwriters, who would have spent them years before. And companies would be unable to manage risk responsibly in the face of the constant potential for massive recoveries based on long-past conduct. That would engender the very uncertainty and expense that Section 507(b) was intended to eliminate. See *Petrella*, 572 U.S. at 670.

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[4] Congress did expect that "various equitable situations" that "[f]ederal district courts, generally, recognize" might apply to the Copyright Act's statute of limitations. S. Rep. No. 1014, at 3. One such traditional equitable doctrine—a narrower, fraud-based discovery rule—is discussed below. See pp. 33-39.

[5] This case acutely illustrates that problem. Respondents claim that important documentary evidence from the early 1980s—including corporate records and written copyright assignments—has now been lost. See 3 C.A. App. 35, 58-59, 62. A crucial witness passed away during the pendency of the case. See D. Ct. Dkt. 288, at 15. And because of an accounting-system change that occurred a decade ago, no financial records are available from the years that "In the Ayer" earned almost all of its income. See D. Ct. Dkt. 128, at 48-52.

3. For Purposes Of Section 507(b), A Plaintiff Ordinarily Has A Complete Cause Of Action At The Time Of Infringement

The Copyright Act provides that "[t]he legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it." 17 U.S.C. 501(b). "To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U.S. 340, 361 (1991). Section 411 additionally provides that, as a general matter, "no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title." 17 U.S.C. 411(a).

Where, as here, a plaintiff already holds a registration, a claim for copyright infringement is complete and present when the infringement occurs: namely, at the time of the wrongful act, such as copying. The element of ownership is an attendant circumstance to that discrete act. See, *e.g.*, *Blake* v. *JP Morgan Chase Bank NA*, 927 F.3d 701, 706 (3d Cir. 2019). The owner of a right in a registered work thus has a cause of action as soon as the infringement occurs.

4. This Court Has Already Recognized That Section 507(b) Imposes A Three-Year Limitation On Retrospective Relief

This Court has twice addressed the statute of limitations in Section 507(b). In *Petrella*, *supra*, the Court discussed it at length and, in reasoning essential to the holding of the case, characterized it as containing a three-year limitation on retrospective relief. And in *SCA Hygiene Products*, *supra*, the Court reaffirmed the reasoning of *Petrella* and extended it to the patent context.

a. In *Petrella*, this Court held that the defense of laches could not be invoked to bar claims for damages under the Copyright Act because Section 507(b) "itself takes account of delay." 572 U.S. at 677. It does so, the Court explained, by providing that "a successful plaintiff can gain retrospective relief only three years back from the time of suit." *Ibid.* Although a plaintiff may be entitled to prospective relief, "[n]o recovery may be had for infringement in earlier years," *ibid.*, making it unnecessary for defendants to have recourse to the defense of laches in order to mitigate the unfairness of delay by plaintiffs.

In so holding, the Court repeatedly relied on the fact that Congress "prescribed a three-year look-back limitations period for all civil claims arising under the Copyright Act." *Petrella*, 572 U.S. at 670. The Court referred numerous times to the Copyright Act's three-year limitation on retrospective relief—a limitation that could only come from Section 507(b). See, *e.g.*, *id.* at 671 (noting that, "[u]nder the Act's three-year provision, an infringement is actionable within three years, and only three years, of its occurrence" and "the infringer is insulated from liability for earlier infringements of the same work"); *id.* at 672 (stating that Congress allowed plaintiffs to "gain retrospective relief running only three years back from the date the complaint was filed"); *id.* at 677 (observing that "a successful plaintiff can gain retrospective relief only three years back from the time of suit"); *ibid.* (explaining that, "if infringement within the three-year look-back period is shown, the Act allows the defendant to prove and offset against profits made in that period 'deductible expenses' incurred in generating those profits" (citation omitted)).

Nor was that understanding limited to the majority opinion. Even the dissent agreed. See *Petrella*, 572 U.S. at 692 (Breyer, J., dissenting) (stating that "the majority correctly points out that the limitations period limits the retrospective relief a plaintiff can recover" by "impos[ing] a cap equal to the profits earned during the prior three years, in addition to any actual damages sustained during this time"). The government likewise argued that, "[u]nder 17 U.S.C. 507(b), a civil suit filed within three years after an act of infringement is timely with respect to that act." U.S. Br. at 13, *Petrella*, *supra* (No. 12-1315).

To be sure, the question presented in *Petrella* explicitly related only to laches and not the statute of limitations, as the court of appeals observed. See Pet. App. 11a. But as this Court explained in *Petrella*, the Ninth Circuit could conclude that laches was necessary "[o]nly by disregarding" that the Copyright Act "itself takes account of delay" because it contains a statute of limitations. 572 U.S. at 677. The Court thus based its holding on a broader compromise inherent in the text of the Copyright Act—a three-year limitation on retrospective relief that could not be extinguished by laches. See *Sohm* v. *Scholastic, Inc.*, 959 F.3d 39, 52 (2d Cir. 2020); 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 12.05(c)(iii) (2023 online ed.) (Nimmer); 6 William F. Patry, *Patry on Copyright* § 20:24 (Sept. 2023 update) (Patry). The existence of that compromise was essential to the Court's reasoning in *Petrella*. Cf. *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 67 (1996).

b. The Court's subsequent treatment of *Petrella* in *SCA Hygiene Products* confirms its relevance here. There, the Court repeated its assessment that the Copyright Act imposes a three-year limitation on retrospective relief and extended the reasoning of *Petrella* to the Patent Act. See 580 U.S. at 336-338. The Patent Act bars claims for patent infringement "committed more than six years prior to the filing of the complaint." 35 U.S.C. 286. The defendants in *SCA Hygiene Products* sought to distinguish *Petrella* on the ground that Section 507(b) of the Copyright Act is a "true" statute of limitations, which "runs forward from the date a cause of action accrues." 580 U.S. at 336. But, as the Court explained, *Petrella* could not be distinguished on that ground because the Court "described the Copyright Act's statute of limitations as a three-year look-back limitations period," which "allows plaintiffs to gain retrospective relief *running only three years back from the date the complaint was filed*." *Ibid.* (internal quotation marks and ellipsis omitted).

As the Court also explained, *Petrella* could not be distinguished on the ground that the Copyright Act's use of the term "accrued" might be susceptible to application of a discovery rule. The Court reiterated the general rule that "[a] claim ordinarily accrues when [a] plaintiff has a complete and present cause of action." *SCA Hygiene Products*, 580 U.S. at 337 (alterations in original; internal quotation marks and citation omitted). The Court added that, in *Petrella*, it had "specifically noted that [it had] not passed on the question" whether the Copyright Act's statute of limitations is subject to a discovery rule. *Id.* at 337-338 (internal quotation marks and citation omitted).

5. *There Is No Valid Basis To Treat Claims For Retrospective Relief As 'Accruing' More Than Three Years After The Plaintiff Has A Complete Cause Of Action*

The Ninth and Eleventh Circuits have held that Section 507(b) permits retrospective relief for acts of infringement occurring more than three years before the filing of suit. But neither the text of Section 507(b) nor the discovery rule compels such a result, and there is no valid reason to support it.

a. The Ninth Circuit and the Eleventh Circuit (in the decision below) have held that a plaintiff may seek retrospective relief for acts of infringement occurring more than three years before the filing of suit. They principally based that conclusion on the supposed incompatibility between a three-year limitation on retrospective relief, on the one hand, and the discovery rule, on the other. See Pet. App. 12a-15a; *Starz Entertainment, LLC* v. *MGM Domestic Television Distribution, LLC*, 39 F.4th 1236, 1244-1245 (9th Cir. 2022).

As a preliminary matter, in recognizing that Section 507(b) imposes a limitation on claims for retrospective relief, the Court need not reject the applicability of a discovery rule to claims for prospective relief (such as an injunction). Unlike a claim for retrospective relief, a claim for prospective relief does not necessarily become complete, and thus may not "accrue," immediately upon injury. To the contrary, a plaintiff seeking prospective relief cannot rely on past violations and injury alone, but must also establish a "sufficient likelihood that he will again be wronged in a similar way" in the future. *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 111 (1983). And in general, statutes of limitations are "not controlling measures of equitable relief," but are instead "drawn upon" by courts in determining whether equitable relief is appropriate in the circumstances of particular cases. *Holmberg* v. *Armbrecht*, 327 U.S. 392, 396 (1946); accord *Petrella*, 572 U.S. at 678. A three-year limitations period "drawn" from Section 507(b), but calculated from the time of discovery, might thus be appropriate for prospective equitable relief (such as an injunction). In all events, the Court need not resolve, and can reserve, that issue here, because the question presented is limited to retrospective relief.

b. The arguments that have been offered by the courts of appeals in favor of a broad discovery rule are unpersuasive. The courts of appeals that have read a broad discovery rule into Section 507(b) have largely done so based on a presumption that all federal statutes of limitations begin to run at the time of discovery, regardless of the cause of the plaintiff's delay in filing suit. For example, the Eighth Circuit has applied a general rule that, "[i]n federal question cases, the discovery rule applies in the absence of a contrary directive from Congress." *Comcast of Illinois X* v. *Multi-Vision Electronics, Inc.*, 491 F.3d 938, 944 (2007) (internal quotation marks and citation omitted); see, *e.g.*, *William A. Graham Co.* v. *Haughey*, 568 F.3d 425, 433-437 (3d Cir.), cert. denied, 558 U.S. 991 (2009); *Polar Bear Products, Inc.* v. *Timex Corp.*, 384 F.3d 700, 706-707 (9th Cir. 2004); *Webster* v. *Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020).

This Court, however, has refused to adopt that atextual approach to statutory interpretation. Indeed, the Court recently called such an "expansive approach to the discovery rule" a "bad wine of recent vintage." *Rotkiske*, 140 S. Ct. at 360 (quoting *TRW*, 534 U.S. at 37 (Scalia, J., concurring in the judgment)). Instead, where the text of a statute does not contain an all-purpose discovery rule, the Court has instructed that one "cannot be supplied by the courts." *Id.* at 360-361 (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)); see U.S. Br. at 14, *Rotkiske*, *supra* (No. 18-328).

Of the courts of appeals that have read a broad discovery rule into Section 507(b), only the Third Circuit appears to have offered a textual argument, but it makes too much of too little. Based on the fact that the civil statute of limitations in Section 507(b) uses the phrase "claim accrued" and the criminal statute of limitations in Section

507(b) uses the phrase "cause of action arose," the Third Circuit has concluded that the former must incorporate a broad discovery rule. See *William A. Graham*, 568 F.3d at 434-435. But the canon that different words have different meanings is "no more than a rule of thumb that can tip the scales when a statute could be read in multiple ways." *Sebelius* v. *Auburn Regional Medical Center*, 568 U.S. 145, 156 (2013) (internal quotation marks, citations, and alterations omitted).

For the reasons discussed above, the terms "accrued" and "arose" convey the same meaning when used in statutes of limitations. See pp. 15-27. And the legislative history confirms that the variation between the two provisions was simply the product of idiosyncratic drafting; the relevant committee memorialized its understanding that there was "no substantial reason for not having statutes of equal periods for both criminal and civil copyright actions." S. Rep. No. 1014, at 2. The better view, therefore, is that the difference between "accrued" and "arose" is immaterial. See *Everly* v. *Everly*, 958 F.3d 442, 462 (6th Cir. 2020) (Murphy, J., concurring) (rejecting the Third Circuit's reasoning).[6]

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[6] Because the Copyright Act permits statutory damages, substantial mischief would accompany a broad discovery rule. Years after an alleged infringement, a plaintiff could exact a hefty price "regardless of the adequacy of evidence offered as to his actual damages and the amount of defendants' profits, and even if he has intentionally declined to offer this evidence." Nimmer § 14.04(A). Courts frequently award statutory damages. See, *e.g.*, *MCA Television Ltd.* v. *Feltner*, 89 F.3d 766, 771 (11th Cir. 1996) (affirming a $9 million award based on a calculation of $10,000 per episode broadcast); *Virtual Studios, Inc.* v. *Beaulieu Group, LLC*, 987 F. Supp. 2d 769, 774 (E.D. Tenn. 2013) (awarding $150,000 per infringing image, for a total of $1,950,000); *All-Star Marketing Group, LLC* v. *Media Brands Co.*, 775 F. Supp. 2d 613, 617, 626-627 (S.D.N.Y. 2011) (awarding

* * * * *

The limitations period in Section 507(b) unambiguously runs from the point at which a plaintiff has a complete and present cause of action. This Court recognized as much in *Petrella*, and adopting a rule that permits retrospective relief going back further would upset the balance that Congress struck and the *Petrella* Court vindicated. Under the text of Section 507(b), respondents may not seek retrospective relief for acts of infringement that occurred more than three years before the filing of suit.

B. Properly Understood, The Discovery Rule Does Not Apply To Respondents' Claim For Retrospective Relief

The question presented in this case, as rephrased by the Court, assumes that the Copyright Act contains a "discovery accrual rule applied by the circuit courts." But at least some courts of appeals do not apply the discovery rule consistently where, as here, the dispute concerns ownership, rather than the existence of infringement.[7]

$325,000); *Berg* v. *Symons*, 393 F. Supp. 2d 525, 546, 548 (S.D. Tex. 2005) (awarding $2,000 per infringed work); *UMG Recordings, Inc.* v. *MP3.com, Inc.*, Civ. No. 00-472, 2000 WL 1262568, at *6 (S.D.N.Y. Sept. 6, 2000) (contemplating up to $118 million in statutory damages at a rate of $25,000 per infringing work). And a broad discovery rule would be a boon to copyright "trolls," for whom actual damages "are either non-existent or minimal," because they could leverage "the threat of $150,000 per work for willful infringement." Patry § 22:88.50; see 17 U.S.C. 504(c).

[7] Where the dispute concerns ownership, rather than the existence of infringement, some courts of appeals purport to apply a special rule under which the running of the limitations period begins with the repudiation of ownership. See, *e.g.*, *Ritchie* v. *Williams*, 395 F.3d 283, 289 n.5 (6th Cir. 2005); *Seven Arts Filmed Entertainment Ltd.* v. *Content Media Corp.*, 733 F.3d 1251, 1254-1255 (9th Cir. 2013); *Stan Lee Media, Inc.* v. *Walt Disney Co.*, 774 F.3d 1292, 1300 n.4 (10th Cir. 2014). For its part, the Eleventh Circuit applies the discovery rule

Moreover, at least one court of appeals that applies a broad discovery rule has explicitly held that it is not an "accrual" rule at all, but rather an equitable doctrine delaying the running of the statute of limitations. See *William A. Graham Co.* v. *Haughey*, 646 F.3d 138, 150 (3d Cir. 2011). And, for the reasons discussed above, a broad discovery rule would be inconsistent with the text of Section 507(b) and this Court's precedents on the interpretation of statutes of limitations. See pp. 15-31.

That said, there is a narrower version of the discovery rule that would be consistent with the text of Section 507(b) and this Court's precedents. That version of the rule "arose in 18th-century fraud cases as an 'exception' to the standard rule" that "a claim accrues 'when the plaintiff has a complete and present cause of action.'" *Gabelli*, 568 U.S. at 448-449; accord *TRW*, 534 U.S. at 37 (Scalia, J., concurring). The narrower rule applies if "a plaintiff has been injured by fraud and 'remains in ignorance of it without any fault or want of diligence or care on his part.'" *Gabelli*, 568 U.S. at 449 (quoting *Holmberg*, 327 U.S. at 397). The Court has also "recognized a prevailing discovery rule" in two additional contexts: "latent disease and medical malpractice." *TRW*, 534 U.S. at 27. Because respondents failed to allege fraud, latent disease, or medical malpractice, the narrower version of the discovery rule does not apply in this case.

where (as here) the dispute concerns ownership, but it has not addressed the applicability of the discovery rule where the dispute concerns the existence of infringement. See Pet. App. 7a-9a; *Webster*, 955 F.3d at 1276.

1. Historical Practice And This Court's Precedents Support A Narrow Discovery Rule In Cases Of Fraud, Latent Disease, Or Medical Malpractice

a. The Court has long recognized a discovery rule applicable "in cases of fraud or concealment." *TRW*, 534 U.S. at 27. Properly understood, that discovery rule—unlike the all-purpose discovery rule presumptively applied by a number of courts of appeals—is a narrow one with a firmer footing in equity and English common law. Because early American legislatures enacted statutes of limitations modeled after the Statute of James I, American courts initially looked to English courts when interpreting and applying those statutes. See John P. Dawson, *Undiscovered Fraud and Statutes of Limitation*, 31 Mich. L. Rev. 591, 597 (1933) (Dawson). And in both countries, "it [was] an established rule of equity" that, for claims based on fraud, "time will not run in favor of the defendant until the discovery of the fraud, or until, with reasonable diligence, it might have been discovered." H.G. Wood, *A Treatise on the Limitation of Actions at Law and in Equity*, ch. 22, § 275, at 651-652 (2d ed. 1893) (Wood).

The Statute of James I had enumerated five grounds for postponing the running of the limitations period, none of them fraud. See Dawson 597-600. But English courts of equity also did so based on fraud, including in at least one suit resembling an action at law. See *ibid.*; *Booth* v. *Lord Warrington*, 2 Eng. Rep. 111 (1714). And by the early eighteenth century, English courts of law had begun following suit. See Dawson 598. That trend came about "[t]hrough the influence of Lord Mansfield," *ibid.*, who recognized in *Bree* v. *Holbech*, 99 Eng. Rep. 415 (1781), that "[t]here may be cases * * * which fraud will take out of the Statutes of Limitations." *Id.* at 416; see Dawson 599 n.19.

Lord Mansfield's opinion in *Bree* was influential on both sides of the Atlantic, triggering a deep debate on whether American courts of law could properly apply a fraud-based discovery rule. See *Whether Fraud Is a Sufficient Answer, in an Action at Law, to a Plea of the Statute of Limitations*, 1 U.S. L. Intelligencer & Rev. 139 (1829); J.K. Angell, *A Treatise on the Limitations of Actions at Law and Suits in Equity and Admiralty*, ch. 18, §§ 3-4, at 191-194 (2d ed. 1846) (Angell). On one side of the debate, opponents argued that applying the fraud-based rule at law was an "assumption of legislative functions" and an unprincipled "judicial exception engrafted upon the statute." Wood § 274, at 651; see Angell, ch. 18, § 3, at 191 (observing that New York courts of law "positively refused" to apply the rule).

On the other side, Justice Story advocated for the fraud-based discovery rule by referring to the equal dignity of courts of law and courts of equity. See *Sherwood* v. *Sutton*, 21 F. Cas. 1303, 1307 (C.C.D.N.H. 1828) (No. 12,782). In his view, Lord Mansfield's opinion in *Bree* had established that the fraud-based discovery rule applied in courts of law, as well as courts of equity. *Id.* at 1306-1307. Without such an "implied exception," Justice Story reasoned, a statute of limitations would "become an instrument to encourage fraud," thereby defeating its main purpose. *Ibid.* In the end, Justice Story's approach "became extremely popular," and, within a century, "the 'fraud' exception ha[d] made its way into the main body of common law doctrine." Dawson 601, 636.

b. In *Bailey* v. *Glover*, 88 U.S. 342 (1874), this Court first recognized the fraud-based discovery rule. *Bailey* involved a creditor's challenge to the discharge of a debt that the debtor had evaded by conveying his assets to his family and then filing for bankruptcy. See *id.* at 343. The creditor sued after the limitations period expired, invoking the fraud-based discovery rule on the ground that the debtor and his family had concealed the scheme. See *ibid.*

At the outset, the Court observed that "a very decided conflict of authority" persisted over whether courts of law could properly apply the fraud-based discovery rule. *Bailey*, 88 U.S. at 348. The Court determined that the rule must apply in both types of courts or neither, on the ground that the bankruptcy statute at issue was administered by both courts of law and courts of equity. See *id.* at 349.

Relying on "the weight of judicial authority, both in this country and in England," and "a sound and philosophical view of the principles of the statutes of limitation," the Court ultimately concluded that the fraud-based discovery rule should apply both at law and at equity. *Bailey*, 88 U.S. at 349. The Court reasoned that, without such a rule, the statute of limitations would encourage fraud, rather than preventing it. See *ibid.* Accordingly, the Court held that, "when there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such character as to conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing, or those in privity with him." *Id.* at 349-350.

In *Holmberg*, *supra*, the Court dispensed with a statute-specific approach and applied the fraud-based discovery rule in a more categorical fashion. *Holmberg* involved a suit by the creditors of a bank against its shareholders. See 327 U.S. at 393. After the limitations period would otherwise have expired, the creditors learned that one shareholder "concealed his ownership" by using a false name. *Ibid.* Quoting *Bailey*, the Court observed that it had "long ago adopted as its own the old chancery rule" that a limitations period begins to run only when a fraud is discovered. *Id.* at 397. "This equitable doctrine," the Court continued, "is read into every federal statute of limitation." *Ibid.*

c. How the Court has characterized the fraud-based discovery rule recognized in *Bailey* and *Holmberg* has varied over time. The Court occasionally has described the rule as a variant of equitable tolling. See *Petrella*, 572 U.S. at 681. But the Court has more recently acknowledged the "discovery rule in 'fraud cases'" as an independent, "equity-based doctrine" that is "distinct from the traditional equitable tolling doctrine." *Rotkiske*, 140 S. Ct. at 361; cf. Br. of Samuel L. Bray et al. at 13, *Rotkiske*, *supra* (No. 18-328) (describing the fraud-based discovery rule as "one of the doctrines of the common law background against which all legislation is enacted").

No matter how the Court has described the discovery rule, it has proceeded with caution in applying it. Not long after the Court first applied the fraud-based discovery rule in *Bailey*, it declined to do so in *Amy* v. *City of Watertown*, 130 U.S. 320 (1889). There, the plaintiffs sought the protection of the rule because they tried to serve the defendant city multiple times and were stymied because the city would elect a new mayor and city council, who would immediately "assemble[] together in a secret place with locked doors," conduct "certain necessary business," and then "immediately * * * resign[]." *Id.* at 322. The Court explained that "seek[ing] to evade the service of process * * * may be morally wrong * * * [or] dishonest; but it is not fraudulent in the legal sense of the term." *Id.* at 326. The Court noted that, although the statute provided an exception based on "inability to serve process occasioned by the defendant's absence from the state," it "provided for no other case of inability to make service." *Id.* at 326-327. The Court reasoned that, "[i]f this is an omission, the courts cannot supply it," because "that is for the legislature to do." *Id.* at 327.

More recently, in *TRW*, *supra*, the Court reversed a Ninth Circuit decision reading a discovery rule into the statute of limitations in the Fair Credit Reporting Act. The Court clarified that *Holmberg* had "instructed with particularity that 'where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered.'" 534 U.S. at 27 (citation omitted). The Court thus read *Holmberg* "for the proposition that equity tolls the statute of limitations in cases of fraud or concealment; it does not establish a general presumption applicable across all contexts." *Ibid.*

The Court observed that "lower federal courts 'generally apply a discovery accrual rule when a statute is silent on the issue.'" *TRW*, 534 U.S. at 27 (citation omitted). But the Court cautioned that it has "not adopted that position as [its] own." *Ibid.* The Court did not mince words, cautioning that it has "never endorsed the Ninth Circuit's view that Congress can convey its refusal to adopt a discovery rule only by explicit command, rather than by implication from the structure or text of the particular statute." *Id.* at 27-28.

d. The Court has recognized a narrow discovery rule in two other, specific contexts: latent disease and medical malpractice. Like fraud, those contexts can be said to involve injuries that, by their nature, conceal themselves.

The Court extended the discovery rule to latent disease in *Urie* v. *Thompson*, 337 U.S. 163 (1949), which involved a compensation claim for silicosis under the Federal Employers' Liability Act. See *id.* at 165-166. The Court reasoned that the petitioner's injury occurred at an "unknown and inherently unknowable" time, "even in retrospect." *Id.* at 169. The Court posited that Congress' "humane legislative plan" would not have "intended such consequences to attach to blameless ignorance" of the petitioner. *Ibid.* Quoting a decision by the California District Court of Appeal, the Court determined that the injury occurred at the point at which "the accumulated effects of the deleterious substance manifest[ed] themselves." *Id.* at 170 (citation omitted).

Thirty years later, the Court addressed the discovery rule in the context of medical malpractice. In *United States* v. *Kubrick*, 444 U.S. 111 (1979), a veteran sought an increase in benefits on the ground that an antibiotic administered to him in 1968 had caused him to lose his hearing. See *id.* at 113-114. He was diagnosed in 1969 and told that "it was highly possible" the antibiotic caused the hearing loss. *Id.* at 114. In 1971, after his claim was denied and his appeal was pending, another doctor told him that the antibiotic had caused his hearing loss and "should not have been administered." *Ibid.* After consulting with a specialist and hiring a lawyer, he sued in 1972 under a statute with a two-year limitations period. See *id.* at 113-115.

The Court stated that "the general rule under the [statute] has been that a tort claim accrues at the time of the plaintiff's injury." *Kubrick*, 444 U.S. at 120. The Court observed that courts of appeals had begun applying *Urie* in the tort context, but it did not evaluate the propriety of that rule because it would not have saved the plaintiff's claim. See *id.* at 120-121 & n.7. The Court explicitly declined to equate "a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause." *Id.* at 122. The Court explained that, if the "technical complexity" of medical malpractice justifies postponing the running of the limitations period, "it would be difficult indeed not to apply the same accrual rule to medical and health claims arising under other statutes and to a whole range of other negligence cases." *Id.* at 124.

In sum, this Court's precedents are marked by conspicuous judicial modesty regarding the scope and application of a background discovery rule. The Court has thus far recognized it only in cases of fraud, latent disease, or medical malpractice, and it has made clear that it is unwilling to recognize a categorical discovery rule applicable in all cases.

2. This Case Does Not Involve Fraud, Latent Disease, Or Medical Malpractice

Respondents did not allege that they were unaware of their claims because of fraud on the part of petitioners (and this case obviously does not involve latent disease or medical malpractice). Respondents contended only that Nealy was unaware of his purported injury because he "was removed from the music business and his associates within it" while he was imprisoned. Resp. C.A. Br. 12-13.[8] The operative version of the complaint contains no allegations of fraud. See 1 C.A. App. 20-54. The parties even stipulated that respondents would not offer evidence of fraud with respect to petitioners' limitations defense. See, *e.g.*, C.A. Supp. App. 659-660.

In fact, respondents went to great lengths affirmatively to allege that petitioners' acts of infringement were

[8] It bears noting that Nealy was out of prison from March 2008 to February 2012, see D. Ct. Dkt. 218, at 10-11, during which time Flo Rida's "In the Ayer" became, in respondents' words, a "smash hit," *id.* at 14. The beginning of the period during which Nealy was out of prison, and "In the Ayer" was a hit, was some ten years before respondents filed suit. See 1 C.A. App. 20-54.

public and widespread. Respondents alleged infringement in musical works by three different "multi-platinum recording artist[s]," 1 C.A. App. 24, one of which they described as a "smash hit" that "topped various airplay and sales charts," *id.* at 25. Respondents further alleged that the supposedly infringing works have been "distributed and sold through record stores, internet on-line sites, and other outlets," as well as "played on terrestrial radio, satellite radio, television, and at live performances * * * worldwide and in the United States." *Ibid.* The musical works have also been "licensed for use in many instances," including on numerous television shows. *Ibid.*; see *id.* at 31. And the works at issue have been the subject of multiple lawsuits, some of which involved respondents. See *id.* at 26-27.

None of those facts is particularly unusual, because Copyright Act claims bear no inherent or regular relationship to fraud or concealment. As noted above, the two primary elements of copyright infringement are "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications*, 499 U.S. at 361. Those elements do not include either "a knowing misrepresentation * * * of a material fact," *Unicolors, Inc.* v. *H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 188 (2022) (alteration and emphasis omitted) (quoting *Black's Law Dictionary* 802 (11th ed. 2019)), or any concealment.

The act of infringement—especially to make a profit—typically occurs in the open. That fact was not lost on Congress. In a hearing on a proposed statute of limitations substantially identical to the one ultimately enacted, a legal adviser to the Copyright Office told members of the House Judiciary Committee that no enumerated exception for fraudulent concealment was necessary because "copyright infringement by its very nature is not a secretive matter." Statement of George D. Carey, Principal Legal Adviser to the Copyright Office, *Hearing on H.R. 781*, at 10-11. The adviser explained that the purpose of infringing a work "is to distribute it" as "an open matter," such that infringement claims "do not have the secretive nature generally where fraudulent concealment in a statute is necessary." *Id.* at 11. As an example, the adviser mentioned "a musical composition [being] sung * * * on the radio." *Ibid.* The adviser also testified that, in cases of fraudulent concealment, the background rule of *Holmberg* would provide a sufficient backstop. See *id.* at 11-12.

In any event, the Court need not craft the exact contours of the discovery rule in this case. It is enough for the Court simply to hold that the traditionally recognized contexts for the discovery rule are absent from the complaint and, in fact, affirmatively ruled out by respondents' allegations of public infringement. As a result, respondents are not entitled to the benefit of the discovery rule under any proper understanding, and respondents' claims for retrospective relief for acts that occurred more than three years before the filing of their lawsuit are time-barred.

C. Even If The Court Were To Assume That The Copyright Act Permits Courts To Apply A Broad Discovery Rule, It Should Apply The Three-Year Limitation On Retrospective Relief As An Equitable Exception

For the reasons already stated, the broad discovery rule applied by some circuits has no basis in—and indeed conflicts with—the text of Section 507(b). But if the Court were to decline to consider the propriety of that rule, it should at a minimum make clear that, to the extent such a rule exists, it is a judicially created, equitable exception to a textually mandated statute of limitations. And in keeping with the well-established principle that "equity follows the law," *Hedges* v. *Dixon County*, 150 U.S. 182, 192 (1893), the Court should ensure that any application of a broad discovery rule does not undermine the statute. At the very least, the Court should enforce a three-year limitation on retrospective relief as an equitable exception to the equitable discovery rule.

1. This Court has previously crafted exceptions and limitations to judicially created rules to ensure that they do not interfere with the text or purpose of the underlying law. For example, in *Maryland* v. *Shatzer*, 559 U.S. 98 (2010), the Court held that the presumption announced in *Edwards* v. *Arizona*, 451 U.S. 477 (1981)—that a suspect who has invoked his right to counsel does not consent to further interrogation—did not apply when there had been a break in custody lasting 14 days or more. See *Shatzer*, 559 U.S. at 110. The Court explained that, because the *Edwards* presumption was a judicially created prophylactic rule, it was the Court's "obligation to justify its expansion" with "reference to its prophylactic purpose," and to ensure that the benefits of any extension of the rule outweighed the costs. *Id*. at 105-106 (internal quotation marks and citation omitted).

Applying those principles, the Court determined in *Shatzer* that the costs of extending the *Edwards* presumption to interrogations occurring more than 14 days after an initial request for counsel outweighed the benefits. See 559 U.S. at 106-108. The Court acknowledged that it was weighing policy considerations and that judicial creation of extra-statutory "precise time limits" was "certainly unusual." *Id*. at 110. The Court nonetheless considered it "appropriate to specify" a precise 14-day time limit in order to ensure that the presumption it had created aligned with the underlying constitutional text and values. *Ibid.*

If the Court were to assume the existence of an all-purpose discovery rule here, it should adopt a similar approach with respect to the three-year limitations period for retrospective relief. Like the *Edwards* presumption, the broad discovery rule lacks a basis in text or traditional methods of interpretation. The broad discovery rule can thus be understood only as an equitable, judicially constructed exception to the standard statutory rule that a claim accrues when a plaintiff has a complete and present cause of action. To the extent the Court declines in this case to consider the propriety of the general discovery rule, the Court should—as in *Shatzer*—place limits on that rule to ensure that its application does not undermine the standard statutory rule.

2. Appropriate limits can be found in this Court's precedents. The Court already made clear in *Petrella* that Section 507(b) contains a three-year limitation on retrospective relief. See 572 U.S. at 677; pp. 24-26, *supra*. The Court reaffirmed that limitation in *SCA Hygiene*. See 580 U.S. at 336. Together, those cases stand for the principle that any discovery rule should be applied in a manner consistent with Congress' goals of making "uniform and certain the time within which copyright claims could be pursued" and limiting a plaintiff's recovery to "retrospective relief only three years back from the time of suit." *Petrella*, 572 U.S. at 670, 677; see S. Rep. No. 1014, at 2. Those cases thus recognize that, with respect to claims for retrospective relief for infringements occurring more than three years before the filing of suit, Congress has already conducted the required cost-benefit analysis. And Congress determined that any benefit to injured parties from the application of a broad discovery rule would come at significant cost to defendants because

"evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli*, 568 U.S. at 448 (citation and alteration omitted). At a minimum, the Court should embrace that previously recognized limitation on retrospective relief as an equitable limitation to any broader discovery rule.

* * * * *

The text of Section 507(b) unambiguously provides that a plaintiff may not seek retrospective relief in a civil action for copyright infringement if the action is filed more than three years after the plaintiff had a complete and present cause of action. To the extent this Court assumes the existence of a discovery rule, it should adopt the traditional, equitable discovery rule available only in cases of fraud, latent disease, or medical malpractice, none of which were alleged here. And to the extent this Court assumes the existence of a broader discovery rule, it should ensure fidelity to the text of Section 507(b) and the Court's precedents by clarifying that the rule does not permit retrospective relief for infringements occurring more than three years before the filing of an action.[9]

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[9] Any argument relying on equitable tolling, fraud, or any other doctrine that could render respondents' claims timely, has been abandoned. See C.A. Supp. App. 659-660 (stipulating that respondents would not offer evidence of fraud with respect to petitioners' limitations defense); D. Ct. Dkt. 128, at 10, 36-38 (relying on the discovery rule to the exclusion of equitable tolling).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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