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.,

Respondents.

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

BRIEF OF *AMICUS CURIAE* AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION IN SUPPORT OF NEITHER PARTY

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QUESTION PRESENTED

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.

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INTEREST OF AMICUS CURIAE

The American Intellectual Property Law Association (AIPLA) is a national bar association representing the interests of approximately 7,000 members engaged in private and corporate practice, government service, and academia. AIPLA's members represent a diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.[1] AIPLA's mission includes providing courts with objective analyses to promote an intellectual property system that stimulates and rewards invention, creativity, and investment while accommodating the public's interest in healthy competition, reasonable costs, and basic fairness. AIPLA has no stake in any of the parties to this litigation or in the result of the case. AIPLA's only interest is in seeking correct and consistent interpretation of the law as it relates to intellectual property issues.

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[1] Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the amicus curiae, its members, or its counsel, made a monetary contribution intended to fund its preparation or submission.

SUMMARY OF ARGUMENT

A circuit split has emerged over whether, in cases applying the discovery rule to copyright ownership disputes, the Copyright Act's statute of limitations limits the lookback period for damages to the three years immediately prior to the lawsuit. The majority of circuits to address the issue have held that it does not, but the Second Circuit has interpreted this Court's holding in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014), as imposing such a bar. The Court should resolve the split by holding that, in cases applying the discovery rule to copyright ownership disputes, the statute of limitations in the Copyright Act does not limit the lookback period for damages.

The Copyright Act contains no explicit or implicit limitation on the award of damages during the time period before a claim accrues. Rather, the statute of limitations speaks only to the timeliness of claims. In discovery accrual cases, where claims may be deemed timely filed even for infringements occurring prior to the limitations period, all infringements involved in the case are compensable, regardless of when they occurred.

The Second Circuit's contrary conclusion misapplies *Petrella.* This Court's remarks about the statute of limitations in *Petrella* were in support of its conclusion that laches generally does not apply in cases of ongoing infringement because defendants are protected from unreasonable delay by the limitations period. The plaintiff in *Petrella* was aware of the infringements as they occurred, and it was therefore undisputed that her claims for infringements more

than three years prior to the lawsuit had accrued and expired, and were unrecoverable. But the case here is an ownership dispute in which the question, as reframed by the Court, assumes the plaintiffs were unaware of the infringements as they occurred and timely asserted their claims upon discovery. *Petrella* is inapplicable to these facts.

Further, assuming the discovery rule for claims accrual applies, fairness and equity weigh against the imposition of a bar to damages for infringements occurring more than three years before they were discovered. Imposing such a bar would undermine the discovery rule in ownership disputes, where plaintiffs are usually not aware that they have a claim, and effectively require plaintiffs to actively monitor for infringements or lose out on otherwise compensable damages. This would place individual artists and small businesses, who may lack the resources to engage in continuous monitoring, at an unfair disadvantage. While copyright owners cannot "bury their heads in the sand" or act with "willful blindness", neither the Copyright Act nor common law obligate owners to actively seek out infringing activities.

Nevertheless, we urge a cautious and measured opinion limited to the facts at bar, in which the plaintiff could not have reasonably discovered the infringements earlier. Otherwise, a broad ruling may result in abusive litigation, and could undermine both the statute of limitations and the general rule that, claims ordinarily accrue when an infringing act occurs. We also encourage the Court to remind the

District Courts of their gatekeeping role to prevent entrepreneurial misuse of the judiciary.

BACKGROUND

I. Overview.

This case is primarily a dispute over copyright ownership. Although the plaintiffs seek damages for copyright infringement, "[t]he defendants concede that if [plaintiffs] prove that they own the copyrights to the works [at issue], the only remaining issue in the case would be damages because the defendants' use of the works would have infringed [plaintiffs'] copyrights." *Nealy v. Warner Chappell Music, Inc.*, 60 F.4th 1325, 1330–31 (11th Cir. 2023).

The lower courts draw a distinction between claim accrual in ordinary copyright infringement and cases involving ownership disputes (and similar close relationships). "This distinction makes sense for purposes of claim-accrual analysis [because in] the ordinary infringement case, ownership is not in dispute [and] the focus is on the infringing acts [whereas] disputes about copyright ownership … accrue only once, when the claimant receives notice that his ownership has been expressly repudiated or contested." *See, e.g., Consumer Health Info. Corp. v. Amylin Pharms., Inc.*, 819 F.3d 992, 997 (7th Cir. 2016) (marks and citation omitted). Thus:

> [W]here the "gravamen" of a copyright claim is ownership, the discovery rule dictates when a copyright plaintiff's claim accrues. Under the discovery rule, a copyright ownership claim accrues, and therefore the limitations period

> starts, "when the plaintiff learns, or should as a reasonable person have learned, that the defendant was violating his ownership rights."

Nealy, 60 F.4th at 1330 (citation omitted) (quoting *Webster v. Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020)).

A factual dispute remains as to whether plaintiffs' claims are actually timely under the discovery rule, but that question is not now before the Court. Rather, as reframed by the Court, the question presented here assumes plaintiffs' claims as to all infringing acts (including those occurring more than three years before filing suit) are timely asserted, and asks whether, under such circumstances, the Copyright Act confines damages to the three-year limitations period.

II. The Statute of Limitations.

The Copyright Act provides a civil cause of action for violations of the exclusive rights of copyright owners granted thereunder, and imposes a three-year statute of limitations on the commencement of such actions. 17 U.S.C. § 501; 17 U.S.C. § 507(b).

Specifically, § 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." 17 U.S.C. § 507(b). This text was adopted, largely unchanged, from the 1909 version of the Act, which was enacted without a limitations period on damages, but amended in 1957 to add one. *Compare* Act to Amend and Consolidate the Acts respecting Copyright, Pub. L. No. 60-320, 35 Stat.

1675 (Mar. 4, 1909); *with* Act to Amend the United States Code entitled "Copyrights" to Provide for a Statute of Limitations Respecting Civil Actions, Pub. L. No. 85-313, 71 Stat. 633 (Sep. 7 1957).

Before the 1957 amendment, federal courts looked to state law to determine the applicable limitations period. *See Petrella*, 572 U.S. at 669. But state law lacked causes of action clearly analogous to copyright infringement, resulting in different courts classifying copyright within different state law causes of action. *Id.* The end result was a patchwork of "wildly disparate limitations periods ranging from one year to two years, five years, six years, 10 years, and even to different periods within the same district," which in turn led to forum shopping. 6 Patry on Copyright § 20:11 (Online ed. Sep. 2023 Update) (footnotes omitted).

This Court has recognized that the "federal limitations prescription governing copyright suits serves two purposes: (1) to render uniform and certain the time within which copyright claims could be pursued; and (2) to prevent the forum shopping invited by disparate state limitations periods[.]" *Petrella*, 572 U.S. at 670.

The limitations section of the Act provides that a claim is timely if filed within three years after it "accrued." The Statute is silent on when accrual actually occurs. There are two prevailing approaches to claim accrual. The first is the injury rule, sometimes also called the occurrence or violation rule. "Under this approach, accrual means . . . the date on

which the violation of an exclusive right occurs[.]" 6 Patry on Copyright § 20:17.

An important related concept is the separate-accrual rule. "[W]hen a defendant commits successive violations, the statute of limitations runs separately from each violation." *Petrella*, 572 U.S. at 671. "[E]ach infringing act starts a new limitations period." *Id.* (approvingly citing *Stone v. Williams*, 970 F.2d 1043, 1049 (2d Cir. 1992) ("Each act of infringement is a distinct harm giving rise to an independent claim for relief.") Thus, the limitations period, in combination with the separate-accrual rule, "allows a copyright owner to defer suit until she can estimate whether litigation is worth the candle." *Petrella*, 572 U.S. at 671.

The second approach is the discovery rule, under which the claims accrue at "the point at which plaintiff is aware of facts supporting a cognizable claim or should have been aware of those facts[.]" *Id.*; *accord Petrella*, 572 U.S. at 670 n.4 (discovery accrual "starts the limitations period when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim" (citation omitted)). The majority (and perhaps all) of the lower courts use the discovery rule in disputes over copyright ownership, such as the case at bar, and the question as amended directs us to assume that the discovery rule applies in this case.[2]

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[2] The circuits are split on the proper articulation of the discovery rule itself. *See, e.g.*, *Webster v. Dean Guitars*, 955 F.3d 1270, 1275-76 (11th Cir. 2020) (describing different approaches taken

Though drafted in seemingly straightforward and simple language, the limitations period in § 507(b) has proven slippery to apply, due to the peculiar nature of limitations periods. As this Court previously observed:

> Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.

Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945).

III. *Petrella* and the Circuit Split.

Following this Court's 2014 ruling in *Petrella*, a Circuit split emerged concerning the availability of damages in discovery accrual cases.

In *Petrella*, the defendant was sued for ongoing infringement and the plaintiff sought damages only for the three-year period prior to the lawsuit. 572 U.S. at 673-74. The defendant invoked laches to bar even those damages, claiming unfair prejudice from the plaintiff's delay in asserting her claims. *Id.* at 675. However, the Court held that laches does not operate

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by the Sixth and Ninth Circuits, as opposed to the First, Second, Fifth, and Seventh Circuits).

as a complete bar to recovery in such circumstances, and cannot be invoked to preclude claims for damages brought during the limitations period. *Id.* at 667. The Court also noted that laches is not necessary in such circumstances because the plaintiff's damages are limited to a three-year look-back by the statute of limitations. *Id.* at 685.

After *Petrella*, the majority of the lower courts to address the issue concluded that, in discovery accrual cases, damages are not limited to the three-year statutory look-back, and they distinguished *Petrella* on various grounds. However, the Second Circuit split from its sister Courts in *Sohm v. Scholastic Inc.*, 959 F.3d 39 (2nd Cir. 2020) , holding that *Petrella* "explicitly delimited damages to the three years prior to the commencement of a copyright infringement action." *Id.* at 51.

The Ninth Circuit subsequently rejected *Sohm*, holding that "the discovery rule for accrual allows copyright holders to recover damages for all infringing acts that occurred before they knew or reasonably should have known of the infringing incidents and that the three-year limitations period runs from the date the . . . the copyright holder knew or should have known of the infringement." *Starz Entm't, LLC v. MGM Domestic Television Dist., LLC*, 39 F.4th 1236, 1244 (9th Cir. 2022). In that case, the Ninth Circuit concluded that a contrary conclusion would "eviscerate the discovery rule" and render it "functionally identical to the incident of injury rule[.]" *Id.* at 1244 (marks and citation omitted).

The Ninth Circuit distinguished *Petrella* as "relevant only to incident of injury rule cases, not to cases where we apply the discovery rule." *Id.* at 1245. Further, the Ninth Circuit found that the text of the statute provides no support for limiting damages in discovery accrual cases. The court observed that "[n]owhere in § 507(b), or anywhere else in the Copyright Act, is there any reference to a separate three-year damages bar based on the complaint's filing date" and finding otherwise would amount to the conclusion this Court's ruling in *Petrella* "invent[ed] a third time prescription for damages in a case where the issue was not before it." *Id.* at 1245–46.

ARGUMENT

I. Neither the Text of the Copyright Act nor the Court's Precedent Justify the Imposition of a Three-Year Lookback for Copyright Damages.

A. The Copyright Act Does Not, Explicitly or Otherwise, Restrict the Time Period for Recovery of Damages.

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." 17 U.S.C. § 507(b). On its terms, this expansive language governs all civil actions "under the provisions of this title" and measures the limitations period for *commencing an action* from the date of *claim accrual*. The text is silent regarding the applicability of the limitations period to remedies.

Likewise, the remedial provisions are not limited on their terms to damages arising during the limitations period and make no reference to the limitations period. Section 504 of the Copyright Act governs damages and provides as follows:

> Except as otherwise provided by this title, an infringer of copyright is liable for either-
> (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
> (2) statutory damages, as provided by subsection (c).

17 U.S.C. § 504(a). On its face, this provision imposes no limitation or restriction on the temporal reach of damages, nor do the specific subsections referenced. § 504(b) provides additional statutory text addressing actual damages and profits, and states that the

> copyright owner is entitled to recover the ***actual damages suffered by him or her*** as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.

17 U.S.C. § 504(b) (emphasis added).

The text refers only to "actual damages suffered" without specifying a time period, nor making any reference to § 507(b). If, under the discovery rule, a claim is otherwise timely filed, there is no basis in the text of § 504(b) for limiting damages to the limitations period.

Similarly, the statutory damages provision in § 504(c) states that the copyright owner may elect to recover "an award of statutory damages for ***all infringements involved in the action***, with respect to any one work, for which any one infringer is liable individually." 17 U.S.C. § 504(c) (emphasis added). If an infringement occurred more than three years before the lawsuit, but is nevertheless "involved in the action" due to the operation of the discovery rule, the plain and unambiguous meaning of § 504(c) is that statutory damages are available.

These provisions stand in sharp contrast to § 504(d), an enhanced damages clause applicable to situations where defendants unreasonably invoke the so-called "homestyle" and "business" exceptions to the public performance right, found in § 110(5).

§ 504(d) provides:

> In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, ***in addition to any award of damages under this section***, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use ***during the preceding period of up to 3 years***.

17 U.S.C. § 504(d) (emphasis added).

The phrasing of § 504(d) is telling. First, it demonstrates that when Congress desires in the Copyright Act to impose a temporal limitation on damages, it does so expressly. Subsections (a), (b), and (c) contain no such terms.

Second, § 504(d) was added to the Copyright Act by amendment in 1998 and includes an express reference to the other damages clauses. *Compare* 17 U.S.C. § 504 (West 1997); *with* 17 U.S.C. § 504 (West 1998). Specifically, it states that enhanced damages are "in additional to any award of damages ***under this section***." 17 U.S.C. § 504(d) (emphasis provided). The enhanced damages are in addition to the other damages provisions in § 504, and, unlike those other provisions, are expressly limited in time. Congress could have, but declined to, add such a limit when adding subsection (d). Thus, the presence of a limitations period in subsection (d) supports the inference that the absence of such a period in subsections (b) and (c) is a legislative choice, which the judiciary is not at liberty to disturb. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (explaining that the "meaningful-variation canon" is a presumption that differences in wording across subsections imply differences in *meaning* across subsections).

Third, subsection (d) also reflects a legislative judgment against establishing a statutory relationship between damages and the statute of limitations. The enhanced damages provision recites the same limitations period as the statute of limitations – 3 years – but *does not* refer to the claim limitation itself. Congress could have simply made reference to § 507(b), but chose instead to repeat the

three-year time frame. Congress thus chose *not to* create a statutory link between the damages provision, and the limitations period for commencing a lawsuit, and it would be incongruent to infer that, in the absence of a reference to the limitations period in § 504, Congress nevertheless intended its subsections to be constrained by it.

Accordingly, the Copyright Act itself does not impose any limitation on the look-back period for damages.

B. Petrella Does Not Restrict the Time Period for Recovery of Damages in Discovery Accrual Cases and the Second Circuit Erred in Holding Otherwise.

Petrella's remarks on the statute of limitations cannot be read in isolation from the holding and, when properly placed in that context, do not justify the imposition of a time bar for damages in discovery accrual cases. The discovery rule was not before the Court in *Petrella* and the applicable claim accrual rule played no role in its holding. This is because the plaintiff in *Petrella* was aware of the ongoing acts of infringement and knowingly declined to assert her claims for a long period of time. Thus, *even if* the discovery rule had been applied in *Petrella,* it would not have impacted the outcome.

In arriving a contrary conclusion, the Second Circuit stated:

> In *Petrella*, the Supreme Court initiated its examination of the Copyright Act's statute of limitations by explaining that "under the Act's

> three-year provision, an infringement is actionable within three years, and only three years, of its occurrence" and that "the infringer is insulated from liability for earlier infringements of the same work." It stated that "§ 507(b)'s limitations period . . . allows plaintiffs . . . to gain retrospective relief running only three years back from the date the complaint was filed." It also explicitly asserted that "a successful plaintiff can gain retrospective relief only three years back from the time of suit" and that "no recovery may be had for infringement in earlier years." Thus, damages "outside the three-year window" before Petrella filed suit could not be recovered.

Sohm, 959 F.3d at 52 (quoting *Petrella*, 572 U.S. at 671–72).

The Court did pen those words, but the Second Circuit analyzed them in isolation from the context of the facts and holding. The plaintiff in *Petrella* knew of the ongoing infringement, resulting in the Court's observation that her claims accrued, as copyright claims "ordinarily" do, as they happened. *Petrella*, 572 U.S. at 663. But *Petrella* did not purport to set out a bright line rule universally applicable to all copyright infringement lawsuits. Rather, it characterized the operation of the statute of limitations in a typical copyright infringement fact pattern involving public-facing, arms-length infringement, which the copyright owner discovered, or with due diligence, should have discovered.

The Court repeated such qualifiers throughout its opinion. *See, e.g., id. at* 670 ("A claim ***ordinarily*** accrues when a plaintiff has a complete and present cause of action." (emphasis added) (marks and citation omitted, alteration accepted)); *id.* ("[T]he limitations period ***generally*** begins to run at the point when the plaintiff can file suit and obtain relief. A copyright claim thus arises or accrues when an infringing act occurs." (emphasis added) (marks and citation omitted, alteration accepted)); *id.* at 672 ("Thus, when a defendant has engaged . . . in a series of discrete infringing acts, the copyright holder's suit ***ordinarily*** will be timely under § 507(b) with respect to more recent acts of infringement (i.e., acts within the three-year window), but untimely with respect to prior acts of the same or similar kind." (emphasis added)).

Sohm includes no discussion or analysis of the statutory provisions in question, nor any attempt to contextualize the *Petrella's* holding with its factual predicate. As set forth in Section A, *supra*, neither the text of the Act nor *Petrella* support this holding, and the Second Circuit's contrary holding is a misapplication of *Petrella*.

It should be noted that this does not mean that plaintiffs in such disputes will necessarily enjoy an unlimited look-back for damages. Plaintiffs' claims are still time-barred and, effectively, damage-barred, to the extent they accrued prior to the three-year statute of limitations. Moreover, courts can take account of delay in determining appropriate injunctive relief and assessing profits. *Petrella,* 572 U.S. at 687.

II. Imposing a Three-Year Damages Bar in Discovery Accrual Cases Would Unfairly Prejudice Small Businesses and Individual Rightsholders.

In cases where discovery accrual applies, the imposition of a limited three-year look-back period for damages would, as the Ninth Court observed, "eviscerate the discovery rule." *Starz*, 39 F.4th at 1244. If damages are so limited, plaintiffs would effectively be subject to a *de facto* diligence requirement, as any infringements discovered more than three years after they occurred would be actionable, yet not compensable. Thus, plaintiffs must discover infringements early to ensure that they can both enjoin future infringements, and collect available damages for past infringements.

Such circumstances would likely unfairly prejudice the rights of independent creators and small businesses, and may incentivize bad actors to engage in start-and-stop infringement. Large enterprises are generally better resourced and better positioned in the market to detect and act upon infringements while they are happening, but independent and small creators may not discover an infringement until it is too late. It is not reasonable to expect every rightsholder to engage in comprehensive monitoring for infringements of their works, lest they prejudice their ability to recover otherwise compensable damages. Moreover, monitoring is not a panacea. For example, monitoring for infringement is not effective in situations where the plaintiff is unaware of his rights, or where an ownership claim has yet to be asserted. Preserving recovery of damages more than

three years prior to commencing suit in discovery accrual cases levels the playing field.

Further, copyright law loses efficacy when damages are unnecessarily constrained, as voluntary compliance is disincentivized. Limiting the look-back period would not only impose an unfair policing burden on small rightsholders, but also render many cases uneconomical where, as here, the majority of the infringement occurred prior to the limitations period. By extending the look-back period in cases where the discovery accrual rules apply, small business and individual authors are more likely to receive fair compensation for their creative works by having access to damages for all infringing acts, as contemplated by the Copyright Act.

This is particularly true in situations where plaintiffs lack the practical ability to timely discover infringements, especially due to causes outside of their reasonable control. In an ordinary infringement lawsuit, the infringement usually takes place (at least in part) in public, such as plays performed at theaters, songs played on the radio, motion pictures played at cinemas, and photographs or artwork displayed in galleries or reproduced in publications. In such cases, infringement is readily discernable.

However, not all infringement occurs in this fashion. For example, a company may reproduce copies of a reference manual for internal distribution rather than purchasing additional copies, or music files are distributed via an on-line platform that requires paid access. Defendants ordinarily "know[] of and control[] the infringing acts and the copyright

holder has little means of discovering those acts" as, "with the constant evolution of technology, copyright infringement is now easier to commit, harder to detect, and tougher to litigate." *Starz*, 39 F.4th at 1246 (internal quotation marks omitted). Additionally, plaintiffs may lack the practical ability to discover infringements due to their particular circumstances, such as military deployments or a prolonged disability or hospitalization.

III. The Court's Ruling Should Be Limited to "Ownership" Cases and the District Courts Should Be Reminded to Serve as Gatekeepers Against Abuse of the Judiciary.

We encourage the Court to limit its ruling here to the application of discovery accrual in copyright ownership disputes such as the case at bar. *See, e.g.*, *Webster v. Dean Guitars*, 955 F.3d 1270, 1276 (11th Cir. 2020) (distinguishing *Petrella* as a non-ownership case). Although some courts also use the discovery rule in ordinary infringement cases, those facts, and that issue, are not now before the Court, and the analytical focus in such cases differs. *See, e.g., Consumer Health*, 819 F.3d at 997 (in "ordinary infringement . . . the focus is on the infringing acts" whereas "disputes about copyright ownership . . . accrue only once").

Moreover, until and unless Congress takes action to expressly state when claims accrue under various circumstances, and how the timing of claim accrual impacts the Copyright Act's limitations period and remedies, then the holding here will likely be misapplied and have the unintended consequence of

spilling over into ordinary infringement. Under those circumstances, claims for ordinary infringement will remain actionable in perpetuity until discovered. This would be incongruous with a three-year statute of limitations, and frustrate the legislative purpose of having one. *Chase*, 325 U.S. at 314. This is particularly concerning in light of the burden-shifting aspects of § 504(b), which require plaintiffs to "present proof only of the infringer's gross revenue" after which the burden shifts to the defendant to "prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." 17 U.S.C. § 504(b).

Additionally, the District Courts must serve as the primary bulwark against abusive litigation. For example, enterprising plaintiffs will be motivated to plead their claims as ownership disputes, even if they are not, or to plead recently-discovered infringement, when in fact, they should have known of the infringements much earlier.

The District Courts have a variety of tools at their disposal to manage their dockets, including the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the trial courts' inherent discretion, and remedies under the Copyright Act, such as awarding attorneys' fees. It will be important that the lower courts facilitate early discovery of facts concerning claim accrual to uncover situations in which plaintiffs have misleadingly pled claims to open the gate to greater damages, and to give defendants a fair opportunity to file dispositive motions. Courts can also take account of delay in determining appropriate injunctive relief and assessing profits.

This Court should encourage the lower courts to be active and energetic early in the proceedings in the use of these tools to identify and discard abusive filings early in the discovery process, and to discourage such filings, such as by awarding attorney's fees under § 505 to successful defendants in appropriate cases.

CONCLUSION

For the foregoing reasons, AIPLA respectfully urges the Court to affirm the Eleventh Circuit decision and rule that the Copyright Act does not impose a statutory bar to damages in copyright ownership disputes accruing under the discovery rule, and remind the lower courts to be active and energetic in using the tools at their disposal to manage their dockets and dispose of abusive filings at the pleadings stage.

Respectfully submitted,

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