

No. 24-768

IN THE
Supreme Court of the United States

RADESIGN, INC., *et al.*,

Petitioners,

v.

MICHAEL GRECCO PRODUCTIONS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a claim “accrue[s]” under the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. 507(b), when the infringement occurs (the “injury rule”) or when a plaintiff discovers or reasonably should have discovered the infringement (the “discovery rule”).

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that respondent Michael Grecco Productions, Inc. has no parent corporation and that no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Petitioners concede that the question presented implicates no division among the courts of appeals, and “[a]ll of the numbered circuits have adopted the discovery rule” challenged here. Pet. 4.

Nevertheless, Petitioners seek this Court’s review because, they say, “[l]ast Term, three Justices called for this Court to hear a case ‘squarely presenting’” the question presented, and “[t]his is that case.” Pet. 2; *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 376 (2024) (Gorsuch, J., dissenting).

But the Court was presented with this exact question last Term, and it denied review. *Hearst Newspapers, L.L.C. v. Martinelli*, 144 S. Ct. 2561 (2024). Petitioners identify no development that would make the question presented now worthy of the Court’s time and attention. There is still no division among the courts of appeals, the question presented still lacks sufficient importance to warrant review, and the uniform circuit rule remains sound. The Court should deny review, as it did last Term.

STATEMENT

1. Congress adopted a uniform federal limitation period for the Copyright Act in 1957, displacing the prior federal practice of borrowing varying limitation periods prescribed by state law. *Petrella v. MGM, Inc.*, 572 U.S. 663, 670 (2014).

That new uniform federal limitation prescription provided, and still 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 “ha[s] never decided . . . whether a copyright claim accrues when a plaintiff discovers or should have discovered an infringement, rather than when the infringement happened.” *Warner Chappell*, 601 U.S. at 371. As Petitioners acknowledge, however, “every numbered court of appeals has adopted a discovery rule,” interpreting the statutory three-year limitation period to run from the date the copyright infringement is (or should be) discovered. Pet. 5.

2. On October 12, 2021, Respondent Michael Grecco Productions Inc. (“Grecco”) filed a lawsuit in the United States District Court for the Southern District of New York against Petitioners (collectively, “RADesign”). The complaint challenged an August 2017 infringement by RADesign discovered by Grecco in February 2021, less than a year before Grecco sued.

On June 20, 2023, the district court dismissed the complaint as untimely under Rule 12(b)(6). That court explained that, “[i]n th[e] [Second] Circuit, infringement plaintiffs have the benefit of the so-called ‘discovery rule.’” Pet. App. 22a. Citing Grecco’s “relative sophistication,” however, the district court concluded at the pleading stage that Grecco “should have discovered” the infringement “within the three-year limitations period.” Pet. App. 23a.

The United States Court of Appeals for the Second Circuit reversed. At the outset, it stated in a footnote that “Ruthie Davis [one of the Petitioners] suggests

that the Supreme Court has cast doubt on applying the discovery rule to determine when a copyright infringement claim accrues.” Pet. App. 8a n.5. But, the Second Circuit stated, this Court has not decided the question, and all circuits agree with the Second Circuit. *Ibid.*

The Second Circuit then held that the district court misapplied the discovery rule. First, it reasoned that the district court’s “calculation actually employed the injury rule.” Pet. App. 8a. Second, the court of appeals held that “the district court compounded its error” by relying on a “sophisticated plaintiff” rationale with “no mooring to [Second Circuit] cases.” Pet. App. 10a. Third, the Second Circuit held that the district court erred because, “[o]n a motion to dismiss, [the complaint’s] allegations [must] be taken as true”; the complaint alleged that the discovery occurred less than three years before the suit, and there was no basis for the district court to make “findings . . . of facts outside the complaint.” Pet. App. 12a.

3. RADesign then petitioned for rehearing *en banc*. That rehearing petition marked the first time Petitioners squarely asserted in any detail the argument that the Second Circuit’s discovery-rule precedents were “out of step with the standard injury rule, contradict[] the plain meaning and context of the Act, and conflict[] with Supreme Court precedent.” *Michael Grecco Productions, Inc. v. RADesign, Inc.*, No. 23-1078 (2d. Cir. July 20, 2023), Dkt. 109 at 1. The Second Circuit denied the petition. Pet. App. 31a.

REASONS FOR DENYING THE PETITION

I. The Court Denied Review Of The Question Presented Just Last Term, In *Martinelli*

Last Term, in *Warner Chappell Music, Inc. v. Nealy*, the Court granted review to resolve a split of authority concerning the circuits’ application of the discovery rule in the Copyright Act. Joining the “mini-epidemic of cert petitions that have convinced [the Court] to take a case because there’s supposedly a conflict” only to raise different matters in merits briefing,¹ Warner Chappell and its *amici* trained their fire on the antecedent question whether applying the discovery rule complied with the text of the Copyright Act and this Court’s precedents. 601 U.S. at 371 n.1.

Called out for the bait-and-switch at oral argument, Warner Chappell pivoted to argue “that the Court ha[d] a petition [then] pending before it . . . in the *Martinelli* case [No. 23-474] that present[ed] th[is] [same] issue.” *Warner Chappell*, No. 22-1078 (Feb. 21, 2024), Tr. 28; *id.* at 60, 61. Petitioner urged, “whether the Court does so in [*Warner Chappell*] or whether it holds [*Warner Chappell*] and then grants the *Martinelli* petition and resolves the broader questions” in *Warner Chappell*, the Court should address whether circuit law applying a discovery rule complied with the statute in the first place. *Id.* at 62.

The Court declined the invitation. Confining its “review to th[e] disputed remedial issue, excluding

¹ *Rivers v. Guerrero*, No. 23-1345 (March 31, 2025), Tr. 28.

consideration of the discovery rule and asking only whether a plaintiff with a timely claim under the rule can get damages going back more than three years,” the Court in *Warner Chappell* resolved the circuit split it had agreed to address in granting the petition. *Warner Chappell*, 601 U.S. at 371. Likewise, although “in *Martinelli*, parties raised the question of whether this Court’s more recent case law discussing the bad wine of recent vintage cast doubt on discovery rules,” *Warner Chappell*, No. 22-1078 (Feb. 21, 2024), Tr. 61, the Court also denied review. See *Hearst Newspapers, L.L.C. v. Martinelli*, 144 S. Ct. 2561 (2024).

Petitioners cite no sound basis for granting review in this case. They cite no development occurring in the intervening year justifying the Court taking a different approach than it took last Term. If anything, as noted below, there is less of a reason to grant review: resolving the question presented in Petitioners’ favor would not achieve circuit uniformity (see *infra* Points II, III), and *Martinelli* was a better vehicle (see *infra* Point V).

II. The Numbered Circuits Are Not Split, But Rather Unanimously Against Petitioners

Petitioners concede that the question presented implicates no division among the courts of appeals, and that, instead, *all* the numbered circuits reject Petitioners’ interpretation of the statute. Pet. 4. That is not surprising: This Court acknowledged as much in *Warner Chappell*, 601 U.S. at 372, and the leading copyright treatise confirms the same. 3 Melville B.

Nimmer & David Nimmer, Nimmer on Copyright § 12.05 (2024) (cited at Pet. 18).

Despite all of that, three of Petitioners’ *amici* try to conjure a split. These *amici* do not identify a case going Petitioners’ way, and indeed they appear to concede that all circuits *do* apply a discovery rule, just as this Court stated. But, in spite of the weight of authority, *amici* claim that this case presents a cert-worthy question because circuits rely on different “legal bases” to justify their uniform result; some cite “tolling” principles, while others focus on “accrual.” Br. of McHale & Slavin, P.A. at 8–9; Br. of Tyler Ochoa at 9–15; Br. of Klema Law at 4–5.

That is not the sort of circuit division justifying review. There is no suggestion that the claimed division has any effect in the application of the discovery rule. And this Court does not take cases to address differences in reasoning that get all the lower courts to the same place. Cf. Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View from the Supreme Court*, 8 J. App. Prac. & Process 91, 96 (2006) (the Court is “not particularly interested in ironing out minor linguistic discrepancies among the lower courts because those discrepancies are not outcome determinative”).

III. The Question Presented Is Unimportant

The Court only considers cases that present important questions, Sup. Ct. R. 10, and this case does not raise one. The Court made that clear last Term when it rewrote the question presented in *Warner*

Chappell to *exclude* the issue of whether the discovery rule applies² and then denied the petition in *Martinelli*, where the Fifth Circuit had rejected the contention, re-raised here, that “a claim accrues under § 507(b) when the infringement occurs.” *Martinelli v. Hearst Newspapers, L.L.C.*, 65 F.4th 231, 234 (5th Cir. 2023). There is no cert-worthy issue here.

Congressional acquiescence with the discovery rule further demonstrates that the question presented is unimportant. The courts of appeals have applied a discovery rule in copyright cases for more than 40 years, at least since *Taylor v. Meirick*, 712 F.2d 1112, 1117–18 (7th Cir. 1983). In that time, Congress has never taken issue with the circuits’ uniform rule, despite amending the Copyright Act approximately 80 times since 1976 (and 73 times since courts adopted the discovery rule). See United States Copyright Office, Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code viii–xv (December 2024), www.copyright.gov/title17/title17.pdf. There is no good reason for this Court to unsettle a uniform rule of law that has been around for more than four decades.

Ignoring that history, Petitioners assert that if the question at issue in *Warner Chappell* “was sufficiently important to merit certiorari, it follows *a fortiori* that

² See 601 U.S. at 371 n.1 (“[E]ven supposing Warner Chappell’s petition had urged us to opine on the discovery rule, our reformulation of the question presented should have put an end to such arguments.”).

the question presented here—whether the discovery rule exists at all—is sufficiently important as well.” Pet. 19. That is not so. This Court frequently reviews questions of law on which the circuits are divided, but it does not follow that any related question is also worthy of the Court’s attention—especially one that is uncontroverted by the courts of appeals.

To be sure, at the time *Warner Chappell* was decided, the circuits were divided as to the application of the discovery rule; thus, a ruling that the statute disallowed any application of a discovery rule would have necessarily resolved the circuit split raised in *Warner Chappell*. In that context, three Justices would have dismissed the petition in *Warner Chappell* “as improvidently granted and awaited another [case] squarely presenting the question whether the Copyright Act authorizes the discovery rule.” *Warner Chappell*, 601 U.S. at 376 (Gorsuch, J., dissenting).

But the Court in *Warner Chappell* resolved the circuit split at issue there, and at this point there is no suggestion by anyone that resolving the question presented in Petitioners’ favor would achieve uniformity in the resolution of federal copyright cases, as it would have before this Court’s decision in *Warner Chappell*. See *Martinelli* Petition for Certiorari, at 7 (“This case presents an alternative approach to resolving the conflict among the circuits [that] the Court is slated to consider [in *Warner Chappell*].”). The courts of appeals now apply a uniform limitation rule, and nobody contends otherwise. This case thus provides no vehicle for achieving federal uniformity.

IV. The Uniform Circuit Rule Is Correct

In interpreting a statute, the Court looks to its “ordinary, contemporary, common meaning . . . when Congress enacted” the provision. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 433–34 (2019). With respect to matters subject to judicial interpretation, the Court also considers the state of the common law at the time of enactment. *Jam v. Int’l Fin. Corp.*, 586 U.S. 199, 211 (2019) (quoting *Neder v. United States*, 527 U.S. 1, 23 (1999)).

In 1957, when Congress adopted the statute at issue here, it was quite clear that “statutes of limitations . . . conventionally require[d] the assertion of claims within a specified period of time after *notice* of the invasion of legal rights.” *Urie v. Thompson*, 337 U.S. 163, 170 (1949) (emphasis added). This Court followed that rule in *Urie*, reasoning further that if a claim accrued before the plaintiff could have reasonably discovered it, then he would have “only a delusive remedy”; the Court declined to infer that Congress “intended such consequences to attach to blameless ignorance.” *Id.* at 169–70. So too here.

Petitioners point to statutes and decisions starting the clock at the time of an injury. Of course, plaintiffs often have notice of an injury at the time of the injury itself; for example, if a defendant hits a plaintiff and causes physical injury, the plaintiff will *ipso facto* be aware of the misconduct.

But a plaintiff is not always immediately aware of an injury, and the assumption that the plaintiff

should be is particularly misguided in the copyright-infringement context. Recall that the statute was enacted in 1957. This was an age of print, not digital, media; television stations were few and far between; and the internet was still decades from anyone’s imagination. In other words, infringements were not easily uncovered, and there is no reason to assume that Congress in 1957 intended for the three-year clock on a copyright infringement claim to run as soon as an unknown publication took place anywhere in the country. It is far more sensible, and in keeping with *Urie*, to start the clock on the date of notice.

There is more. At the time of enactment, Congress was simultaneously considering the 1957 Willis Bill, H.R. 8873, 85th Cong., 1st Sess. (July 23, 1957) (reprinted in 39 J. Pat. Off. Soc’y 596 (1957)). The Willis Bill urged a narrow prescription governing damages for copyright infringement claims based on designs of useful articles: “No recovery . . . shall be had for any infringement committed more than three years prior to the filing of the complaint.” Willis Bill Section 23(b). This statute would have adopted the sort of rule Petitioners sponsor, by enacting a three-year look-back rule based on a date-of-infringement accrual rule. But Congress refused to adopt that narrow formulation when it enacted Section 507(b) of the Copyright Act. It chose a broader provision. That choice matters, and further confirms Congress opted to implement in the statute *Urie*’s notice-of-injury accrual rule. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457–58 (2022) (“[W]here [a] document has used one term in one place, and a materially different term in

another, the presumption is that the different term denotes a different idea[.]” (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)).³

V. There Are Other Reasons To Deny Review

1. *Martinelli* was a better vehicle than this case. The issue on which review was sought there was raised in the lower courts in a substantive manner, and the lower courts addressed the issue in their opinions. 65 F.4th at 234–45 (discussing the issue over multiple pages). Unlike in *Martinelli*, the question presented here was not squarely raised until Petitioners’ effort at obtaining rehearing *en banc* in the Second Circuit. Before that petition, RAdesign merely “suggest[ed]” to the panel “that the Supreme Court has cast doubt on applying the discovery rule.” Thus, the Second Circuit’s opinion disposed of that “suggest[ion]” in a footnote, and did not give it detailed consideration. Pet. App. 8a n.5. There is no reason to grant the petition when the Second Circuit panel had no opportunity to address the question presented. *E.g.*, *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (dismissing certiorari on issues not properly raised or addressed below).

2. The petition’s interlocutory posture also weighs against review. “It is often most efficient for the

³ Congress underscored the point two years later. In 1959, it considered passing the same design provision while Section 507(b) was already in effect, but ultimately declined to do so. S. 2075 (O’Mahoney-Wiley-Hart Bill), 86th Cong., 1st Sess. (May 28, 1959).

Supreme Court to await a final judgment and a petition for certiorari that presents all issues at a single time rather than reviewing issues on a piecemeal basis.” Stephen M. Shapiro et al., Supreme Court Practice § 4.4(h). Indeed, the case may still be resolved on other grounds, and the courts below may still find the claims untimely on another basis. Cf. *Mount Soledad Mem’l Ass’n v. Trunk*, 567 U.S. 944, 944 (2012) (Alito, J., concurring in denial of petitions) (“Because no final judgment has been rendered . . . I agree with the Court’s decision to deny the petitions for certiorari.”). Again, that all counts against review.

CONCLUSION

The petition raises an unimportant question that has unified the courts of appeals and that this Court declined to consider just last Term. The Court should once again decline review.

Respectfully submitted,

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