

No.

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**In the Supreme Court of the United States**

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

*v.*

SHERMAN NEALY AND MUSIC SPECIALIST, INC.

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

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether the Copyright Act's statute of limitations for civil actions, 17 U.S.C. 507(b), precludes retrospective relief for acts that 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.

**RELATED PROCEEDINGS**

United States District Court (S.D. Fla.):

*Nealy, et al. v. Caren, et al.*, Civ. No. 18-25474  
(June 4, 2021)

United States Court of Appeals (11th Cir.):

*Nealy, et al. v. Warner Chappell Music, Inc., et al.*,  
No. 21-13232 (Feb. 27, 2023)

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Warner Chappell Music, Inc., and Artist Publishing Group, LLC, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

**OPINIONS BELOW**

The opinion of the court of appeals (App., *infra*, 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 (App., *infra*, 18a-34a) is unreported but available at 2021 WL 2280025. The opinion of the district court certifying its order for interlocutory appeal (App., *infra*, 35a-39a) is unreported.

### **JURISDICTION**

The judgment of the court of appeals was entered on February 27, 2023. The jurisdiction of this Court is invoked under 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**

This is an obvious candidate for the Court's review, presenting an important question that has divided the federal courts of appeals. The Copyright Act's statute of limitations 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). The question presented is whether that provision precludes retrospective relief for acts that occurred more than three years before the filing of a lawsuit.

Respondents alleged that petitioners used several copyrighted works in reliance on an unauthorized grant of rights from a third party. In granting partial summary judgment for petitioners, the district court held that the Copyright Act's statute of limitations precludes recovery of damages for acts that occurred more than three years before the filing of the lawsuit. The district court certified that order for interlocutory appeal and stayed further proceedings. The court of appeals granted permission to appeal and reversed, holding that the discovery rule permits plaintiffs to recover damages for earlier acts.



The Eleventh Circuit’s decision was erroneous and deepened an acknowledged conflict on the question presented. The Second Circuit has held that financial recovery is limited to three years before the filing of suit, but the Ninth and Eleventh Circuits now disagree. The resulting conflict on an important question of copyright law is intolerable, creating confusion for parties and encouraging forum-shopping. This case comes to the Court after the district court certified the question for interlocutory review; for that reason, it is a pristine vehicle for the Court to decide the meaning of the Copyright Act’s statute of limitations. The petition for a writ of certiorari should be granted.

#### 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; to impound and dispose of infringing articles, see 17 U.S.C. 503; and, of particular relevance here, to award damages and profits, 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). In 1957, Congress added a three-year statute of limitations to the Copyright Act. As amended, 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.” 17 U.S.C. 507(b). That provision “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, which ranged from one to eight years.” *Petrella*, 572 U.S. at 670.

This Court has explained that an infringement claim “arises or ‘accrue[s]’ when an infringing act occurs.” *Petrella*, 572 U.S. at 670. Eleven courts of appeals, including the Eleventh Circuit, “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.” *Id.* at 670 n.4 (internal quotation marks and citation omitted); see *Webster v. Dean Guitars*, 955 F.3d 1270, 1275-1276 (11th Cir. 2020); *Diversey v. Schmidly*, 738 F.3d 1196, 1200-1201 (10th Cir. 2013); *William A. Graham Co. v. Haughey*, 568 F.3d 425, 433 (3d Cir.) (collecting cases), cert. denied, 558 U.S. 991 (2009). This Court has not addressed whether the discovery rule applies to Section 507(b). See *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 137 S. Ct. 954, 962 (2017); *Petrella*, 572 U.S. at 670 n.4.

In *Petrella*, *supra*, this Court held that the defense of laches cannot be invoked to bar an action under the Copyright Act. Crucial to the Court’s reasoning was the fact that “the copyright statute of limitations, § 507(b), itself takes account of delay.” 572 U.S. at 677. The statute 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 injunctive or other prospective relief, “[n]o recovery may be had for infringement in earlier years.” *Ibid.*; see *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”); *id.* at 672 (stating that “§ 507(b)’s limitations period \* \* \* allows plaintiffs during that lengthy term to gain retrospective

relief running only three years back from the date the complaint was filed”).

### **B. Facts And Procedural History**

1. Petitioner Artist Publishing Group, LLC, is a music publishing company that acquires rights in musical compositions and licenses them for commercial use. Petitioner Warner Chappell Music, Inc., is a music publishing company that acted under license as Artist Publishing Group’s worldwide music-publishing administrator during the period and for the musical compositions at issue in this case. C.A. Supp. App. 612.

Respondent Music Specialist, Inc., released sound recordings of the five musical compositions that remained at issue at summary judgment: “Jam the Box,” “I Know You Love Me,” “Computer Language,” “Lookout Weekend,” and “The Party Has Begun.” Respondent Sherman Nealy is the owner and president of Music Specialist. App., *infra*, 29a; 1 C.A. App. 23.

Nealy formed Music Specialist 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 compositions at issue, and Music Specialist released sound recordings of those musical compositions between 1983 and 1986. App., *infra*, 3a-4a.

The copyright registrations for the five musical compositions at issue list various claimants and authors. On the registration for “Jam the Box” and “I Know You Love Me,” the claimant is a company called “Music Specialist Publishing” and the author is Tony Butler. For “Computer Language,” the claimant is “Happy Stepchild Music Publ. Corporation & Music Specialist Publ.” and the author is Tony Butler. For “Lookout Weekend” and “The Party Has Begun,” the claimant is Music Specialist and the author is Tony Butler. 3 C.A. App. 50.

Music Specialist dissolved in 1986 and remained inactive until 2017. Nealy was incarcerated for cocaine distribution from 1989 to 2008 and again from 2012 to 2015. During that time, Nealy did not authorize anyone to exploit Music Specialist's catalog of musical compositions. App., *infra*, 4a-5a; C.A. Supp. App. 41, 117-126.

2. In 2008, Butler formed 321 Music, LLC. Defendant Atlantic Recording Corporation obtained a license from Butler and 321 Music in February 2008 to use the musical composition "Jam the Box" in "In the Ayer," a sound recording by the rapper Flo Rida. Plaintiffs have alleged that Flo Rida's sound recording of "In the Ayer" was a "smash hit" that sold millions of copies, "topped various airplay and sales charts," and was licensed for use on television shows. App., *infra*, 4a; 1 C.A. App. 64, 68-69.

Artist Publishing Group separately entered an agreement with Butler and 321 Music in July 2008. That agreement permitted it to publish and administer Butler's entire catalogue, including the musical compositions at issue in this case. App., *infra*, 4a; 1 C.A. App. 59-60, 167-168. By virtue of Warner Chappell's administration agreement with Artist Publishing Group, Warner Chappell then began licensing the musical compositions at issue on behalf of Artist Publishing Group.

3. After Nealy was released from prison for the first time in March 2008, he confronted the owner of two other companies that were using Music Specialist's catalog of musical compositions. Like petitioners and Atlantic, those companies had obtained permission from Butler to use the musical compositions. Nealy "let[] them know that [he] was home and they had [his] music," but he did not take any action to investigate the uses by petitioners. App., *infra*, 4a-5a; 3 C.A. App. 51.

Ownership of Music Specialist's catalog of musical compositions has also been the subject of several lawsuits.

Music Specialist was a party in a 2006 lawsuit in Florida state court. And in 2017, Music Specialist and Nealy both intervened in a federal lawsuit in which petitioners were named as defendants. C.A. Supp. App. 322-387, 623.

Further, Nealy and Music Specialist have been registered members of Broadcast Music, Inc. (BMI). BMI licenses the public performance of musical compositions written, owned, or controlled by songwriter and music-publisher members; collects income from those performances; pays the resulting royalties to its members; and maintains a public database of information, including the writers, owners, and administrators of certain musical compositions. Beginning in July 2008, Warner Chappell was listed in BMI's public records as the administrator of all of the musical compositions at issue. Nealy claims not to have accessed that database, despite the facts that he was aware other entities were using musical compositions from Music Specialist's catalog; that sound recordings incorporating the disputed musical compositions were successful; and that Music Specialist never received royalty checks for several of the musical compositions at issue. App., *infra*, 4a-5a; 1 C.A. App. 67; C.A. Supp. App. 130.

BMI sent Nealy several statements and royalty checks for another musical composition that was included in the operative complaint but that respondents have since dropped from the case. At least one of those statements identified Warner Chappell as "publisher" and "administrator" for that musical composition. Nealy has admitted that he received several checks before December 28, 2015, for royalties earned during the period when Music Specialist was inactive. He did not investigate. 1 C.A. App. 227-228; 2 C.A. App. 158-159; C.A. Supp. App. 46, 53-54, 268-286.

According to respondents, none of those events placed them on notice of the alleged infringement by petitioners

and Atlantic in reliance on licenses granted by Butler and 321 Music. Respondents instead contend that Nealy discovered the alleged infringement in or around January 2016, when an associate talked to him about Butler's agreements with Artist Publishing Group and Atlantic. 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 that conversation in January 2016—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 summary judgment to Atlantic and partial summary judgment to petitioners. App., *infra*, 18a-34a. The district court concluded that respondents had not established ownership of the copyright in several of the musical compositions, including the only musical composition whose copyright Atlantic allegedly infringed. *Id.* at 19a-25a. As to the remaining musical compositions, the court held that there was a factual dispute about when respondents knew or should have known about the alleged infringement. *Id.* at 30a-32a. However, it further held that respondents could not obtain retrospective relief for acts that occurred more than three years before they filed their lawsuit. *Id.* at 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; see C.A. Supp. App. 636. The district court nonetheless concluded, based on this Court's decision in *Petrella*, that the Copyright Act "itself takes account of the delay" by imposing a three-year lookback period for monetary

relief. App., *infra*, 26a-27a (quoting *Petrella*, 572 U.S. at 671).

The district court subsequently granted the parties' joint motion to certify its order for interlocutory appeal under 28 U.S.C. 1292(b). App., *infra*, 35a-38a. The court noted that respondents "have indicated that because the vast bulk of damages being sought fall outside of the three-year lookback period, limiting [their] recovery to the three years prior to [their] filing suit will render this matter no longer practical to pursue." *Id.* at 36a. The court thus certified the question whether "damages in this copyright action are limited to the three-year lookback period as calculated from the date of the filing of the [c]omplaint." *Ibid.*

5. The court of appeals granted permission to appeal and reversed. App., *infra*, 1a-17a. Rejecting the Second Circuit's interpretation of Section 507(b), the court of appeals joined the Ninth Circuit in holding 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 first discussed the timeliness of respondents' action. App., *infra*, 7a-9a. The court reaffirmed that its precedents require the application of the discovery rule where, as here, the "'gravamen' of a copyright claim is ownership." *Id.* at 7a (quoting *Webster*, 955 F.3d at 1276). The court assumed for purposes of answering the certified question that respondents' action was timely under the discovery rule. *Id.* at 9a.

The court of appeals 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." App., *infra*, 10a. The court of

appeals acknowledged this Court’s discussion of the statute of limitations in *Petrella* but limited it to claims that “accrue under the injury rule, not the discovery rule.” *Ibid.*; see *id.* at 12a-14a. 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 reading this 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 “gut” that rule. *Id.* at 15a.

#### **REASONS FOR GRANTING THE PETITION**

This case is a straightforward candidate for certiorari. It presents the important question whether the Copyright Act’s statute of limitations precludes retrospective relief for acts that occurred more than three years before the filing of a lawsuit. That question is the subject of an entrenched conflict among three federal courts of appeals, which are home to the major artistic centers of New York, Los Angeles, and Miami. Only this Court can resolve that conflict. And this case, which arises on a certified question and is thus free of any potential vehicle problems, presents an optimal opportunity to do so. The petition for a writ of certiorari should be granted.

##### **A. The Decision Below Conflicts With The Decisions Of Other Courts Of Appeals**

The court of appeals acknowledged that it was deepening a conflict between the Second and Ninth Circuits on the question whether a plaintiff may recover for acts that occurred more than three years before the commencement of a copyright-infringement action. That conflict self-evidently warrants the Court’s review.



1. The Eleventh Circuit’s decision conflicts with a decision of the Second Circuit. In *Sohm v. Scholastic, Inc.*, 959 F.3d 39 (2d Cir. 2020), the plaintiff, a professional photographer, sued the defendant, a book publisher. See *id.* at 42. The plaintiff alleged that the defendant used his photos beyond the scope of the licenses that it had obtained. See *ibid.*

The defendant opposed the plaintiff’s motion for partial summary judgment on several grounds, including the statute of limitations. See *Sohm*, 959 F.3d at 44. The district court applied the discovery rule and concluded that the plaintiff could not have discovered several of the infringing acts more than three years before he filed his complaint. See *ibid.* The district court further concluded that this Court’s decision in *Petrella v. Metro-Goldwyn Mayer, Inc.*, 572 U.S. 663 (2014), did not “establish a time limit on the recovery of damages distinct from the statute of limitations.” *Sohm*, 959 F.3d at 44.

The Second Circuit reversed in relevant part. In an opinion written by Judge Sullivan, the Second Circuit first reaffirmed its precedent that “the discovery rule applies for statute of limitations purposes in determining when a copyright infringement claim accrues under the Copyright Act.” *Sohm*, 959 F.3d at 50. The court acknowledged that, “while some language in *Petrella* is perhaps consistent with the injury rule, in light of the Supreme Court’s direct and repeated representations that it has not opined on the propriety of the discovery or injury rules, it would contravene settled principles of *stare decisis*” to “depart from [this court’s] prior holding.” *Ibid.* And on the facts before it, the Second Circuit agreed with the district court that the discovery rule tolled the accrual of the plaintiff’s claims. See *ibid.*

Although the action as a whole was timely under Second Circuit precedent, the court held that “a plaintiff’s recovery is limited to damages incurred during the three years prior to filing suit.” *Sohm*, 959 F.3d at 52. The Second Circuit explained that, in *Petrella*, this Court “explicitly delimited damages to the three years prior to the commencement of a copyright infringement action.” *Id.* at 51. The Second Circuit quoted this Court’s observations that “an infringement is actionable within three years, and only three years, of its occurrence”; “the infringer is insulated from liability for earlier infringements of the same work”; a plaintiff may “gain retrospective relief running only three years back from the date the complaint was filed”; and “a successful plaintiff can gain retrospective relief only three years back from the time of suit.” *Id.* at 52 (quoting *Petrella*, 572 U.S. at 671, 672, 677).

The Second Circuit rejected the plaintiff’s argument that the statements from *Petrella* were mere dicta. See *Sohm*, 959 F.3d at 52. It reasoned that this Court “partially based its determination that laches was inapplicable to actions under the Copyright Act on the conclusion that the statute ‘itself takes account of delay’ by limiting damages to the three years prior to when suit is filed.” *Ibid.* (quoting *Petrella*, 572 U.S. at 677). The Second Circuit thus recognized that, regardless of the timeliness of an action as a whole, there is a “three-year lookback period from the time a suit is filed to determine the extent of the relief available.” *Ibid.*

2. By contrast, in addition to the Eleventh Circuit in the decision below, the Ninth Circuit has held that the discovery rule may extend a copyright defendant’s liability for damages beyond three years without limitation. In *Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*, 39 F.4th 1236 (2022), the Ninth Circuit

relied on its precedents requiring application of the discovery rule. See *id.* at 1240. Specifically, the court reasoned that Section 507(b) “does not prohibit the recovery of damages for infringing acts that occurred outside the three-year window so long as ‘the copyright plaintiff was unaware of the infringement, and that lack of knowledge was reasonable under the circumstances.’” *Ibid.* (quoting *Polar Bear Productions, Inc. v. Timex Corp.*, 384 F.3d 700, 706 (9th Cir. 2004)).

Like the Eleventh Circuit in the decision below, the Ninth Circuit specifically rejected the Second Circuit’s reading of *Petrella*. In the Ninth Circuit’s view, “because the *Petrella* Court was solely concerned with laches \* \* \* it could not have intended its language to address the situation where a copyright holder does not know about the infringing act to which the discovery rule, not the incident of injury rule, applies.” *Starz Entertainment*, 39 F.4th at 1242. The Ninth Circuit also worried that a three-year lookback period would “eviscerate the discovery rule,” despite the availability of prospective relief in cases in which the three-year lookback period had run. *Id.* at 1244. Accordingly, the Ninth Circuit limited *Petrella* to “incident of injury rule cases,” and it ultimately held 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.” *Ibid.*

3. There can be little doubt that there is a substantial and direct circuit conflict on the question presented. That question is ripe for the Court’s review now that three courts of appeals—home to some of the Nation’s most prominent artistic and commercial centers—have fully developed the arguments on both sides. The Court has recently granted certiorari with the same or shallower asserted conflicts both on questions of copyright law and

questions involving limitations periods. See *Reed v. Goertz*, 143 S. Ct. 955 (2023) (2-1 conflict); *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493 (2022) (2-1 conflict); *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941 (2022) (1-1 conflict); *Rotkiske v. Klemm*, 140 S. Ct. 355 (2019) (2-1 conflict). Without this Court’s intervention, it is highly unlikely that the conflict will resolve itself.\*

**B. The Question Presented Is Exceptionally Important And Warrants Review In This Case**

The question presented in this case is a recurring one of substantial legal and practical importance. This case, which presents the question exceptionally cleanly, is an optimal vehicle for the Court’s review.

1. The Court has already recognized the importance of a consistent limitations period in copyright actions. Congress adopted the statute of limitations in Section 507(b) to “render uniform and certain the time within which copyright claims could be pursued.” *Petrella*, 572 U.S. at 670. In the absence of a uniform limitations period, plaintiffs are likely to engage in forum-shopping in order to obtain relief far in excess of the statutory three-year

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\* In *Petrella*, the Court left open the question whether the discovery rule applies in Copyright Act cases. See 572 U.S. at 670 n.4. Although a conflict in the courts of appeals has not yet developed on that antecedent question, this case would allow the Court to reach the question if it were so inclined, and it is encompassed within the question presented above. The availability of the discovery rule was not challenged below because it would have been futile to do so in light of Eleventh Circuit precedent. See, e.g., *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125 (2007); cf. *Samia v. United States*, 143 S. Ct. 542 (2022) (granting certiorari where the court of appeals’ rule on the question presented was not challenged below because it would have been futile in light of binding circuit precedent).

lookback period. See *ibid.* Congress enacted the Copyright Act’s statute of limitations in response to “disparate state limitations periods,” *ibid.*, and the same concerns militate against having different interpretations of that statute in different federal circuits.

Indeed, this case presents concerns similar to those that compelled review in *Petrella*. Some courts of appeals had held that laches could bar suits brought within the statute of limitations, while others held the doctrine of laches was unavailable. See *Petrella*, 572 U.S. at 676 & n.12. Recognizing that such a conflict was untenable, this Court granted certiorari to resolve the conflict.

2. The practical consequences of the conflict on the question presented are significant as well. The court of appeals’ extension of the limitations period will incentivize litigation that would not otherwise be brought. As respondents explained when seeking interlocutory review, where “the vast bulk of damages being sought fall outside the three-year lookback period,” a case may “no longer [be] practical to pursue.” App., *infra*, 36a.

What is more, the court of appeals’ decision places defendants in an untenable situation by increasing uncertainty and expense. See *United States v. Briggs*, 141 S. Ct. 467, 471 (2020); *Rotella v. Wood*, 528 U.S. 549, 555 (2000). The discovery rule expands a defendant’s financial exposure beyond that contemplated by the statutory text. Litigating the resulting claims from discovery to judgment imposes costs on defendants, and if a plaintiff delays long enough, the evidence needed for a defendant to demonstrate authorization to use the copyrighted works may be unavailable due to the passage of time. See *Gabelli v. SEC*, 568 U.S. 442, 448 (2013). Deprived of a predictable limitations period and faced with expensive, time-consuming, and difficult litigation in order to defend years-old uses of copyrighted works, defendants will often

be left with no choice but to settle claims early even in the absence of wrongdoing—or potentially never enter valuable agreements in the first place.

Those problems are especially acute because the current circuit conflict encourages plaintiffs to file cases in forums that allow significant potential damages far beyond that contemplated by the statute. Plaintiffs can then leverage the expanded damages exposure in their preferred circuits to extract settlements from defendants.

“The length of a limitations period reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.” *Rotkiske*, 140 S. Ct. at 361 (internal quotation marks and citation omitted). “Statutes of limitations promote justice by preventing surprises through [plaintiffs’] revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014) (internal quotation marks and citation omitted). The Eleventh Circuit’s expansive application of the discovery rule undermines those purposes, forcing defendants to face significant financial liability for stale, unmeritorious Copyright Act claims.

3. This case is the perfect vehicle in which to decide the question presented. That question was certified by the district court to the court of appeals. Accordingly, as the court of appeals acknowledged, the facts of the case are relevant “only as context” for the decision, because the appeal presented a “pure question of law.” App., *infra*, 3a.

In all, three courts of appeals have now analyzed the question presented here. Those courts have reached different conclusions after substantial analysis. This case provides an ideal opportunity to consider and resolve an

exceedingly important question concerning the interpretation of the Copyright Act that has divided the federal courts of appeals. The Court should grant review.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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