

Seeing Starz: No Damages Bar in Copyright Discovery Rule Case

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The US Court of Appeal for the Ninth Circuit affirmed a district court's denial of a motion to dismiss copyright infringement claims as barred by the statute of limitations, affirming the copyright owner's right to sue even though more than three years had passed since the alleged infringement occurred. *Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*, Case No. 21-55379 (9th Cir. July 14, 2022) (**Wardlaw**, Ikuta, Bade, JJ.)

Starz entered into licensing agreements for movies and television series episodes with MGM in 2013 and 2015. Under the agreements, MGM granted Starz the exclusive right to exhibit the movies and television series episodes for specified time periods. MGM agreed that it would not exhibit or license the content to any third parties during such specified time periods. From 2019 to 2020, Starz discovered that certain content it licensed from MGM was available on other streaming platforms.

Starz sued MGM in May 2020, asserting 340 claims of direct, contributory and vicarious copyright infringement, among other claims. MGM moved to dismiss, arguing that Starz's copyright infringement claims were barred by the Supreme Court's 2014 decision in *Petrella v. MGM*. MGM asserted that *Petrella* imposes a strict bar to collecting any damages for copyright infringement that occurs more than three years prior to the filing of the complaint. The district court determined that *Petrella* did not affect the discovery rule (*i.e.*, that under the Copyright Act there exists a three-year damages bar) except when the plaintiff reasonably was not aware of the infringements at the time they occurred. MGM filed an interlocutory appeal.

The Copyright Act states: "No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." The issue on appeal here was when a copyright infringement claim accrues. The Ninth Circuit noted that it, and every other circuit, has an exception to the infringement rule, known as the "discovery rule," which starts the clock when a copyright holder knows or reasonably should know that an infringement occurred. The Court disagreed with MGM that *Petrella* did away with the discovery rule. Instead, the discovery rule of accrual copyright claims is alive and well, and thus the Court affirmed the district court's finding that Starz was not barred by *Petrella* from bringing a lawsuit.

The Ninth Circuit next addressed the issue of whether *Petrella* imposed a damages bar separate from the statute of limitations. MGM argued that *Petrella* created a separate damages bar that limits

damages to damages arising from acts of infringement within the three-year window. The Court found that a three-year lookback period would eviscerate the discovery rule and explained that MGM's approach is a textbook example of the absurdity of such a rule. The agreements between Starz and MGM covered hundreds of titles under separate time periods, and under MGM's approach, damages could only be recovered for a 2013 infringement if the complaint was filed by 2016. In this case, Starz did not discover any infringement until 2019 and brought the suit less than a year later. While Starz's copyright infringement claim accrued when Starz discovered the alleged infringement in 2019 and was timely, under MGM's theory the act of infringement would have been nonrecoverable since 2016. The Court rejected such an inherently self-contradictory damages bar rule, finding that neither the Copyright Act nor *Petrella* imposes a three-year damages bar in a discovery rule case.

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