

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*

REPLY BRIEF FOR THE PETITIONERS

JONATHAN Z. KING
COWAN, LIEBOWITZ
& LATMAN, P.C.
*114 West 47th Street
New York, NY 10036*

KAREN L. STETSON
JONATHAN L. GAINES
GRAYROBINSON, P.A.
*333 S.E. Second Avenue,
Suite 3200
Miami, FL 33131*

KANNON K. SHANMUGAM
Counsel of Record
BRIAN M. LIPSHUTZ
YISHAI SCHWARTZ
ABIGAIL FRISCH VICE
KATHERINE FANG
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com*

MUAMERA HADZIC
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019*

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The question presented in this case, as rephrased by the Court, asks whether “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 is ordinarily no. Under the text of the Copyright Act’s statute of limitations, a civil action for copyright infringement must be brought “within three years after the claim accrued.” The standard rule is that a claim “accrues” when the plaintiff has a complete cause of action—usually, when the infringement occurs. Accordingly, a plaintiff “can gain retrospective relief”—*i.e.*, actual damages and profits, or statutory damages—“only three years back from the time of suit.” *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 677 (2014). At most, under the discovery rule, a plaintiff is entitled to extend that period in cases involving fraud.

In rephrasing the question presented, the Court directed the parties to address the availability of retrospective relief in light of two considerations: (1) “the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. §507(b),” and (2) “the discovery accrual rule applied by the circuit courts.” Respondents and the government urge the Court to address only the second consideration and to ignore the relevant statutory language in Section 507(b). That approach is at odds both with the question presented and with this Court’s familiar approach to statutory interpretation. And it is belied by respondents’ and the government’s own reliance on textual arguments.

With respect to “the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. §507(b)”: the key term in Section 507(b) is “accrued.” Neither respondents nor the government argues that a claim ordinarily “accrues,” as a matter of statutory interpretation, only when the plaintiff discovers his injury. Respondents’ sole argument as to Section 507(b)—the provision the Court directed the parties to address—is not joined by the government. Respondents argue that the criminal statute of limitations, which uses the term “arose,” does not contain a discovery rule, so the civil statute of limitations, which uses “accrued,” must. But the terms “arose” and “accrued” convey the same meaning in this context; respondents’ contrary argument overreads the meaningful-variation canon and is at odds both with *Petrella* and with the legislative history. Respondents and the government also contend that other provisions of the Copyright Act give rise to an inference that Section 507(b) incorporates a broad discovery rule. But that inference is unfounded, and none of those provisions can overcome the plain meaning of “accrued.”

With respect to “the discovery accrual rule applied by the circuit courts”: respondents and the government

simply assume that, because *some* courts of appeals apply a broad discovery rule to all copyright-infringement cases, this Court should too. But neither respondents nor the government comes to grips with the three courts of appeals that do not apply a discovery rule where, as here, the dispute concerns ownership. Although the Court may leave for another day the validity and exact scope of the discovery rule, it is impossible to resolve this case without recognizing that a broad discovery rule is inconsistent with the text of Section 507(b) and this Court's precedents.

The only discovery rule that comports with Section 507(b) in cases seeking retrospective relief is the narrower, historical version recognized by this Court's precedents. As respondents agree (and as the government recently argued in another case), the narrow discovery rule does not apply unless there is fraud, latent disease, or medical malpractice. This case does not involve any of those circumstances.

Finally, even if this Court were to assume the existence of a judicially created, broad discovery rule, it should still hold that respondents are not entitled to retrospective relief. This Court's decision in *Petrella* did not repudiate the maxim that equity follows the law. At a minimum, the Court should impose a three-year limitation on retrospective relief as an equitable exception to the discovery rule in light of the text and intent of Section 507(b).

The foregoing arguments have been fully briefed by the parties and numerous amici. For all of respondents' indignation, petitioners have taken a consistent position in this Court, and they have assumed the existence of a discovery rule at the merits stage. Respondents would have this Court resolve a question of statutory interpretation without considering the text—perhaps not coincidentally, the strongest argument in petitioners' favor.

The Court should answer the question presented, hold that respondents are not entitled to retrospective relief for acts that occurred more than three years before the filing of suit, and reverse the court of appeals' judgment.

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

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

Neither respondents nor the government disputes that statutes of limitations should be interpreted according to their text. They instead contend that the rephrased question presented does not permit consideration of the meaning of the text of Section 507(b), including whether it contains a broad discovery rule. See Resp. Br. 21-25; U.S. Br. 16-17. That is incorrect.

a. Unsurprisingly, the question presented, as rephrased by the Court, contemplates analysis of the statutory text. See Pet. Br. 15. The question presented refers to “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).” *Id.* at i (emphasis added). The only reasonable reading of that formulation is that it requires consideration of *both* the statutory text *and* the discovery accrual rule applied by the circuit courts.

As the government recognizes (but not respondents), that is consistent with this Court’s ordinary practice in statutory-interpretation cases, where the starting point is always the text. See U.S. Br. 17. Indeed, the Court has proceeded to consider, and interpret, the text of federal statutes of limitations even where “lower federal courts generally apply a discovery accrual rule.” *TRW, Inc. v. Andrews*, 534 U.S. 19, 27 (2001) (internal quotation marks

and citation omitted); see *Rotkiske v. Klemm*, 140 S. Ct. 355, 360 (2019).

It is of no moment whether the text of Section 507(b) presents an antecedent question (“whether the discovery rule applies in Copyright Act cases,” Pet. 14 n.*) or simply supplies an additional argument on the question presented (“whether * * * a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of a lawsuit,” Pet. Br. i). See U.S. Br. 17. The Court routinely resolves “threshold” questions, *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 173 n.1 (2009); questions that are “predicate[s] to an intelligent resolution of the question presented,” *United States v. Grubbs*, 547 U.S. 90, 94 n.1 (2006) (internal quotation marks and citation omitted); and questions that are “necessary for the proper disposition of the case,” *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 246 n.12 (1981). Here, it would “make[] little sense” to interpret Section 507(b) without reference to the text of that provision, *Grubbs*, 547 U.S. at 94 n.1, and doing so would be enormously confusing to the lower courts, see Chamber Br. 10-11.

Indeed, the arguments made by respondents and the government demonstrate the futility of deciding this case without considering the most relevant language in Section 507(b). Even as they dispute the permissibility of doing so, respondents resort to arguments about when a claim “accrues,” and both respondents and the government invite the Court to draw selective inferences from *other* statutory provisions. See, e.g., Resp. Br. 33-35, 39-40, 45-46; U.S. Br. 18 n.1. In any event, the question presented unmistakably directs the parties to consider the meaning of the statutory text, as parties naturally would in any other statutory-interpretation case.

b. Respondents argue at length that the Court should dismiss this case as improvidently granted (an argument

the government merely acknowledges in passing). See Resp. Br. 21-25; U.S. Br. 33. But the reasons respondents offer for that disposition plainly lack merit. *First*, this is not a case of waiver in the court of appeals. See *Baldwin v. Reese*, 541 U.S. 27, 34 (2004); *EEOC v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986). As the government seemingly agrees, petitioners were under no obligation to challenge binding circuit precedent. *Second*, this is not a case of unfair surprise. See *Visa, Inc. v. Osborn*, 580 U.S. 993, 993 (2016). Far from engaging in a “bait-and-switch,” Resp. Br. 24, petitioners identified *in their petition* the broader question of whether the discovery rule applies in copyright cases. See Pet. 14 n.*. *Third*, this is not a case of inadequate briefing; both the parties and numerous amici have thoroughly briefed the merits of that broader question. See, *e.g.*, Pet. Br. 15-31; Resp. Br. 32-40; Chamber Br. 12-22; AAP Br. 11-15; RIAA Br. 13-16; EFF Br. 13-15; Cavazos Br. 4-10; McHale Br. 16-25; Ochoa Br. 4-15; NSEAL Br. 5-9; Authors Guild Br. 5-16; AIPLA Br. 17-19; Oman Br. 5-24. *Fourth*, consistent with the rephrased question presented, petitioners ultimately do not contest the validity of the discovery rule. To the contrary, petitioners endeavor to supply meaning to it in light of the courts of appeals’ disagreement regarding its scope. See Pet. Br. 31-44; pp. 15-18, *infra*.

To underscore the last point: petitioners do not contend that the Court must comprehensively resolve the validity and scope of the discovery rule in this case. See Resp. Br. 48 n.7 (recognizing as much); U.S. Br. 29-30 (same). Petitioners have explained that a broad discovery rule could still apply to claims for prospective relief, see Pet. Br. 28, and that a narrower discovery rule could still apply to all claims, see *id.* at 33-39. Petitioners’ modest

submission is that the Court should consider the most relevant language in Section 507(b) as it applies to the claim for retrospective relief here.

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

When it comes to the statutory text, respondents and the government conspicuously avoid discussing the key term in Section 507(b)—“accrued.” Respondents offer no sources defining that term to refer to the time when the plaintiff discovers his injury. Instead, respondents and the government rely on strained comparisons with other statutory provisions, arguments from congressional silence, and a mistaken interpretation of this Court’s decision in *Petrella*.

All of those arguments are unavailing. When Congress used “accrues” in Section 507(b), it tied the three-year period for an infringement claim to the time when the plaintiff has a complete and present cause of action. It necessarily follows that a plaintiff cannot ordinarily seek retrospective relief for acts more than three years before the filing of suit.

a. When Congress enacted Section 507(b), it was “common parlance” that “a right accrues when it comes into existence.” *Gabelli v. SEC*, 568 U.S. 442, 448 (2013) (quoting *United States v. Lindsay*, 346 U.S. 568, 569 (1954)). That definition of “accrues” is reflected both in this Court’s cases and in contemporaneous legal dictionaries. See Pet. Br. 16-19. It is also confirmed by this Court’s longstanding interpretation of similar terms; Congress’s enactment of express discovery rules in other statutes; and Congress’s intent to provide a fixed limitations period. See *id.* at 19-23.

Neither respondents nor the government casts serious doubt on that “standard rule.” Despite the government’s

efforts to sidestep the issue here, the government recently agreed that “[t]he ‘standard rule’—which has ‘governed since the 1830s’—‘is that a claim accrues when the plaintiff has a complete and present cause of action.’” U.S. Br. at 14, *Rotkiske*, *supra* (No. 18-328) (quoting *Gabelli*, 568 U.S. at 448). While respondents seek to distinguish *Gabelli* and *TRW* on the ground that the Court supplied *additional* reasons for adopting an injury rule, see Br. 48-51, the fact remains that the Court reiterated the “standard rule” in each case (and has done so in many others). See *TRW*, 534 U.S. at 22-23; *Gabelli*, 568 U.S. at 448; *Reading Co. v. Koons*, 271 U.S. 58, 64 (1926); Pet. Br. 16 (citing other cases).¹

b. Respondents’ sole argument concerning Section 507(b) itself is that the term “accrued” in the civil statute of limitations must have a different meaning from “arose” in the criminal statute of limitations in Section 507(a), which does not contain a discovery rule. See Br. 39-40. That argument—which the government does not make—is incorrect for two reasons.

First, while a variation in language sometimes signals a variation in meaning, that canon 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, citation, and alterations omitted). Here, there is only one way to read Section 507(b): a cause of action unambiguously “accrues” when the plaintiff has a complete cause of action. See Pet. Br. 15-23, 30. Respondents offer no definitions establishing that a claim “accrues” only when the plaintiff discovers his injury.

¹ Most courts of appeals have relied on an interpretive presumption in favor of the broad discovery rule, but this Court distanced itself from that presumption in *TRW*, see 534 U.S. at 27, and repudiated it altogether in *Rotkiske*, see 140 S. Ct. at 360-361.

Second, there is ample evidence that “arose” and “accrued” convey the same meaning when used in statutes of limitations. This Court equated the two terms in *Petrella*, explaining that a claim “arises or ‘accrue[s]’ when an infringing act occurs.” 572 U.S. at 670. And the Senate Judiciary Committee understood there to be “no substantial reason for not having statutes of equal periods for both criminal and civil copyright actions.” S. Rep. No. 1014, 85th Cong., 1st Sess. 2 (1957). Respondents do not explain why both the Court and the Committee were incorrect to treat the terms as identical.

c. Rather than focusing on the text of Section 507(b) itself, respondents primarily rely on inferences from other statutory provisions. Respondents, joined by the government, first contend that the references to “actual damages,” “any profits,” and statutory damages for “all infringements” in the Copyright Act’s provision governing damages and profits, 17 U.S.C. 504, are inconsistent with any limit on retrospective relief. See Resp. Br. 33; U.S. Br. 19-20. But that proves far too much. Even under a broad discovery rule, a plaintiff who waits to bring suit until more than three years after he discovered his cause of action would not be entitled to all of his “actual damages,” all of the infringer’s “profits,” or statutory damages for “all infringements.” And that argument is the very portrait of a strawman, because no one is arguing that the *remedial* provision, rather than the limitations provision, imposes the temporal limit on the availability of retrospective relief (as the Court itself recognized in citing Section 507(b), not Section 504, in the rephrased question presented). See *Petrella*, 572 U.S. at 671. The Copyright Act’s remedial provision should be read in light of the limitations provision, not the other way around.

d. Respondents next argue that two other provisions of Title 17—neither cited by the government—would be

redundant if Section 507(b) limited retrospective relief to acts that occurred within three years of the filing of suit. See Resp. Br. 34-38. There is no redundancy, but even if there were, it would not justify an inference that Section 507(b) permits unlimited retrospective relief.

The first provision is the limitations provision in the Vessel Hull Design Protection Act (VHDPA), which limits recovery for “any infringement committed more than 3 years before the date on which the complaint is filed.” 17 U.S.C. 1323(c). But there is nothing redundant about Section 1323(c), because the VHDPA is a self-contained scheme that operates independently of copyright law and provides different measures of relief. An action for infringement of a vessel hull or deck design—which need not be protected by copyright—is brought under the cause of action in 17 U.S.C. 1321(a), not the separate cause of action for copyright infringement in Section 501(b). A prevailing plaintiff may recover different remedies—either the infringer’s profits or actual damages increased by “\$50,000 or \$1 per copy, whichever is greater, as the court determines to be just.” 17 U.S.C. 1323(a). And there are no cross-references between the VHDPA and the rest of Title 17. Indeed, the VHDPA was originally envisioned as a “separate title on design protection,” before being codified as an additional chapter of Title 17. *Hearing Before the H. Subcomm. on Courts and Intellectual Property, Comm. on Judiciary*, 105th Cong., 1st Sess. (Oct. 23, 1997) (statement of Marybeth Peters, Register of Copyrights). It is unsurprising that Congress would include a distinct limitations provision in a distinct chapter of Title 17.

The second provision on which respondents rely is Section 504(d), but that provision is also inapposite. Section 504(d) provides that, if a “proprietor of an establish-

ment” raises a specified defense in a copyright-infringement action without “reasonable grounds,” the plaintiff is entitled to “additional damages” of “two times the amount of the license fee that the [defendant] should have paid the plaintiff for such use during the preceding period of up to 3 years.” 17 U.S.C. 504(d). Section 504(d) thus creates an additional remedy that is calculated differently from the remedies generally available to copyright-infringement plaintiffs—and one available only if the plaintiff’s claim was *already* timely under Section 507(b). There is no reason to assume the limitations provision in Section 507(b) would restrict the “additional damages” available under Section 504(d). Read in that light, it is entirely consistent for the “additional damages” to be explicitly limited to three years, just as retrospective relief under the rest of Section 504 is limited to that period.

Finally on this point, even if those provisions were redundant to Section 507(b), any redundancy would not justify departing from Section 507(b)’s plain meaning. This Court has emphasized that “[r]edundancy is not a silver bullet” and can supply “only a clue” to a statute’s interpretation. *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 881 (2019). Sections 504(d) and 1323(c) could reflect nothing more than a “belt-and-suspenders approach.” *Guam v. United States*, 593 U.S. 310, 320 (2021).

e. Nor is there any inference to be drawn from other provisions (or unenacted provisions) that limit retrospective relief using different language. See Resp. Br. 38-39; U.S. Br. 18 n.1; Oman Br. 8-13. Respondents and the government point to the statute of limitations in the Patent Act, which provides that “no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.” 35 U.S.C. 286. The government also points to

28 U.S.C. 1498(b), which provides that, as a general matter, “no recovery shall be had for any infringement” by the government “committed more than three years prior to the filing of the complaint.” And an amicus cites an unenacted proposal involving the design of useful articles, which would have provided that “[n]o recovery * * * shall be had for any infringement committed more than three years prior to the filing of the complaint.” Oman Br. 9 (quoting H.R. 8873, 85th Cong., 1st Sess. § 23(b) (July 23, 1957)). But those provisions have a different effect from Section 507(b), because they preclude equitable tolling. See *California Public Employees’ Retirement Systems v. ANZ Securities, Inc.*, 582 U.S. 497, 504-505 (2017). In any event, there is no canon of construction that “forbids interpreting different words * * * to mean roughly the same thing,” *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013), especially when they are “scattered references in distinct contexts,” *Türkiye Halk Bankası A.S. v. United States*, 598 U.S. 264, 269 (2023). Indeed, the Court declined to distinguish Section 286 from Section 507(b) in *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 580 U.S. 328, 336-338 (2017). The mere fact that Congress could have used even more explicit language in Section 507(b) does not render petitioners’ plain-meaning interpretation unsound.²

f. Respondents further argue (at 45-46) that Congress ratified the availability of unlimited retrospective

² Respondents also cite Section 1504(b)(1), which provides that “[a] proceeding may not be maintained before the Copyright Claims Board unless the proceeding is commenced * * * not later than 3 years after the claim accrued.” 17 U.S.C. 1504(b)(1); see Br. 38-39. But by using language identical to Section 507(b), Section 1504(b)(1) indicates only that Congress intended the limitations period for claims before the Copyright Claims Board to mirror that for claims in court.

relief by amending other portions of Title 17 after some lower courts had interpreted Section 507(b) to embrace a broad discovery rule. But “congressional inaction” generally “deserves little weight in the interpretive process.” *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001) (citation and alteration omitted). And such arguments are particularly unpersuasive when predicated on the decisions of lower courts. See *BP p.l.c. v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1541 (2021). What is more, respondents cite only amendments to other parts of Title 17, not amendments to Section 507(b) in particular. Where, as here, “the [subsequent] legislative consideration * * * was addressed principally to matters other than that at issue,” “the failure of Congress to overturn [a particular] interpretation falls far short of providing a basis to support a construction * * * clearly at odds with its plain meaning.” *Aaron v. SEC*, 446 U.S. 680, 694 n.11 (1980).

The meaning of Section 507(b) is indeed plain: a claim for copyright infringement “accrues” when the plaintiff has a complete and present cause of action (usually, when the act of infringement occurs). Accordingly, under Section 507(b), a plaintiff can obtain retrospective relief only for acts that occurred within three years of the filing of suit.

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

Both respondents (at 40-44) and the government (at 20-27) strain to avoid the most natural reading of this Court’s opinion in *Petrella*. That opinion tracks the plain meaning of Section 507(b): a plaintiff’s claim “accrues” when there is a complete cause of action. See Pet. Br. 24-27; see also U.S. Br. at 7, *Petrella, supra* (No. 12-1315) (arguing that, “[u]nder the established construction” of

Section 507(b), a claim “accrue[s] at the time the infringing act occurs” (internal quotation marks omitted); *Sohm v. Scholastic Inc.*, 959 F.3d 39, 51-52 (2d Cir. 2020).

Respondents focus on what they call “qualified language” in the Court’s opinion, Br. 42, 44 n.5, but they take that language out of context. The Court set out a default rule, applicable to all statutes, that a “claim ordinarily accrues when a plaintiff has a complete and present cause of action.” *Petrella*, 572 U.S. at 670 (internal quotation marks, citation, and alteration omitted); see *ibid.* (stating that a “limitations period generally begins to run at the point when the plaintiff can file suit and obtain relief” (internal quotation marks and citation omitted)); *SCA Hygiene*, 580 U.S. at 337 (noting that, “[a]s we wrote in *Petrella*, ‘a claim ordinarily accrues when a plaintiff has a complete and present cause of action’” (alterations omitted)). But the Court further explained that, in the copyright context, the default rule applies without qualification: “A copyright claim * * * arises or ‘accrue[s]’ when an infringing act occurs.” *Id.* at 670; see *id.* at 671, 677, 682; *id.* at 692 (Breyer, J., dissenting); *SCA Hygiene*, 580 U.S. at 336-337.³

This Court’s repeated endorsements of a three-year limitation on retrospective relief in *Petrella* did not simply concern the operation of the separate-accrual rule. See Resp. Br. 42-43; U.S. Br. 25. That rule dictates that each act of infringement is governed by a separate limitations period, but it does not specify when those periods begin. See, e.g., *Petrella*, 572 U.S. at 671. The Court independently defined “accrues,” *id.* at 670, and that definition

³ One sentence in the opinion does use qualified language when discussing copyright cases. See *Petrella*, 572 U.S. at 672. But that qualified language presumably refers to the exceptions for equitable tolling, see *id.* at 681, and potentially a discovery rule, see *id.* at 670 n.4.

was essential to the Court’s explanation that “an infringement is actionable within three years, and only three years, of its occurrence,” *id.* at 671. The paragraph defining “accrues” could not have been clearer: “[a] claim ordinarily accrues when a plaintiff has a complete and present cause of action,” with the result that a copyright-infringement claim “arises or ‘accrues’ when an infringing act occurs.” *Id.* at 670 (alterations omitted) (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of California*, 522 U.S. 192, 201 (1997)).

In short, this Court’s opinion in *Petrella* supports—indeed, compels—the plain-meaning interpretation of Section 507(b). Under that provision, “a successful plaintiff can gain retrospective relief only three years back from the time of suit.” *Petrella*, 572 U.S. at 677.

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

In order to resolve this case, all the Court need decide with regard to the discovery rule is that a broad version of that rule—under which a plaintiff can obtain potentially decades’ worth of retrospective relief if he neither knew nor reasonably could have known of his copyright claim—is inconsistent with the text of Section 507(b). Respondents and the government simply assume that a broad discovery rule applies because numerous courts of appeals have adopted such a rule, but they gloss over the fact that at least three courts of appeals do not apply the discovery rule where, as here, the dispute concerns ownership of a copyrighted work, not infringement.

In light of the disagreement in that subset of cases, petitioners submit that the Court should at most recognize a narrower version of the discovery rule, which operates as a background principle rooted in equity. See Pet. Br. 31-41; see also U.S. Br. at 9-10, 27-30, *Rotkiske*, *supra*

(defending the same historical understanding of the discovery rule). Respondents fail to cite any historical evidence supporting a broad discovery rule, and the government does not even argue for one. The application of any narrow discovery rule would be straightforward here; as respondents concede (at 51), this case does not involve any of the limited circumstances—fraud, latent disease, or medical malpractice—in which the Court has contemplated application of such a rule. Because those circumstances are absent here, respondents are not entitled to the benefit of the discovery rule under any proper understanding.

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

a. Both respondents and the government assume that the “discovery accrual rule applied by the circuit courts” must be a broad discovery rule that applies categorically, regardless of the cause of the plaintiff’s delay. See Resp. Br. 51-53; U.S. Br. 30-31. But they fail to come to grips with the fact that three courts of appeals have declined to apply the discovery rule *at all* to cases where, as here, the dispute concerns ownership of a copyrighted work. See Pet. Br. 31 n.7 (citing cases). Respondents suggest (at 52) that those courts’ precedents were abrogated by *Petrella*, but all three courts have adhered to their position since then. See *Garza v. Everly*, 59 F.4th 876, 880 (6th Cir. 2023); *Abbas v. Vertical Entertainment, LLC*, 854 Fed. Appx. 816, 819 (9th Cir. 2021); *Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1300 n.4 (10th Cir. 2014).

For its part, the government contends (at 30) that no court of appeals has applied the narrower discovery rule in a copyright-infringement case. But for present purposes, the key point is that there is no uniform “discovery

accrual rule applied by the circuit courts.” And as this Court has explained, it “need not define the precise contours” of a doctrine, except insofar as it is decisive of the facts of the case. *Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018). In the absence of uniformity among the courts of appeals, the best option is to apply the narrower discovery rule recognized by this Court’s precedents “in cases of fraud or concealment.” *TRW*, 534 U.S. at 27.⁴

b. There is no dispute among the parties that the narrower, historically grounded discovery rule extends, at most, to cases involving fraud (or latent disease or medical malpractice). See Pet. Br. 33-39. Of note, respondents fail to cite any case from this Court—or any case from any court before 1983—applying the broad discovery rule to a copyright-infringement claim. See Resp. Br. 45; *Taylor v. Meirick*, 712 F.2d 1112, 1118 (7th Cir. 1983). And the government acknowledges that this Court’s decisions limiting the discovery rule would be “relevant” if their reading of the question presented as mandating application of a broad discovery rule were incorrect. U.S. Br. 30.

Several amici argue that the Court’s precedents favor a broad discovery rule derived from equity. See Authors Guild Br. 5-8, 32; Oman Br. 18-20 & n.5. Those arguments lack merit. In *Holmberg*, *supra*, the Court applied a fraud-based discovery rule where the plaintiffs learned, after the limitations period had expired, that a defendant had concealed his identity by using a false name. 327 U.S.

⁴ The Court need not decide whether the broad discovery rule applies in cases seeking prospective relief. See Pet. Br. 28. A claim for prospective relief might not become complete until there is a “sufficient likelihood that [the plaintiff] 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 cases seeking injunctive relief, statutes of limitations are not “controlling measures.” *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946).

at 393-396. Lower courts have since confirmed that “the period of suit” is extended “during concealment by the wrongdoer.” *Movicolor Ltd. v. Eastman Kodak Co.*, 288 F.2d 80, 84 (2d Cir. 1961); see Adam Bain, *Determining the Preemptive Effect of Federal Law on State Statutes of Repose*, 43 U. Balt. L. Rev. 119, 126 & nn.33-34 (2014).

Nor is it reasonable to conclude that the narrow decision in *Urie v. Thompson*, 337 U.S. 163 (1949), extends beyond the context of latent disease. As this Court has since reaffirmed, *Urie* turned on the latent disease being “‘unknown and inherently unknowable.’” *United States v. Kubrick*, 444 U.S. 111, 121 n.7 (1979) (quoting *Urie*, 337 U.S. at 169). In that unique circumstance, the Court recognized a special rule that a claim does not “accrue” under the Federal Employers’ Liability Act “until [the plaintiff’s] disease [has] manifested itself.” *Ibid.* And more recently, this Court has contemplated application of the discovery rule only in cases of fraud, latent disease, or medical malpractice. See, e.g., *TRW*, 534 U.S. at 27.

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

Applying the traditionally recognized discovery rule is straightforward here, as respondents concede. See Br. 51. Petitioners did not fraudulently conceal their alleged infringement. For that reason, under any proper understanding of the discovery rule, respondents are not entitled to retrospective relief for acts that occurred more than three years before the filing of suit.⁵

⁵ Respondents make several incorrect factual assertions. Tony Butler was not an “employee” hired to “create music,” Resp. Br. 10, 56; he was an officer and was, by Sherman Nealy’s admission, not engaged to write music. See D. Ct. Dkt. 167, at 1-3. Butler was never hired as part of a “work-for-hire program,” Resp. Br. 10; he created

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

If the Court were to accept the broad discovery rule applied by some circuits, it should clarify that any such rule operates as a judicially created, equitable exception to Section 507(b). The Court should then enforce a three-year limitation on retrospective relief as a boundary on that rule. See Pet. Br. 41-44. Contrary to the arguments of respondents (at 54-56) and the government (at 31-32), that approach gives effect to *Petrella* and the statutory text.

As a threshold matter, the government urges this Court to avoid any analysis of whether the discovery rule is inherent in the statutory text or is a judicially created, equitable exception. See Br. 31. Although the government is correct that several courts of appeals have treated the discovery rule as an interpretation of Section 507(b), the government is forced to concede (at 32 n.3) that at least one court of appeals has held that the discovery rule is an equitable exception that delays the running of the statute of limitations, rather than a rule of accrual. See *William A. Graham Co. v. Haughey*, 646 F.3d 138, 150 (3d Cir.), cert. denied, 565 U.S. 963 (2011); see also Chamber Br. 6-10. Indeed, just a few years ago, the government argued that “this Court has never adopted a general presumption that federal limitations periods should be read to incorporate a discovery rule.” U.S. Br. at 8, *Rotkiske, supra*. As with the question of *when* the discovery rule

the works at issue and allegedly assigned them to Music Specialist. D. Ct. Dkt. 167, at 12. Finally, petitioners have never “claimed ownership of a copyright in the relevant works.” Resp. Br. 53. They are merely licensees, and the dispute here concerns ownership of the original licensed works. See Pet. Br. 7-8.

applies, there is no uniform answer to *why* the discovery rule applies, making it impossible for the Court simply to assume that the plaintiff-friendly justification is correct.

Respondents (at 54-56) and the government (at 32) both argue that, in *Petrella*, the Court implicitly rejected a three-year limitation when it held that laches was unavailable as a defense under the Copyright Act. But the Court did no such thing. See *Sohm*, 959 F.3d at 52. Laches, the Court explained in *Petrella*, is principally applied to mitigate unfairness when “the Legislature has provided no fixed time limitation.” 572 U.S. at 678. But Section 507(b) “itself takes account of delay,” thereby eliminating the need for laches. *Id.* at 677. The Court thus rejected the application of laches in *Petrella* not because equitable doctrines can never “foreclose[] retrospective relief” to copyright claimants or because “policy arguments” are irrelevant to crafting the scope of equitable doctrines, Resp. Br. 54, but because Section 507(b) obviated the need for the equitable doctrine of laches.

Even if the Court were to assume that a broad discovery rule applies to this case, it should still recognize that the only conceivable basis for that rule is an exercise of its equitable powers. As with any judicially created rule, the Court must determine whether it is “appropriate to specify a [limit] to avoid the consequence” that the rule “will not reach the correct result most of the time.” *Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (citation omitted). To effectuate Congress’s intent to limit retrospective relief to three years, the Court should restrict that judicially created discovery rule with a judicially created bar on retrospective relief for infringing acts that occurred more than three years earlier. See *Petrella*, 572 U.S. at 670.

That said, the Court need not reach the issue of a judicially created limitation, because the text of Section 507(b) is inconsistent with a broad discovery rule. In the face of

disagreement among the courts of appeals regarding the scope of the discovery rule, the Court should adhere to the traditional understanding of the discovery rule. And on that understanding, which extends at most to cases involving fraud, latent disease, or medical malpractice, respondents are not entitled to retrospective relief for acts that occurred more than three years before they filed suit.

* * * * *

The judgment of the court of appeals should be reversed.

Respectfully submitted.

JONATHAN Z. KING
COWAN LIEBOWITZ
& LATMAN, P.C.
*114 West 47th Street
New York, NY 10036*

KAREN L. STETSON
JONATHAN L. GAINES
GRAYROBINSON, P.A.
*333 S.E. Second Avenue,
Suite 3200
Miami, FL 33131*

KANNON K. SHANMUGAM
BRIAN M. LIPSHUTZ
YISHAI SCHWARTZ
ABIGAIL FRISCH VICE
KATHERINE FANG
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300*

MUAMERA HADZIC
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019*

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