

Jason Bloom Gains Media Coverage After Supreme Court Copyright Decision

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PRACTICES Intellectual Property, Copyright, Intellectual Property Litigation

[Jason Bloom](#), chair of the Intellectual Property Litigation practice at Haynes Boone, spoke with several media outlets after the United States Supreme Court ruled that copyright plaintiffs could recover damages for acts of alleged infringement that date back more than three years before the filing of a suit, leaving some counsel to wonder if the court addressed the right question.

The case involves Florida music producer Sherman Nealy, who sued Warner Chappell Music Inc. and Artist Publishing Group LLC in 2018 after his release from prison, claiming the music companies used songs he owns without his permission.

The Flo Rida track “In the Ayer” incorporated elements of “Jam the Box,” created in the 1980s by Tony Butler, also known as Pretty Tony. Nealy, who was Butler’s former business partner, claimed he never agreed to license the music and that he didn’t know it was being used because he was in and out of prison.

Read excerpts of his conversation below.

Bloomberg Law - ["Discovery Rule Dodge Puts Justices' Damages Ruling on Thin Ice"](#)

Gorsuch’s statement that the Copyright Act “almost certainly does not tolerate a discovery rule” makes the three dissenters’ position clear. That raises the question of whether at least one of the other six think the court should hear the question presented by Hearst.

Bloom told *Bloomberg Law* that the ruling on damages before deciding whether to hear Hearst didn’t mean it wouldn’t.

“They may not have thought it through in the proper order, but I don’t think that means they won’t take up Hearst,” he said.

The 2014 Supreme Court opinion *Petrella v. Metro-Goldwyn-Mayer Inc.*, which imposed a three-year look-back on copyright damages in a non-discovery rule case, had created confusion that “needed to be cleared up,” Bloom said. That gave the court reason not to simply dismiss the case as improvidently granted as Gorsuch’s dissent suggested. The high court generally doesn’t sit on cases for long after hearing them, he said, making it unlikely the justices would wait until it could hear Hearst.

Even so, Bloom noted that 11 circuits have applied the discovery rule, “so maybe there’s not enough of a split” to take up Hearst on its own.

Law360 – ["High Court Leaves Discovery Rule Question For Another Day"](#)

While the opinion provided some certainty about what lawyers can expect regarding the scope of damages in certain copyright cases, Bloom told *Law360* that the justices left the bigger question

unanswered.

"It seems kind of like they're putting the cart before the horse a little bit by addressing this issue, rather than addressing the discovery rule," Bloom told *Law360*.

ManagingIP – ["Copyright Plaintiffs Hoping For Big Wins After Scotus Ruling"](#)

Bloom told *ManagingIP* that because the case expands the scope of potential damages, it could encourage plaintiffs to file more lawsuits.

He notes, for example, that a plaintiff could recover fairly small damages when going back three years, but a larger award when going back further.

"That's not a common scenario, but it comes up," he told *ManagingIP*.