

No. 12-1315

In the Supreme Court of the United States

PAULA PETRELLA, PETITIONER

v.

METRO-GOLDWYN-MAYER, INC., ET AL.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
SUPPORTING PETITIONER**

DONALD B. VERRILLI, JR.

*Solicitor General
Counsel of Record*

STUART F. DELERY

Assistant Attorney General

MALCOLM L. STEWART

Deputy Solicitor General

NICOLE A. SAHARSKY

*Assistant to the Solicitor
General*

SCOTT R. MCINTOSH

DARA S. SMITH

Attorneys

*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether and under what circumstances laches may bar relief on a claim of copyright infringement brought within the three-year limitations period set out in 17 U.S.C. 507(b).

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INTEREST OF THE UNITED STATES

This case presents the question whether and under what circumstances laches may bar relief on a claim of copyright infringement brought within the three-year limitations period set out in 17 U.S.C. 507(b). The United States has significant responsibilities related to, and derives important benefits from, the registration of creative works under the national copyright system. The United States Copyright Office is responsible for administering the registration of creative works and for advising Congress, federal agencies, the courts, and the general public on copyright law and policy. See 17 U.S.C. 701. Rules governing the availability of remedies for copyright violations have important implications for the operation of the copyright system. This case also implicates questions

of concern to other federal agencies charged with administering federal laws governing intellectual property, such as the United States Patent and Trademark Office. The United States therefore has a substantial interest in the Court's resolution of this case.

STATEMENT

1. The Copyright Act, 17 U.S.C. 101 *et seq.*, grants copyright protection to original works of authorship fixed in a tangible medium of expression. 17 U.S.C. 102(a). Under the Act, copyright in a work “vests initially in the author or authors of the work,” but the author or authors may transfer whole or partial ownership to a third party. 17 U.S.C. 201(a) and (d). The Act confers on a copyright owner certain exclusive statutory rights, including the rights to reproduce and distribute the work and to prepare derivative works. 17 U.S.C. 106.

The length of copyright protection depends on when the work was created. Copyrighted works created on or after January 1, 1978, generally are protected from the date of creation until seventy years after the author's death. 17 U.S.C. 302(a). Copyrighted works created before that date—such as the works at issue in this case—were protected for an initial period of twenty-eight years, which could be extended for a renewal period of up to sixty-seven years. 17 U.S.C. 304(a).

The Copyright Act provides a variety of civil remedies for infringement. See 17 U.S.C. 502-505. A court may issue an injunction, “on such terms as it may deem reasonable,” to prevent or restrain infringement of a copyright. 17 U.S.C. 502(a). At the election of the copyright owner, the court also may award either

(1) “the copyright owner’s actual damages and any additional profits of the infringer,” 17 U.S.C. 504(a)(1), or (2) statutory damages within a defined range, 17 U.S.C. 504(c). The 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).

2. This copyright infringement case concerns the 1980 film *Raging Bull*. The film was based on the life of boxer Jake LaMotta. Pet. App. 3a. After he retired from boxing, LaMotta worked with longtime friend Frank Petrella to tell the story of his career. *Ibid.* Their collaboration resulted in three copyrighted works: a screenplay registered in 1963 to Frank Petrella as sole author, which stated that it was written “in collaboration with” LaMotta; a book registered in 1970 to co-authors Frank Petrella, LaMotta, and Joseph Carter; and a screenplay registered in 1973 to Frank Petrella as the sole author. *Ibid.* The parties dispute which of these works was created first. *Id.* at 3a, 37a.

In 1976, Frank Petrella and LaMotta executed a written agreement that assigned their rights in the book and the two screenplays, including renewal rights, to Chartoff-Winkler Productions, Inc. Pet. App. 3a-4a. In 1978, respondent United Artists Corporation—a subsidiary of respondent Metro-Goldwyn-Mayer, Inc.—acquired the motion picture rights to the story from Chartoff-Winkler. *Id.* at 4a. In 1980, United Artists registered a copyright in the film *Raging Bull*. *Ibid.*

In 1981, during the original 28-year term of the copyrights for the book and screenplays, Frank Petrella died. Pet. App. 4a. Under this Court’s decision

in *Stewart v. Abend*, 495 U.S. 207 (1990), when the author of a pre-1978 work transfers his renewal rights to a third party but dies before renewal, the renewal rights revert to his heirs, and the owner of any derivative work may not exploit that work without authorization from the heirs or their successors. *Id.* at 219-220, 227-228.

Petitioner is Frank Petrella's daughter. Pet. App. 4a. She asserts that she is now the sole owner of Frank Petrella's interest in the works. *Id.* at 31a. In 1990, petitioner consulted an attorney about her rights in the works and in 1991, the attorney filed a renewal application for the 1963 screenplay on her behalf. *Id.* at 4a-5a. Because petitioner did not timely renew the copyrights in the 1970 book and the 1973 screenplay, the infringement claims in this case are predicated only on the 1963 screenplay. *Id.* at 32a, 34a.

In 1998, petitioner's attorney contacted respondents and advised them that petitioner had obtained the copyright to the 1963 screenplay and that their exploitation of derivative works, including *Raging Bull*, was infringing that copyright. Over a period of two years, the parties exchanged letters, in which respondents denied the validity of the infringement claim and petitioner repeatedly threatened to take legal action. Petitioner did not take any legal action at that time. Pet. App. 5a.

3. In 2009, petitioner filed this copyright infringement suit against respondents in federal district court. Pet. App. 5a, 28a n.1. Petitioner's complaint sought damages and various forms of equitable relief. J.A. 34-35. Respondents moved for summary judgment on several grounds, including that petitioner's claims

were barred by the equitable doctrine of laches. Pet. App. 7a.

The district court granted summary judgment to respondents on the ground that laches bars petitioner's claims. Pet. App. 28a-48a. The court stated that laches bars a copyright infringement claim if the defendants show "lack of diligence by the plaintiff" and "prejudice to the defendant." *Id.* at 42a (quoting *Grand Canyon Trust v. Tucson Elec. Power Co.*, 391 F.3d 979, 987 (9th Cir. 2004)). The court first determined that petitioner had unreasonably delayed in bringing this lawsuit because she "had knowledge of the legal theories she is asserting in this action in 1990 or 1991" but had "refrained from filing suit at that time because the [f]ilm was not yet profitable." *Id.* at 42a-44a.

The district court further concluded that respondents had established "expectations-based prejudice" because "they have made significant investments in exploiting the film," and allowing petitioner's suit to proceed would "potentially" allow her "to reap the benefit of these expenditures." Pet. App. 44a-45a (internal quotation marks omitted). The court concluded that respondents had also established "evidentiary prejudice" because Frank Petrella and Joseph Carter had died and LaMotta was elderly and no longer recognized petitioner. *Id.* at 45a-46a.

4. The court of appeals affirmed. Pet. App. 1a-27a. In the court's view, laches bars a plaintiff's copyright claim if the defendant shows that "(1) the plaintiff delayed in initiating the lawsuit; (2) the delay was unreasonable; and (3) the delay resulted in prejudice." *Id.* at 8a. The court stated, at the outset of its analysis, that "[i]f any part of the alleged wrongful conduct

occurred outside of the limitations period, courts presume that the plaintiff's claims are barred by laches." *Ibid.* (quoting *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 997 (9th Cir. 2006)).

The court of appeals concluded that petitioner had unreasonably delayed in bringing suit because petitioner had been aware of her potential claims in 1991 but had not filed suit until 2009, and the "evidence suggests the true cause of [the] delay was that the film hadn't made money during this time period." Pet. App. 9a-11a (internal quotation marks omitted). The court then concluded that respondents had demonstrated "expectations-based prejudice" because they had spent \$8.5 million distributing and promoting *Raging Bull* since 1991, *id.* at 12a-13a, and they had entered into numerous agreements to license and broadcast the film, *id.* at 14a. Petitioner had argued that respondents "would not have done anything different, or been in any better position, had the suit been filed sooner." *Id.* at 15a. The court determined, however, that respondents were not required to make such a showing in order to invoke laches to bar petitioner's claims. *Ibid.* Because it concluded that respondents had established "expectations-based prejudice," the court did not consider whether they had also shown "evidentiary prejudice." *Id.* at 12a.

Judge William Fletcher concurred. Pet. App. 23a-27a. While acknowledging that the court's outcome was consistent with circuit precedent, Judge Fletcher contended that the circuit's law should be revised because it "is the most hostile to copyright owners of all the circuits." *Id.* at 23a (W. Fletcher, J., concurring).

SUMMARY OF ARGUMENT

A. The Copyright Act's limitations provision requires that any civil suit under the Act be filed "within three years after the claim accrued." 17 U.S.C. 507(b). Under the established construction of that provision, each new act of infringement gives rise to a distinct "claim," which "accrue[s]" at the time the infringing act occurs, even when multiple acts of infringement involve the same copyrighted work. The consequence of that provision is that, when a defendant has engaged (or is alleged to have engaged) in a prolonged course of infringing conduct, the copyright holder's suit may be timely with respect to more recent acts of infringement, but not with respect to prior acts in the same series. Consistent with that understanding, neither of the courts below suggested that petitioner's suit was barred by Section 507(b).

B. Although petitioner seeks to recover only for acts of infringement that occurred within the three-year period before her suit was commenced, her factual and legal theory logically suggests that respondents had engaged in infringing conduct long before that date. In affirming the district court's grant of summary judgment for respondents, the court of appeals relied in part on a presumption that an infringement suit is barred by laches if any part of the defendant's wrongful acts occurred outside the limitations period. Even apart from the question whether laches can ever bar an infringement suit like petitioner's, that approach is seriously flawed.

Laches is an affirmative defense on which the defendant bears the burden of proof. Treating a suit that is timely under Section 507(b) as presumptively barred by laches fails to give due weight to the bal-

ance struck by Congress in Section 507(b) itself. That is particularly true because each act of infringement gives rise to a new “claim” triggering a new three-year window for filing suit, so that claims for more recent infringing conduct may be timely even though claims for earlier acts are barred. The court of appeals’ approach, by contrast, treats the initial infringing act as the presumptive triggering event for the three-year period within which suit must be filed.

The court of appeals assumed that the likelihood of prejudice to the defendant increases as the plaintiff’s delay in filing suit grows longer. Under Section 507(b), however, a plaintiff’s delay will often inure to the defendant’s benefit, by enabling it to retain the profits earned through any infringing acts that occurred outside the limitations period. The mere fact that a defendant makes substantial investments in a work does not establish that it would have been better off if the plaintiff had filed suit earlier. The court of appeals also failed to appreciate the flexibility of the Copyright Act’s remedial provisions, and the extent to which a plaintiff’s delay may be considered in fashioning appropriate relief.

C. A Copyright Act infringement suit that is timely under Section 507(b), and seeks both legal and equitable relief, cannot be dismissed altogether on the ground of laches. The doctrine of laches was initially applied in proceedings in equity, which traditionally were not subject to statutes of limitations. Although present-day equitable actions are often governed by statutory limitations provisions, courts have continued to apply laches in such actions as an additional safeguard against dilatory behavior and consequent prejudice to the defendant. But while compliance with the

governing statute of limitations does not preclude the application of laches to claims for equitable relief, the Court has disapproved its application to bar claims at law.

The Copyright Act's limitations provision does not directly address the possible use of laches as a ground for dismissing timely infringement suits. The natural inference from that congressional silence, which the pertinent legislative history reinforces, is that Congress intended Section 507(b) to be applied in accordance with the background principles that have traditionally governed in this area. Because petitioner's complaint sought both legal and equitable relief, the court of appeals erred in invoking laches as a ground for terminating the suit altogether. If petitioner ultimately prevails on the merits of her infringement claims, however, her delay in suing may be taken into account in determining the nature and extent of any equitable relief that might be awarded.

ARGUMENT

WHEN A COPYRIGHT INFRINGEMENT CLAIM IS BROUGHT WITHIN THE LIMITATIONS PERIOD IN 17 U.S.C. 507(b), LACHES MAY LIMIT EQUITABLE BUT NOT LEGAL RELIEF

Petitioner's suit was timely under the applicable three-year statute of limitations, see 17 U.S.C. 507(b), and her complaint sought both legal and equitable remedies. The court of appeals nevertheless affirmed the district court's grant of summary judgment for respondents based on laches, thus preventing adjudication of petitioner's claims on the merits and foreclosing the possibility of any form of relief. That holding was erroneous.

If petitioner ultimately prevails on the merits of her infringement claims, her delay in filing suit can properly be taken into account in fashioning appropriate equitable relief. Laches has traditionally been inapplicable, however, to claims for legal relief, and nothing in the text or history of the Copyright Act suggests that Congress intended to deviate from that understanding here. Principles of laches therefore provide no sound basis for terminating petitioner's suit altogether. The judgment of the court of appeals should be reversed.

A. Under The Copyright Act's Statute Of Limitations, A Plaintiff's Suit Is Timely With Respect To All Acts Of Infringement That Occurred Within The Three-Year Period Before Suit Was Filed, Even If The Suit Was Filed More Than Three Years After The Defendant's Overall Course Of Infringing Conduct Began

1. A statute of limitations is a law that bars claims that are filed after a specified period of time. *E.g.*, *Black's Law Dictionary* 1546 (9th ed. 2009). Such provisions serve "to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-349 (1944). The length of a limitations period generally "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." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975).

Prior to 1957, federal copyright law did not include a statute of limitations for civil suits. As a result,

federal courts applied analogous state statutes of limitations to assess the timeliness of copyright infringement claims. See S. Rep. No. 1014, 85th Cong., 1st Sess. 1-2 (1957) (Senate Report). In 1957, Congress established a three-year limitations period for all civil actions arising under the Act. See Act of Sept. 7, 1957, Pub. L. No. 85-313, § 1, 71 Stat. 653 (17 U.S.C. 115(b) (1958)). This limitations period was designed to bring uniformity and certainty to federal copyright claims and to prevent forum shopping. Senate Report 2; see H. Rep. No. 2419, 84th Cong., 2d Sess. 2 (1956) (House Report).

The three-year statute of limitations was carried forward without material change in the 1976 revision of the Copyright Act. See Act of Oct. 19, 1976, Pub. L. No. 94-553, sec. 101, § 507(b), 90 Stat. 2586. The Copyright Act now provides: “No 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).

2. Application of the statute of limitations to copyright infringement claims requires an understanding of when such a claim accrues. A claim generally accrues when the plaintiff has a “complete and present cause of action.” *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98 (1941)). The limitations period therefore generally begins to run at the point when “the plaintiff can file suit and obtain relief.” *Ibid.*; see also, *e.g.*, *Gabelli v. SEC*, 133 S. Ct. 1216, 1220-1221 (2013).

The Copyright Act states that “[a]nyone who violates any of the exclusive rights of the copyright owner” under the Act “is an infringer of the copyright,”

and that the copyright owner may “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(a) and (b). For purposes of Section 507(b), a “claim” therefore generally “accrue[s]” when the defendant commits an act of infringement.¹

In a copyright infringement lawsuit, a plaintiff may have several distinct claims based on the defendant’s continuing course of conduct, even if all of the acts of infringement involve the same copyrighted work. In this context, “[e]ach act of infringement is a distinct harm giving rise to an independent claim for relief.” *Stone v. Williams*, 970 F.2d 1043, 1049-1050 (2d Cir. 1992), cert. denied, 508 U.S. 906 (1993). Under that “separate accrual” rule, when a defendant commits a series of infringing acts, a separate claim accrues with each act of infringement, rather than one continuing claim accruing from the initial infringing act. 6 William F. Patry, *Patry on Copyright* § 20:23, at 20-44 (2013).²

¹ Nine courts of appeals allow for a “discovery rule” for copyright infringement claims, under which the cause of action accrues when the plaintiff discovered, or with due diligence should have discovered, the infringement that forms the basis for her claim. See *William A. Graham Co. v. Haughey*, 568 F.3d 425, 433 (3d Cir.) (citing cases), cert. denied, 558 U.S. 991 (2009); see also 6 William F. Patry, *Patry on Copyright* § 20:18, at 20-28 (2013) (“The overwhelming majority of courts use discovery accrual in copyright cases.”). Under that approach, a Copyright Act claim may occasionally accrue later, but will never accrue earlier, than the date of the infringing act. Petitioner does not rely on the discovery rule in this case. See J.A. 30 (complaint); Pet. Br. 8.

² Although it has not been considered by this Court, the “separate accrual” rule has been widely accepted by the courts of appeals. See, e.g., *Bouchat v. Baltimore Ravens Ltd. P’ship*, 619

Under 17 U.S.C. 507(b), a civil suit filed within three years after an act of infringement is timely with respect to that act. When the defendant has committed a series of infringing acts, the plaintiff may recover for those acts of infringement that occurred within three years of suit. See *Bridgeport Music, Inc. v. Rhyme Syndicate Music*, 376 F.3d 615, 621 (6th Cir. 2004); *Stone*, 970 F.2d at 1049-1050; see also 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 12.05[B][1][b], at 12-150.4 (2012).

The effect of the Copyright Act’s statute of limitations thus is “to limit the period of recovery to three years.” *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Enters., Int’l*, 533 F.3d 1287, 1320 n.39 (11th Cir. 2008). The plaintiff may recover for acts occurring within the limitations period but may not use a “new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that

F.3d 301, 316 (4th Cir. 2010); *William A. Graham Co.*, 568 F.3d at 433; *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Enters., Int’l*, 533 F.3d 1287, 1320 n.39 (11th Cir. 2008); *Bridgeport Music, Inc. v. Rhyme Syndicate Music*, 376 F.3d 615, 621 (6th Cir. 2004); *Makedwde Publ’g Co. v. Johnson*, 37 F.3d 180, 182 (5th Cir. 1994); *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir. 1994); see also *Taylor v. Meirick*, 712 F.2d 1112, 1119 (7th Cir. 1983) (accepting separate accrual rule but allowing plaintiff who sues for series of infringing acts to “reach back and get damages for the entire duration of the alleged violation” on fraudulent-concealment grounds).

The separate accrual rule also is consistent with the approach this Court has taken in analogous contexts, such as under the Clayton Act. See *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338-339 (1971); see also, e.g., *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 110-112 (2002) (Title VII); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189-190 (1997) (civil RICO).

took place outside the limitations period.” *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997) (civil RICO context). That rule strikes an appropriate balance between copyright plaintiffs and defendants, allowing plaintiffs to seek relief for infringing acts occurring within three years of the suit while excusing defendants from liability for prior acts that fall outside the three-year window.

3. Because the Copyright Act includes uniquely long periods of protection for authors and owners, a work may remain protected (and unauthorized uses of the work may constitute infringement of copyright) for decades after the work was created. See 17 U.S.C. 302(a) (post-1978 copyrighted works protected from the date of creation until seventy years after the author’s death); 17 U.S.C. 304(a) (pre-1978 copyrighted works protected for up to 95 years). When the defendant has engaged in a prolonged series of allegedly infringing acts, a suit by the copyright holder therefore may be timely under Section 507(b) (because at least one such act has occurred within the three-year period before suit is commenced) even though it is filed many years after the first iteration of the defendant’s conduct. Consistent with that understanding, neither of the courts below suggested that petitioner’s suit was barred by Section 507(b). Instead, the courts below considered whether laches might provide an independent bar to petitioner’s claims.

B. The Court Of Appeals Erred In Applying A Presumption That, Because Respondents' Allegedly Infringing Conduct Began More Than Three Years Before Petitioner's Suit Was Filed, Petitioner's Claims Are Barred By Laches

Petitioner seeks to recover only for “acts of infringement occurring on or after January 6, 2006,” the date three years before this suit was commenced. Pet. Br. 8. Petitioner’s factual and legal theory logically implies, however, that respondents had engaged in infringing conduct for many years before that. Relying on a prior opinion in the trademark context, the court below stated that, “[i]f any part of the alleged wrongful conduct occurred outside of the limitations period, courts presume that the plaintiff’s claims are barred by laches.” Pet. App. 8a (quoting *Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 997 (9th Cir. 2006)). Even apart from the question whether laches can ever appropriately be used to bar an infringement suit like petitioner’s, the court of appeals’ invocation and application of that presumption was flawed in several respects.

1. Laches is an affirmative defense, and as with other affirmative defenses, the burden rests on the defendant to demonstrate that its requirements have been met. 1 Dan B. Dobbs, *Dobbs Law of Remedies: Damages, Equity, Restitution* § 2.4(4), at 104 (2d ed. 1993) (*Dobbs on Remedies*). The limitations period in the Copyright Act is the product of a legislative effort to balance the legitimate interests of copyright owners and persons accused of infringement. See Senate Report 2-3. Although the text of Section 507(b) does not literally foreclose application of laches, see pp. 24-25, *infra*, that provision (like any statute of limita-

tions) reflects a legislative judgment that a defendant's legitimate interests in repose will not ordinarily be prejudiced when suit is commenced within three years after the infringing act occurs. See, e.g., *Chirco v. Crosswinds Cmty's, Inc.*, 474 F.3d 227, 235 (6th Cir.), cert. denied, 551 U.S. 1131 (2007). Treating a suit that is filed within the Section 507(b) limitations period as *presumptively* barred by laches fails to give due weight to that congressional judgment.

2. Under the plain terms of Section 507(b), the three-year period for commencing suit on any "claim" begins to run on the date "the claim accrued." Each act of infringement, moreover, gives rise to a new "claim" and thus a new three-year window for filing suit. See pp. 11-14, *supra*; *Makedwde Publ'g Co. v. Johnson*, 37 F.3d 180, 182 (5th Cir. 1994); *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir. 1994); *Hoste v. Radio Corp. of Am.*, 654 F.2d 11, 11 (6th Cir. 1981) (per curiam). In this case, the court of appeals' analysis of petitioner's delay did not focus on the passage of time between the infringing acts *for which petitioner seeks to recover* (i.e., the infringing acts that are alleged to have occurred on or after January 6, 2006) and the commencement of petitioner's suit. Rather, the court's presumption of laches was triggered by the fact that a lengthy period of time had passed since respondents' alleged *initial* infringing act. See Pet. App. 8a.

The practical effect of the court of appeals' approach is to treat that initial infringing act, rather than the acts of infringement for which the plaintiff seeks to recover, as the presumptive triggering event for the three-year period within which suit must be filed. Under the court of appeals' rule, if a copyright

holder does not bring suit for an infringing act within three years after the infringement first occurs, she has presumptively slept on her rights and can never again seek to enforce her copyright for any further violations committed by the defendant, regardless of how long the copyright's term continues after that point. That rule significantly upsets the balance struck by Congress, under which a plaintiff may seek relief on any claims (but only on those claims) that accrued within the three-year period before suit was filed. The court's presumption thus has the potential to deprive copyright owners of the benefit of their copyrights decades before the statutory terms of the copyrights have run.

3. The court of appeals' analysis reflects an express assumption that the likelihood of prejudice to the defendant increases as the period of delay grows longer. See Pet. App. 11a-12a. That assumption is unwarranted. To be sure, one type of prejudice—the loss of evidence that delay may entail, see, *e.g.*, *Russell v. Todd*, 309 U.S. 280, 287 (1940) (explaining that a defendant may be prejudiced by the plaintiff's delay when “in the normal course of events evidence is lost or obscured”)—is more likely to result from a long delay than from a short one. In this case, however, the court of appeals expressly declined to consider whether “evidentiary prejudice” had occurred. See Pet. App. 12a. And in concluding that respondents had instead established “expectations-based prejudice,” see *ibid.*, the court wholly failed to consider the ways in which petitioner's delay in filing suit might redound to respondents' benefit. Most obviously, under Section 507(b) and the separate accrual rule, respondents will be entitled to keep any profits they

may have earned from acts of infringement that occurred before January 6, 2006 (three years before petitioner commenced this action), even if petitioner ultimately prevails on the merits of her infringement claims.

Even in circumstances where laches potentially applies, its justification is not “a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties.” *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); see, e.g., 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2946, at 109 (3d ed. 2013) (defendant generally must show not only a “lapse of time,” but also that “during the lapse of time, changed circumstances inequitably work[ed] to [its] disadvantage or prejudice”) (quoting William Q. de Funiak, *Handbook of Modern Equity* § 24, at 41 (2d ed. 1956)). The court of appeals held that respondents had established “expectations-based prejudice” simply by showing that they had made significant expenditures to market and distribute *Raging Bull* since 1991. Pet. App. 12a-14a. But businesses routinely make large expenditures to earn even greater revenues, and a substantial portion of any profits that respondents’ expenditures on *Raging Bull* produced will be beyond the reach of the court even if petitioner’s suit is successful. The bare fact that respondents invested millions of dollars between the time that petitioner acquired her interest in the 1963 screenplay’s copyright and the time that petitioner brought suit does not demonstrate that respondents have suffered financially from the delay. Respondents’ evidence therefore falls well short of establishing

that they would have been better off if petitioner had filed her infringement suit at an earlier date.

4. The court of appeals also failed to appreciate the flexibility provided by the Copyright Act's remedial provisions, and the extent to which a plaintiff's delay may be considered in fashioning appropriate relief. After describing the investments and business arrangements that respondents had made to market and distribute *Raging Bull*, the court stated that, if this suit were allowed to proceed and petitioner prevailed on the merits, "the anticipated profits from these investments and licensing agreements—the expectation of which underlay [respondents'] business decision making—would wind up in [petitioner's] pocket." Pet. App. 17a. As explained above, that assertion is wholly wrong with respect to any profits earned from infringing acts that occurred before January 6, 2006, as to which Section 507(b) would bar any recovery. And even with respect to profits earned from acts of infringement occurring within the limitations period, courts may allocate profits equitably between the parties at the remedial phase of a successful infringement action.

The Copyright Act states that the plaintiff may recover "any profits of the infringer *that are attributable to the infringement.*" 17 U.S.C. 504(b) (emphasis added). In this case, the "infringement" (if any is ultimately found) would be the unauthorized use of the 1963 screenplay on which petitioner holds a copyright. To determine what portion of respondents' profits on the film *Raging Bull* are attributable to that unauthorized use, the court could take account of respondents' contributions to the success of the finished work. See *Sheldon v. Metro-Goldwyn Pictures Corp.*, 309

U.S. 390, 402 (1940) (apportioning profits to account for independent contributions of infringing defendant); see also 17 U.S.C. 504(b) (defendant is entitled to prove “the elements of profit attributable to factors other than the copyrighted work”).

Allowing the defendant to retain the return on its investment that is attributable to its own enterprise, as distinct from the value created by the infringed work, will often provide adequate protection against the financial consequences of the plaintiff’s delay. More generally, as explained below, courts have well-established discretion to consider the nature and consequences of a plaintiff’s delay in fashioning appropriate equitable relief. The extreme disposition chosen by the court of appeals—an approach that terminated petitioner’s suit, left her without any potential remedy, and left respondents free to engage in allegedly infringing conduct throughout the remaining decades of petitioner’s copyright—was therefore unnecessary to prevent unjust enrichment to petitioner.

C. A Claim For Copyright Infringement Brought Within Three Years Of The Allegedly Infringing Act, And Seeking Both Legal And Equitable Relief, Is Not Subject To Dismissal Based On Laches

For the reasons stated above, the court of appeals erred both in its adoption of a presumption of laches, and in its analysis of respondents’ contention that they were prejudiced by petitioner’s delay. The more difficult question posed by this case is whether a Copyright Act infringement suit that is filed within the statute of limitations, and seeks both legal and equitable relief, can be dismissed altogether on the ground of laches. In the government’s view, such a disposition is not appropriate.

1. The doctrine of laches rests on the longstanding equitable principle that a plaintiff who delays unreasonably in pursuing judicial relief, to the detriment of the defendant, may forfeit his right to relief. See, e.g., *Lane & Bodley Co. v. Locke*, 150 U.S. 193, 201 (1893) (“Courts of equity, it has often been said, will not assist one who has slept upon his rights, and shows no excuse for his laches in asserting them.”). “The doctrine of laches is based upon grounds of public policy, which require for the peace of society the discouragement of stale demands”; courts “will not aid a party” whose “gross negligence or deliberate delay” has compromised their ability to fairly resolve a dispute. *Mackall v. Casilear*, 137 U.S. 556, 566 (1890). Consequently, a claim is barred by laches only when a plaintiff unreasonably delays in bringing suit, and the defendant is prejudiced by that delay. See, e.g., *Costello v. United States*, 365 U.S. 265, 282 (1961); *Russell*, 309 U.S. at 287.

“The doctrine of laches has a historical pedigree pre-dating the statutory enactment of periods of limitations.” *Ivani Contracting Corp. v. City of N.Y.*, 103 F.3d 257, 259 (2d Cir.), cert. denied, 520 U.S. 1211 (1997). Courts of equity have long “refuse[d] to interfere where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights.” *Badger v. Badger*, 69 U.S. (2 Wall.) 87, 94 (1865); see also, e.g., *New York City v. Pine*, 185 U.S. 93, 98 (1902); *Bowman v. Wathen*, 42 U.S. (1 How.) 189, 194 (1843). Although laches has the effect of limiting the time period during which a suit may be brought, it is not “a mere matter of time”; instead, it is “principally a question of the inequity of permitting the claim to be enforced” based upon

“some change in the condition or relations of the property or the parties.” *Gallihier v. Cadwell*, 145 U.S. 368, 373 (1892).

Although proceedings in equity traditionally were not subject to statutes of limitations, federal courts sitting in equity eventually came to borrow analogous statutes of limitations from state law. See, e.g., *Russell*, 309 U.S. at 288; William Wirt Blume & B.J. George, Jr., *Limitations and the Federal Courts*, 49 Mich. L. Rev. 937, 943 (1951). However, the fact that a plaintiff brought suit within the relevant limitations period did not preclude the defendant from invoking laches as a defense to a claim for equitable relief. See, e.g., *Patterson v. Hewitt*, 195 U.S. 309, 318-319 (1904); *Whitney v. Fox*, 166 U.S. 637, 647-648 (1897); *Alsop v. Riker*, 155 U.S. 448, 460-461 (1894); *Godden v. Kimmell*, 99 U.S. 201, 201-202 (1879). Instead, this Court recognized that even within the limitations period, “[l]aches may bar equitable remedy before the local statute has run.” *Russell*, 309 U.S. at 288 n.1. Accordingly, with respect to claims for equitable relief, the statute of limitations “fix[es] a time beyond which the suit will not, under any circumstances, lie” but does not “preclud[e] the defense of laches, provided there has been unreasonable delay within the time limited by the statute.” *Patterson*, 195 U.S. at 318.

The doctrine of laches originated in the courts of equity, but it was “eventually adopted by common law courts and, following the merger of law and equity, became part of the general body of rules governing relief in the federal court system.” *Environmental Def. Fund, Inc. v. Alexander*, 614 F.2d 474, 478 (5th Cir.), cert. denied, 449 U.S. 919 (1980). This Court has continued to acknowledge the potential availability of

a laches defense to equitable claims filed within a statute of limitations, explaining that “statutes of limitation are not controlling measures of equitable relief.” *Holmberg*, 327 U.S. at 396. The Court has discountenanced the application of a laches defense to bar legal relief. See *County of Oneida, N.Y. v. Oneida Indian Nation*, 470 U.S. 226, 244 n.16 (1985); see also *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 652 (2010).³

Suits seeking equitable remedies for copyright infringement have historically been subject to the defense of laches. See, e.g., *Edwin L. Wiegand Co. v. Harold E. Trent Co.*, 122 F.2d 920, 925 (3d Cir. 1941), cert. denied, 316 U.S. 667 (1942); *D.O. Haynes & Co. v. Druggists’ Circular*, 32 F.2d 215, 217-218 (2d Cir. 1929); *West Publ’g Co. v. Edward Thompson Co.*, 169 F. 833, 885-887 (C.C.E.D.N.Y. 1909); *Werner Co. v. Encyclopaedia Britannica Co.*, 134 F. 831, 833 (3d Cir. 1905). This Court has assumed the availability of a laches defense in a copyright suit. See *Callaghan v. Myers*, 128 U.S. 617, 659 (1888). Judge Learned Hand stated the settled understanding that remedies in a copyright infringement suit are subject to “the usual principles of equity,” including the principle that “it is inequitable for the owner of a copyright, with full notice of an intended infringement, to stand inactive

³ It has been “established past all controversy or doubt” that the “United States are not bound by any [state] statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right, or to assert a public interest.” *United States v. Beebe*, 127 U.S. 338, 344 (1888); see also, e.g., *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132-133 (1938); *Chesapeake & Del. Canal Co. v. United States*, 250 U.S. 123, 125 (1919); *United States v. Verdier*, 164 U.S. 213, 219 (1896).

while the proposed infringer spends large sums of money in its exploitation, and to intervene only when his speculation has proved a success.” *Haas v. Leo Feist, Inc.*, 234 F. 105, 107-108 (S.D.N.Y. 1916).⁴ Judge Hand did not, however, treat the plaintiff’s delay as a ground for dismissing the infringement suit entirely. Rather, he adjudicated the suit on the merits and invoked the plaintiff’s delay as a ground for disallowing particular equitable remedies. See *id.* at 107-108.

2. The Copyright Act’s limitations provision does not, by its terms, resolve the question whether laches may ever be invoked to dismiss a copyright-infringement suit that is filed within the specified three-year period. That limitations provision states that “[n]o civil action may be maintained” under the Act “unless it is commenced within three years after the claim accrued.” 17 U.S.C. 507(b). Although the statute makes clear that a suit filed more than three years after the claim’s accrual may not go forward, it does not literally foreclose the possibility that some

⁴ In his concurrence below, Judge William Fletcher construed this passage from Judge Hand as applying equitable estoppel rather than laches. Pet. App. 25a (W. Fletcher, J., concurring). Equitable estoppel generally requires affirmative misbehavior—a person using “false language or conduct” to “induce[] another person to act in a certain way,” *Black’s Law Dictionary* 630—whereas laches typically involves a “harm to [the] defendant from the plaintiff’s inaction,” 6 *Patry on Copyright* § 20:54, at 20-96. Judge Hand’s discussion, which refers to the plaintiff as simply “stand[ing] inactive,” *Haas*, 234 F. at 108, is better understood to refer to prejudicial delay rather than to affirmative misconduct.

suits brought within that three-year period might be dismissed based on the plaintiff's prejudicial delay.⁵

"Congress is understood to legislate against a background of common-law adjudicatory principles," and this Court presumes that Congress intended to incorporate those principles unless the text provides to the contrary. *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991). Section 507(b)'s legislative history reinforces the inference that Congress intended the limitations provision to be applied in a manner consistent with traditional norms. In the course of its deliberations regarding possible enactment of a federal limitations period, Congress heard testimony regarding whether it should "specifically enumerat[e] certain equitable considerations that might be advanced in connection with civil copyright actions," such as equitable tolling and fraudulent concealment. Senate Report 2-3. Both the House and Senate Judiciary Committees "reached the conclusion that this was unnecessary" because the "Federal district Courts, generally, recognize these equitable defenses anyway." *Id.* at 3 (quoting House Report 2).

⁵ The Federal Circuit has concluded, based on the Patent Act's text and legislative history and on historical practice, that laches is an available defense to patent infringement, but only to bar claims for damages, and not prospective injunctive relief. See *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1029-1032, 1039-1041 (1992) (en banc); see also 35 U.S.C. 286 (Patent Act statute of limitations). The Lanham Act, which governs trademark protection, contains no statute of limitations, and it expressly provides that "equitable principles," including "laches," may provide a defense to an infringement claim. 15 U.S.C. 1115(b)(9). The laches analysis presented here is specific to the Copyright Act and does not address potential differences presented by the Patent Act and Lanham Act.

Indeed, Congress decided not to set out particular equitable “circumstances or conditions” because express references to such examples “might result in unfairness to some persons” who would otherwise be entitled to relief under existing judicial practice. Senate Report 3. Thus, the question whether laches can be invoked to bar a suit like petitioner’s must be resolved, not by reference to the text of Section 507(b) standing alone, but in light of the accepted background equitable principles at the time the statute was enacted.

3. Prior to the merger of law and equity with the adoption of the Federal Rules of Civil Procedure in 1938, laches was traditionally associated with equitable claims and remedies rather than with legal ones. See, *e.g.*, *Alsop*, 155 U.S. at 460; *Mackall*, 137 U.S. at 566; see also *Godden*, 99 U.S. at 210 (Laches is a “defence peculiar to courts of equity founded on lapse of time and the staleness of the claim.”). Accordingly, although laches could bar equitable relief even though suit had been commenced within a limitations period, see, *e.g.*, *Patterson*, 195 U.S. at 318-319, this Court observed that “[l]aches within the term of the statute of limitations is no defense at law,” *United States v. Mack*, 295 U.S. 480, 489 (1935). Put another way, “[i]n actions at law, the question of diligence is determined by the words of the statute,” where “[i]f an action [is] brought the day before the statutory time expires, it will be sustained”; whereas “[i]n suits in equity the question is determined by the circumstances of each particular case.” *Patterson*, 195 U.S. at 317.

Since the merger of law and equity, when suit is filed within the statute of limitations, courts have continued to permit consideration of laches with re-

spect to equitable but not legal relief. See, e.g., *Russell*, 309 U.S. at 288 n.1; *Ivani Contracting Corp.*, 103 F.3d at 260 “One basic principle has * * * been consistently followed: equitable remedies are not available if granting the remedy would be inequitable to the defendant because of the plaintiff’s long delay.” *Environmental Def. Fund, Inc.*, 614 F.2d at 478. “A plaintiff guilty of laches may be barred from recovery of any kind of equitable remedy, including injunctions, specific performance, and equitable accounting.” 1 *Dobbs on Remedies* § 2.4(4), at 103 (footnotes omitted). But “[w]hen laches does not amount to estoppel or waiver, it does not ordinarily bar legal claims.” *Id.* § 2.4(4), at 104; see also 6 *Patry on Copyright* § 20:54, at 20-98 (“Application of laches to legal claims is not the norm.”). As this Court has remarked, “application of the equitable defense of laches in an action at law would be novel indeed.” *County of Oneida*, 470 U.S. at 244 n.16; see also *Lyons P’ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 797 (4th Cir. 2001) (“[L]aches is a doctrine that applies only in equity to bar equitable actions, not at law to bar legal actions.”).⁶

⁶ Consistent with that rule, the Second Circuit has applied laches in a copyright infringement suit to bar permanent injunctive relief but not a damages remedy. See *New Era Publ’ns Int’l, ApS v. Henry Holt & Co.*, 873 F.2d 576, 584-585 (2d Cir. 1989), cert. denied, 493 U.S. 1094 (1990). The Ninth Circuit, by contrast, applies laches to both legal and equitable relief. See Pet. App. 8a, 18a. The Sixth Circuit appears to do the same. See *Chirco*, 474 F.3d at 234. The Seventh Circuit has suggested that laches could bar claims for legal as well as equitable relief. See *Maksym v. Loesch*, 937 F.2d 1237, 1248 (7th Cir. 1991) (breach of contract case).

In the present case, petitioner’s complaint sought both damages and injunctive relief. The only question presented in this Court is whether laches provided a sound basis for the decisions of the courts below to grant summary judgment to respondents, thereby pretermittting adjudication of petitioner’s claims on the merits and leaving her without any potential legal or equitable remedy. For the reasons set forth above, the answer to that question is no. Nothing in the text or history of the Copyright Act suggests that Congress intended to depart from the background principle that “[l]aches within the term of the statute of limitations is no defense at law.” *Mack*, 295 U.S. at 489. Because the Act authorizes both legal and equitable relief, and petitioner sought damages as well as an injunction and profits, the courts below erred in invoking laches as a ground for barring the suit entirely.

If petitioner ultimately prevails on the merits of her infringement claims, however, her delay in suing may be taken into account in determining the nature and extent of any equitable relief that might be awarded. The Copyright Act authorizes the federal courts to issue “temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright,” 17 U.S.C. 502(a), or to order the impounding and disposition of infringing articles, 17 U.S.C. 503. Injunctions are classic equitable relief. The standard for granting an injunction typically requires application of an estab-

The Eleventh Circuit has held that, in a copyright suit filed within the statute of limitations, “laches serves as a bar only to the recovery of retrospective damages, not to prospective relief.” *Peter Letterese & Assocs., Inc.*, 533 F.3d at 1321.

lished four-factor test, see, *e.g.*, *eBay Inc. v. Merc-Exchange, L.L.C.*, 547 U.S. 388, 391 (2006), and the plaintiff's delay may bear on the court's assessment of one or more of those factors in a particular case. The plaintiff's delay may also be relevant in determining the "profits of the infringer that are attributable to the infringement." 17 U.S.C. 504(b); see pp. 19-20, *supra*.

Because petitioner's infringement claims have not yet been decided on the merits, this case does not present the Court with an occasion to determine what equitable relief would be appropriate if petitioner prevails, or how her delay in filing suit should affect the availability of equitable remedies. Accordingly, this Court should hold that laches cannot bar petitioner's suit altogether and remand the case for further proceedings. If petitioner ultimately prevails on the merits of her infringement claims, the courts below can consider the effect of her delay at the remedial stage of the case.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

STUART F. DELERY
Assistant Attorney General

MALCOLM L. STEWART
Deputy Solicitor General

NICOLE A. SAHARSKY
*Assistant to the Solicitor
General*

SCOTT R. MCINTOSH
DARA S. SMITH
Attorneys

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APPENDIX

1. 17 U.S.C. 501 provides:

Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the

(1a)

case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or

display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

2. 17 U.S.C. 502 provides:

Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

3. 17 U.S.C. 503 provides:

Remedies for infringement: Impounding and disposition of infringing articles

(a)(1) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable—

(A) of all copies or phonorecords claimed to have been made or used in violation of the exclusive right of the copyright owner;

(B) of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced; and

(C) of records documenting the manufacture, sale, or receipt of things involved in any such violation, provided that any records seized under this subparagraph shall be taken into the custody of the court.

(2) For impoundments of records ordered under paragraph (1)(C), the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been impounded. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

(3) The relevant provisions of paragraphs (2) through (11) of section 34(d) of the Trademark Act (15 U.S.C. 1116(d)(2) through (11)) shall extend to any impoundment of records ordered under paragraph (1)(C) that is based upon an ex parte application, not-

withstanding the provisions of rule 65 of the Federal Rules of Civil Procedure. Any references in paragraphs (2) through (11) of section 34(d) of the Trademark Act to section 32 of such Act shall be read as references to section 501 of this title, and references to use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services shall be read as references to infringement of a copyright.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

4. 17 U.S.C. 504 provides:

Remedies for infringement: Damages and profits

(a) IN GENERAL.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) ACTUAL DAMAGES AND PROFITS.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement,

and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) STATUTORY DAMAGES.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case

where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118(f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used

in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

(d) **ADDITIONAL DAMAGES IN CERTAIN CASES.**—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

5. 17 U.S.C. 505 provides:

Remedies for infringement: Costs and attorney’s fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

6. 17 U.S.C. 507 provides:

Limitations on actions

(a) **CRIMINAL PROCEEDINGS.**—Except as expressly provided otherwise in this title, no criminal proceeding shall be maintained under the provisions of this title unless it is commenced within 5 years after the cause of action arose.

(b) **CIVIL ACTIONS.**—No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.