2. Filing Too Late

Like other causes of action, claims of copyright infringement are subject to a statute of limitations that establishes the time frame in which legal proceedings must be filed.

§507 — 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.

Understanding the application of this statute of limitations requires understanding when a claim "accrues." Consider the following case.

Roley v. New World Pictures, Ltd.

19 F.3d 479 (9th Cir. 1994)

TANG, J.: . . . Some time before 1972, [plaintiff Sutton] Roley wrote a screenplay originally entitled "A Little Visit Home." He renamed the screenplay "Sleep Tight Little Sister."

In 1985, Roley gave [defendant Walter] Coblenz, a friend and successful film producer, the original copy of his work, hoping that Coblenz would produce the screenplay. Coblenz declined the proposed project.

Two years later, in August 1987, Coblenz invited Roley to the screening of his new movie "Sister, Sister." [Defendant New World Entertainment Limited] was a financier of the film. After viewing the screening, Roley claimed that the movie was a production of his screenplay "Sleep Tight Little Sister." Coblenz admitted that the film and screenplay were similar, but

advised Roley that the film was based upon a screenplay entitled "Louisiana Swamp Murders" written by Ginny Cerrella in the 1970's.

Roley retained counsel to assist him in pursuing his claim that "Sister, Sister" violated his copyright on "Sleep Tight Little Sister." In late 1987 and early 1988, New World's insurance carrier, Firemen's Fund, rejected Roley's claim, advising him that it found no similarity between the two works and, in any event, the screenplay for the film was written independently of Coblenz.

Thereafter, the film opened unsuccessfully and was withdrawn from distribution. It was subsequently shown on television in 1988 and in 1992. Today, it is available for rental or purchase at home video stores.

Roley filed his complaint against Coblenz and New World in February 1991. In June 1992, both Coblenz and New World filed motions for summary judgment, arguing, in part, that Roley's copyright infringement claims were barred by the three year statute of limitations mandated by 17 U.S.C. §507(b). The district court granted appellees' motions, finding that §507(b) barred Roley's infringement claims.

Discussion

Roley's only contention on this appeal is that the district court erred in concluding his infringement claims are barred by the three year statute of limitations mandated by §507(b). . . . A cause of action for copyright infringement accrues when one has knowledge of a violation or is chargeable with such knowledge.

Roley alleged infringement after first viewing the screening of "Sister, Sister" in August 1987. There is no dispute that Roley's infringement claims accrued at that time. Even so, Roley applies the "rolling statute of limitations" theory. He argues that so long as any allegedly infringing conduct occurs within the three years preceding the filing of the action, the plaintiff may reach back and sue for damages or other relief for all allegedly infringing acts. *See Taylor v. Meirick*, 712 F.2d 1112, 1118-19 (7th Cir. 1983). The district court rejected the application of this theory. We do so as well.

Section 507(b) is clear on its face. "It does not provide for a waiver of infringing acts within the limitation period if earlier infringements were discovered and not sued upon, nor does it provide for any reach back if an act of infringement occurs within the statutory period." *Hoey v. Dexel Systems Corp.*, 716 F. Supp. 222, 223 (E.D. Va. 1989). This interpretation is consistent with the prevailing view that the statute bars recovery on any claim for damages that accrued more than three years before commencement of suit. . . . Lest there be any confusion regarding the law in this Circuit on this particular point, we adopt this view.

Roley filed his suit on February 7, 1991. Here, then, §507(b) bars recovery of any damages for claims that accrued prior to February 7, 1988. Roley's claims that appellees' production of "Sister, Sister" infringed his screenplay accrued before February 7, 1988. Nevertheless, Roley asserts that New World and Coblenz have continued to infringe his copyright, thus §507(b) does not bar recovery. Specifically, Roley alleges that appellees have manifested the distribution of the allegedly infringing film for public display in theaters and on television, and that they have manifested the copying of the film on videocassettes for rental and purchase in home video stores, all within the three years prior to the filing of this action.

In a case of continuing copyright infringements, an action may be brought for all acts that accrued within the three years preceding the filing of the suit. Here, however, Roley fails to produce any evidence that appellees engaged in actionable conduct after February 7, 1988.

Indeed, his assertions rely on naked allegations and speculation. . . . The district court's summary judgments are affirmed.

NOTES AND QUESTIONS

1. As *Roley* discusses, a minority view of §507 permits a plaintiff to claim relief for allegedly infringing acts that took place beyond the limitations period, if they were part of a series of infringing acts and at least some of those acts occurred within the preceding three years. Thus, if the infringing acts started in 1995, the plaintiff does not file suit until 1999, and the infringement has continued throughout this period, the plaintiff's action can "reach back" to all the infringing acts starting from 1995. *Taylor v. Meirick*, 712 F.2d 1112 (7th Cir. 1983). The *Roley* court explicitly rejects this theory. Which view makes more sense? Why weren't the broadcasts of the defendant's movie in 1992 and the ongoing sales in video stores infringements within the limitations period?

2. Once a defendant establishes a statute of limitations defense, the plaintiff may then be able to show reasons for tolling the statute. Under the Copyright Act, tolling must be predicated upon an equitable ground recognized under federal law. Sometimes a copyright owner does not discover the infringement until after the three-year limitations period has already passed. Nine circuits have concluded that the federal discovery rule applies. *William A. Graham Co. v. Haughey*, 568 F.3d 425, 433 (3d Cir. 2009) (collecting cases). "[U]nder the discovery rule, a cause of action accrues 'when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim.' " *Id.* at 438. For example, in *Taylor*, the court accepted the plaintiff's tolling argument because the alleged infringer fraudulently concealed the infringement by placing a copyright notice bearing his own name on copies of the plaintiff's work, 712 F.2d at 1118.

3. In addition to the statute of limitations, litigants must also be aware of other equitable doctrines that might necessitate prompt filing. For example, the doctrine of laches may be asserted even if the lawsuit is timely filed under §507. *See, e.g.*, *Chirco v. Crosswinds Cmtys., Inc.*, 474 F.3d 227 (6th Cir. 2007) (holding that laches was properly interposed in a case in which the plaintiffs delayed two and a half years before commencing litigation asserting that the condominiums being built by defendants infringed upon plaintiffs' copyrights).