

INSIGHTS

Copyright Owners: Keep Your Eye on the Road

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Copyright owners need to stay alert! If you have an infringement, ownership interest, or other claim to assert in a copyrighted work and fail to do so within [the three year statute of limitations](#) you risk being barred from asserting that claim thereafter. In other words, keep your eyes open and be diligent in enforcing your copyright interests. Following similar rulings by the Second and Sixth Circuits, the Ninth Circuit Court of Appeals recently affirmed a lower court ruling that held a copyright infringement claim was barred by the Copyright Act's three-year statute of limitations on ownership interest claims. The Ninth Circuit held that where an ownership interest claim is time-barred and ownership is dispositive of the issue, then any attendant infringement claims also should fail under the same time barred basis. Because these three circuits arguably are the most active and precedential for copyright issues, the Ninth Circuit ruling has significant impact. So take care as you drive down that "copyright" road, and plan your future actions and contractual agreements accordingly.

In the Ninth Circuit case *Seven Arts Filmed Entm't Ltd. v. Content Media Corp. PLC*,¹ Seven Arts Filmed Entertainment, Ltd. (Seven Arts) previously had asserted its ownership interests in three motion pictures against a predecessor of Content Media Corp. (Content Media) and against Paramount Pictures Corp. (Paramount), a distributor of the motion pictures. A series of actions were filed by Seven Arts in the U.S. and Canada beginning in 2002. Seven Arts ownership claims and corresponding demands for an accounting of royalties were rejected by the defendants. Eventually, Seven Arts obtained a summary judgment order in Canada, and then many years later, Seven Arts filed a new action in the District of California, for copyright infringement, a declaration of ownership and an accounting against Content Media and Paramount. The District Court dismissed the complaint with prejudice on the ground that Seven Arts' claims were barred by the three-year statute of limitation, even though Paramount had conceded that it was exploiting the motion pictures.

The Ninth Circuit decided to be guided by the rulings of the Second and Sixth Circuits on the issue and held that "where the gravamen of a copyright infringement claim is ownership, and a free-standing ownership claim would be time-barred, any infringement claims are also barred."² Put another way, where the ownership claim is time-barred and ownership is the dispositive issue, any attendant infringement claims must also fail.³ Because Seven Arts fully was aware that Content Media and Paramount had rejected its ownership claims for almost a decade before the infringement action was prosecuted in the U.S., the claims well exceeded the three-year statute of limitations, and the action was barred.

The lesson to be learned for those who create, develop and produce original copyrighted content is this – if you assert a claim for copyright ownership or infringement against a third-party and your assertion is rejected or otherwise disputed, you must be diligent in enforcing

your rights. Although a claim arguably may become more valuable over the passage of time as damages accrue, you must keep your eye on the copyright road.

¹ No. 11-56759, 2013 WL 5928356 (9th Cir. Nov. 6, 2013)

² *Seven Arts*, 2013 WL 5928356, at *3.

³ See *Kwan v. Schlein*, 634 F.3d 224, 229–30 (2d Cir. 2011); *Ritchie v. Williams*, 395 F.3d 283, 288 n. 5 (6th Cir. 2005); see also *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 389–90 (6th Cir. 2007).