



Third Circuit: Copyright Statute of Limitations Begins to Run When Infringement is or Should Have Been Discovered

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By [Jake Linford, Trademark Attorney](#)

In *William A. Graham Co. v. Haughey*, the Third Circuit joined several of its sister circuits in determining that the clock on the Copyright Act's three year statute of limitations starts when the infringing activity is discovered, or should have been discovered with reasonable diligence.

Plaintiff Graham, an insurance brokerage firm, fired defendant Haughey, but knew that Haughey retained copyrighted material that Graham used in selling insurance policies to businesses. Haughey breached a non-compete clause in his termination agreement and solicited Graham's customers for his new employer. The parties entered into a second agreement whereby Graham transferred several accounts to Haughey and his employer, and Haughey committed to return some copyrighted documents and keep others confidential. Subsequently, Haughey and his employer began copying Graham's insurance policy language in materials used to solicit new clients, successfully hiding the infringing activity from Graham for nearly twelve years.

After a jury trial awarding millions in damages to plaintiff Graham, the District Court set aside the jury finding and held that Graham was time-barred from recovering for acts that occurred more than three years before it filed suit, in light of "storm warnings" that it received prior to the first act of infringement. The District Court found that because Haughey retained the copyrighted works and worked for Graham's competitor, Graham should have reasonably known "it was quite possible, if not likely" that Haughey and his employer would include Graham's copyrighted material in client proposals. Because Graham had prior indications of Haughey's bad faith, the District Court held that there was "no reason why the clock on Graham's claims should not have started to run at the time when Haughey first began to infringe, since there is no sign that any of the storm warnings had abated by that point."

The Third Circuit reversed for abuse of discretion, noting that "a potential plaintiff cannot discover his injury before it has occurred." The District Court erred in concluding that evidence that the



infringer was a “bad actor in some general sense” was sufficient to put the copyright holder on notice of infringement that had not yet happened. The Third Circuit determined that there was sufficient evidence to support the jury finding that Graham’s claims were not barred, as “[t]he mere fact that a copyright owner has notice that another person also possessed its copyrighted material and may find it useful to copy should not and does not by itself constitute a storm warning of possible infringement.”

[William A. Graham Co. v. Haughey, No. 05-cv-00612 \(3d Cir. 2009\).](#)

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