COMMENT

To Bar or Not To Bar? The Application of an Equitable Doctrine Against a Statutorily Mandated Filing Period

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INTRODUCTION

Michael James, famous for creating a family of lovable cartoon characters, was the head writer on several television shows.[1] A production company hired James to write scripts for a television special featuring one of James's unique characters, Rainbow Glow.[2] When James agreed to write the scripts, he retained copyright protection over both the scripts and the character.[3] Following the show's original airing, James noticed a DVD compilation for sale featuring Rainbow Glow.[4] This surprised James because he had not granted a license to use his script or character to anyone.[5] As a result, James filed an infringement claim against the DVD's producers.[6] Even though he filed his claim within the Copyright Act's three year statute of limitations, the producers argued that James waited too long to file suit, and that the doctrine of laches should bar his claim.[7]

Copyright holders such as James seek protection under the Copyright Act of 1976 ("the Act") to guard their work against infringement.[8] The Act provides remedies for potential infringements, such as injunctive or monetary relief.[9] Copyright holders seeking relief under the Act have three years to bring a claim against infringers under its statute of limitations.[10] Normally, the right to file suit does not expire before the statute of limitations.[11] The Act is unique, however, in that equitable doctrines — such as the doctrine of laches — provide exceptions to the statute of limitations.[12]

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[1] This scenario draws facts from *Kling v. Hallmark Cards, Inc.*, 225 F.3d 1030, 1032 (9th Cir. 2000) (rejecting defendant's defense of laches in copyright infringement case).

[2] *See generally id.* (describing contractual relationship between television production company and individual creator).

[3] *See generally id.* (describing copyright registrations).

[4] *See generally id.* at 1034 (describing how original creator's widow discovered newly released videos containing unauthorized characters).

[5] *See generally id.* (describing how neither original creator nor his widow had authorized copying of video for production or distribution).

[6] *See generally id.* (filing complaint against Hallmark Cards for copyright infringement).

[7] *See generally id.* at 1035 (claiming that doctrine of laches barred Kling's claim).

[8] *See* 17 U.S.C. §§ 501-513 (2006).

[9] *See id.* §§ 502-505 (2006).

[10] *Id.* § 507(b) (2006).

[11] *See infra* Part III.A.

[12] *See* discussion *infra* Part I.A.

The circuit courts of appeals disagree on the correct interpretation of the Act's exceptions to the statute of limitations and, as a result, produce conflicting holdings.[13] In *Chirco v. Crosswinds Communities, Inc.*, the Sixth Circuit held that courts should generally defer to the statutory limitations Congress selected.[14] The court carved out an exception, however, to allow the doctrine of laches to apply in extraordinary circumstances.[15] If James's hypothetical case came before the Sixth Circuit, the court would likely bar his claim under laches if the producers would suffer inequitably.[16] Not all circuits agree with the Sixth Circuit. Indeed, the *Chirco* holding conflicts with the Fourth Circuit's decision in *Lyons Partnership v. Morris Costumes*.[17] The *Lyons* court held that laches cannot bar claims brought within legislative statutory limitations.[18] A court following this holding would allow James's claim to proceed under a standard of strict adherence to the limitations period.[19]

This Comment argues that the *Chirco* ruling was erroneous and the doctrine of laches is impermissible as an affirmative defense to copyright infringement claims.[20] Part I examines the historical and statutory background of laches and the Copyright Act of 1976.[21] Part II explores the conflict between the Sixth Circuit's holding in *Chirco* and the Fourth Circuit's holding in *Lyons*.[22] Part III argues that courts should defer both to legislative intent and to the separation of powers doctrine and honor statutorily mandated filing periods.[23] Next, it argues that even if the doctrine of laches was relevant, the *Chirco* court misapplied the doctrine in that case.[24] Finally, Part III argues that

[13] *Compare* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 236 (6th Cir. 2007), *with* Lyons P'ship v. Morris Costumes, Inc., 243 F.3d 789, 797 (4th Cir. 2001).

[14] *Chirco*, 474 F.3d at 236.

[15] *Id.*

[16] *See infra* Part I.B.

[17] *See Chirco*, 474 F.3d at 236; *Lyons*, 243 F.3d at 797.

[18] *Lyons*, 243 F.3d at 797.

[19] *See id.*

[20] *See infra* Part III.A-B.

[21] *See infra* Part I.A-B.

[22] *See infra* Part II.A-B.

[23] *See infra* Part III.A; *see also* Ledbetter v. Goodyear Tire & Rubber Co., 515 U.S. 618, 630 (2007) (holding that statutes of limitation give notice to both plaintiffs and defendants); United States v. Mack, 295 U.S. 480, 489 (1935) (holding that laches within term of statute of limitations is not defense at law). *See generally* Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256, 281 (1979) (holding that courts should rule in favor of underlying purposes of Congress).

[24] *See infra* Part III.B.

upholding *Chirco* would be unwise as a matter of public policy because it would counteract the Act's remedial effects.[25] This Comment concludes that the Supreme Court should ultimately resolve the circuit split by adopting a stance in line with the Fourth Circuit decision.[26]

I. BACKGROUND

The equitable doctrine of laches allows defendants to short circuit a plaintiff's claims, even when a plaintiff files those claims within the statutory period.[27] Historically, courts generally — though not unanimously — allow defendants to raise a laches defense.[28] The Copyright Act, however, sets forth a specific, congressionally enacted statute of limitations for filing an infringement claim.[29]

A. The Copyright Act of 1976

The U.S. Constitution grants power to Congress to give copyright protection to those who seek it.[30] The main purpose of this protection

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[25] *See infra* Part III.B. *But see* Colonial Trust Co. v. Brown, 135 A. 555, 564 (Conn. 1926) (invalidating restriction on erecting buildings more than three stories tall on public policy grounds); DeVetter v. Principal Mut. Life Ins. Co., 516 N.W.2d 792, 794-95 (Iowa 1994) (holding that low cost group disability insurance to citizens through predictable underwriting is consistent with public policy); Eyerman v. Mercantile Trust Co., 524 S.W.2d 210, 217 (Mo. Ct. App. 1975) (holding that society cannot tolerate waste and destruction of resources when doing so affects interests of others); *In re* Will of Pace, 400 N.Y.S.2d 488, 493 (N.Y. Sur. 1977) (holding that will provision to destroy house is contrary to public policy against waste); RESTATEMENT (SECOND) OF TORTS § 918 (1965) (denying recovery in tort actions because public policy requires that persons be discouraged from wasting their resources, both physical and economic).

[26] *See* Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 72 (1983) (holding that defendants face burden to establish mootness, otherwise they would be free to continue infringement after threat of litigation); County of L.A. v. Davis, 440 U.S. 625, 631 (1979) (ruling in favor of copyright holders in effort to deter further infringement); United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953) (holding that purpose of injunction is to prevent future violations).

[27] *See* Martin v. Gray, 142 U.S. 236, 239 (1891) (holding that rule of equity requires that unreasonable delay bars relief).

[28] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 236 (6th Cir. 2007); Lyons P'ship v. Morris Costumes, Inc., 243 F.3d 789, 797 (4th Cir. 2001).

[29] 17 U.S.C. § 507(b) (2006).

[30] U.S. CONST. art. I, § 8, cl. 8 (stating purpose is "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

is to incentivize individuals to innovate in science and useful arts.[31] The Framers of the Constitution sought to provide safeguards for creativity and invention, while disallowing and discouraging monopolies.[32] In Article I, the Framers accomplished this goal by providing for patents and copyrights.[33] The U.S. Congress later codified the Framer's intent in the Copyright Act of 1976.[34] The Act extended protection to original works in any fixed or tangible medium and governs modern copyright disputes.[35]

Prior to 1958, a limitation period for civil copyright claims did not exist.[36] Consequently, civil infringement claims could arise fifty years after the infringement occurred.[37] The Copyright Act of 1909 established a statute of limitations period for criminal copyright infringement.[38] Criminal copyright claims must satisfy two elements: infringement, and acting with the requisite mens rea.[39] The principal difference between criminal and civil infringement is that criminal infringement requires intent, while civil infringement does not.[40] Courts have discretion, however, to increase statutory damages in civil cases for willful infringement.[41]

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[31] *Id.*

[32] *See* 17 U.S.C. §§ 501-513 (2006); *see also* United Carbon Co. v. Binney & Smith Co., 317 U.S. 228, 236 (1942) (indicating goal of patent system is to limit uncertainty and to promote invention).

[33] *See* U.S. CONST. art. I, § 8, cl. 8.

[34] 17 U.S.C. §§ 101-1332.

[35] Architectural Works Copyright Protection Act, Pub. L. No. 101-650, 104 Stat. 5089, 5133 (1990); *see* 17 U.S.C. § 102 (2006) (stating that works protected under Act includes literary, musical, dramatic, pictorial, and architectural).

[36] *See* David E. Harrell, *Difficulty Counting Backwards from Three: Conflicting Interpretations of the Statute of Limitations on Civil Copyright Infringement*, 48 SMU L. REV. 669, 670 (1995).

[37] *See id.*

[38] *Cf.* 60 CONG. CH. 320, Mar. 4, 1909, 35 Stat. 1075, 1084 (stating that courts cannot maintain criminal proceeding under provisions of this Act unless infringer commenced within three years after cause of action arose).

[39] *See* Dennis v. United States, 341 U.S. 494, 500 (1951) (stating that establishing mens rea is rule of, not exception to, criminal jurisprudence); United States v. Forbes, 64 F.3d 928, 981 (4th Cir. 1995) (stating court will not impose criminal liability without showing of mens rea); MODEL PENAL CODE § 2.02(1) (1985) (stating that person is not guilty of offense unless she acted purposely, knowingly, recklessly, or negligently as to each element of offense).

[40] *See, e.g.*, Feist Publ'n, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991) (finding infringement if plaintiff proves ownership of copyright and if defendant has infringed).

[41] 17 U.S.C. § 504(c)(2) (2006) (stating that when infringement is willful, court in its discretion may increase statutory award).

In the absence of specific statute of limitations periods for civil copyright claims, federal courts found guidance in individual states' treatment of other tort claims.[42] This approach yielded considerable deviations in applying the limitation period.[43] For example, in 1948, the Fifth Circuit Court of Appeals affirmed a one-year statute of limitations as dictated by Alabama tort law.[44] The Alabama legislature enacted a cover-all provision providing that an individual must bring any action (not specifically statutorily enumerated) within one year.[45] A U.S. district court in New York, by contrast, upheld New York's six-year limitations period on torts claims in 1950.[46] These state-by-state variations motivated Congress to create a uniform system.

In 1958, Congress amended the 1909 Copyright Act to include a three-year filing period for civil copyright infringement claims to resolve the state-to-state inconsistency.[47] In 1976, when Congress recodified the Copyright Act, it retained a three-year limitations period for both civil and criminal infringement.[48] Congress designed this three-year limitations period to begin when a plaintiff knows or has reason to know of an actual violation.[49] Furthermore, the 1976

[42] *See* Brady v. Daly, 175 U.S. 148, 158 (1899); Local Trademarks, Inc. v. Price, 170 F.2d 715, 717-18 (5th Cir. 1948); Pathe Exch. v. Dalke, 49 F.2d 161, 162 (4th Cir. 1931) (referring to Virginia statute of limitations); McCaleb v. Fox Film Corp., 299 F. 48, 50 (5th Cir. 1924) (applying Louisiana statute of limitations for civil copyright infringement); Carew v. Melrose Music, Inc., 92 F. Supp. 971, 972 (S.D.N.Y. 1950) (applying New York six-year statute of limitations); *see also* Moore v. Ill. Cent. R.R. Co., 312 U.S. 630, 636 (1941) (reversing circuit court decision for failure to follow state law on statute of limitations).

[43] John E. Theuman, *Construction and Application of 17 U.S.C.A. §507(b), Requiring that Civil Copyright Action Be Commenced Within 3 Years After Claim Accrued*, 140 A.L.R. FED. 641 § 2(a) (1997); *see* Harrell, *supra* note 36, at 672 (noting national jurisprudence inconsistencies due to applying varying theories in adopting local statute of limitations period).

[44] *Local Trademarks*, 170 F.2d at 719.

[45] *Id.* at 718-19.

[46] *Carew*, 92 F. Supp. at 971-72 (choosing six-year period (section 49(7)) over three-year period (section 48(2)) in New York's Civil Practice Act in determining limitations period).

[47] S. REP. NO. 1014, at 34 (1957), *reprinted in* 1957 U.S.C.C.A.N. 1961, 1962 (citing forum-shopping as one principal reason for civil statute of limitations period).

[48] H.R. REP. NO. 94-1476, at 164 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5780 (stating § 507, which is substantially identical with section 115 of present law, establishes three-year statute of limitations for both criminal proceedings and civil actions); *see* Lafferty v. St. Riel, 495 F.3d 72, 78 n.7 (3d Cir. 2007) (noting that one Congressional aim was to deter forum shopping); *see also* Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (1976) (codified as amended at 17 U.S.C. §§ 101–1332 (2006)).

[49] *See* Hotaling v. Church of Jesus Christ of Latter-Day Saints, 118 F.3d 199, 202

recodification brought all copyrightable works under federal jurisdiction, not common law or state statute.[50] This rule also clarified inventors' and artists' right to file suit against infringers.[51] The protections of the Act, however, are not absolute and courts have allowed exceptions to apply.

B. The Doctrine of Laches

The doctrine of laches embodies the Latin maxim *vigilantibus non dormientibus aequitas subvenit*.[52] Loosely translated, this phrase means "equity aids the vigilant not those who slumber on their rights."[53] The doctrine effectively bars claims by those whose unreasonable and inexcusable delay in bringing a claim results in prejudice to the defendant.[54]

The doctrine of laches originated in the English Courts of Equity.[55] While English Courts of Law addressed legal claims under statutory and common law, Courts of Equity recognized defenses and remedies

(4th Cir. 1997); *see also* Roley v. New World Pictures, Ltd., 19 F.3d 479, 481 (9th Cir. 1994) (stating that copyright infringement accrues when individual has knowledge of violation or is chargeable with knowledge).

[50] *See* 17 U.S.C. § 301(a) (2006).

[51] *Id.* § 501 (2006).

[52] *See* 2 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 419, at 172 (Spencer W. Symons ed., 5th ed. 1941) (noting courts of equity have always refused to aid stale demands where party has slept on his rights and acquiesced for great length of time); *see also* New York v. Pine, 185 U.S. 93, 98 (1902); Ikelionwu v. United States, 150 F.3d 233, 236 (2d Cir. 1998); Ivani Contracting Corp. v. New York, 103 F.3d 257, 259 (2d Cir. 1997); Stone v. Williams, 873 F.2d 620, 623 (2d Cir. 1989), *cert. denied*, 493 U.S. 959 (1989), *vacated on other grounds*, 891 F.2d 401 (2d Cir. 1989); Poole v. Elliot, 76 F.2d 772, 775 (4th Cir. 1935); Fitzpatrick v. Bradshaw, No. 1:06-CV-356, 2006 WL 1722418, at *1 n.1 (S.D. Ohio 2006); Springer v. Partners In Care, 17 F. Supp. 2d 133, 137 (E.D.N.Y. 1998); Landell v. N. Pac. Ry. Co., 122 F. Supp. 253, 256 (D.D.C. 1954); *In re* Gilmore, 198 B.R. 686, 690 (Bankr. E.D. Tex. 1996); *In re* Westwood Plaza Apartments, Ltd., 192 B.R. 693, 696 (Bankr. E.D. Tex. 1996).

[53] Cornetta v. United States, 851 F.2d 1372, 1375 (Fed. Cir. 1988); *see also* 2 POMEROY, *supra* note 52, at 171.

[54] *See* Russell v. Todd, 309 U.S. 280, 287 (1940) (recognizing that equity will not aid plaintiff whose unexcused delay would prejudice defendant); Boone v. Mech. Specialties Co., 609 F.2d 956, 958 (9th Cir. 1979); Goodman v. McDonnell Douglas Corp., 606 F.2d 800, 804 (8th Cir. 1979), *cert. denied*, 446 U.S. 913 (1980). *But see* Shouse v. Pierce County, 559 F.2d 1142, 1147 (9th Cir. 1977) (holding that laches is inapplicable when defendant fails to prove actual delay).

[55] *See* Ralph A. Newman, *The Place and Function of Pure Equity in the Structure of Law*, 16 HASTINGS L.J. 401, 413 (1965) (noting that English courts of equity evolved in response to English common law that unjustly left claimants with no remedy at law).

based on fairness.[56] Because the laches doctrine addressed underlying fairness, it served primarily as an equitable, but not legal, defense.[57] Laches allowed the courts to bar a claim when the plaintiff's delay in bringing suit was unreasonable and prejudicial.[58] In this way, the doctrine of laches acted as a precursor to a statutory limitation.[59] In the United States, despite the merger of courts of equity and law under the Federal Rules of Civil Procedure, court decisions in a variety of cases continue to uphold the viability of laches.[60] Courts apply the doctrine if allowing the claim would simply be unfair and inequitable.[61]

To apply laches, a court requires both unreasonable delay by the plaintiff and prejudice to the defendant.[62] Plaintiffs engage in

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[56] *See* Lindsay Petroleum Co. v. Hurd, 5 L.R.-P.C. 221, 221 (1874) (appeal taken from Ontario, Canada) (noting that laches applies when party had knowledge of claim, but forbore asserting it); Eric Fetter, *Laches at Law in Tennessee*, 28 U. MEM. L. REV. 211, 213-14 (1997); *see also* David E. Cole, *Judicial Discretion and the "Sunk Costs" Strategy of Government Agencies*, 30 B.C. ENVT'L AFF. L. REV. 689, 703-13 (2003).

[57] *See* Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 259 (2d Cir. 1997) (noting historical pedigree of laches when Chancellor in Equity could withhold relief when plaintiff's delay was inordinate and caused prejudice to defendant).

[58] *Id.*

[59] *Id.*

[60] *See* FED. R. CIV. P. 2 (stating that there will be one form of action known as "civil action"); Chauffeurs, Local No. 391 v. Terry, 494 U.S. 558, 565 (1990) (applying two-prong test to determine whether remedy is legal or equitable, with respect to issues involved and remedy sought); Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 231 (6th Cir. 2007); McKesson Info. Solutions LLC v. Trizetto Group, Inc., 426 F. Supp. 2d 203, 208 (D. Del. 2006).

[61] *See* Mackcall v. Casilear, 137 U.S. 556, 566 (1890) (holding that public policy affects applicability of doctrine of laches, which discourages stale demands); Mathieu v. Mahoney, 851 P.2d 81, 85 (Ariz. 1993) (holding that simple fairness is real basis for applying equitable doctrine of laches); *see also* Order of R.R. Tels. v. Ry. Express, 321 U.S. 342, 348-49 (1944) (holding that doctrine of laches and statutes of limitation prevent injustice of resurrecting stale claims).

[62] *See* Costello v. United States, 365 U.S. 265, 282 (1961); Herman Miller, Inc. v. Palazzetti Imps. & Exps., Inc., 270 F.3d 298, 320 (6th Cir. 2001) (stating that party asserting laches must show lack of diligence by other party and prejudice to asserting party); Couveau v. Am. Airlines, 218 F.3d 1078, 1083 (9th Cir. 2000); Baker Mfg. Co. v. Whitewater Mfg. Co., 430 F.2d 1008, 1011 (7th Cir. 1970) (holding that laches requires passage of time and express or implied knowledge of alleged wrong); Akers v. Arnett, 597 F. Supp. 557, 562 (S.D. Tex. 1983) (noting court will not bar action by laches unless it finds there has been inexcusable delay by plaintiff and prejudice to defendant results from delay); *see also* Clamp Mfg. Co. v. Enco Mfg. Co., 870 F.2d 512, 515 (9th Cir. 1989). *See generally* Dylan Ruga, *The Role of Laches in Closing the Door on Copyright Infringement Claims*, 29 NOVA L. REV. 663, 665-67 (2005) (discussing laches as defense against copyright infringement claims).

"unreasonable delay" when, with actual or constructive knowledge of the facts, they fail to assert their rights by bringing suit.[63] Because no bright-line rule exists for determining the reasonableness of delay, the court balances equities in each particular case.[64] For example, in a Title VII employment suit, the court held that laches barred a claim filed after a fourteen-and-one-half-year delay.[65] Such fact-specific decisions result in added confusion and inconsistency in the legal system.[66]

Prejudice to the defendant is the second vital factor in laches analysis.[67] Courts find prejudice when, over time, a change in circumstances inequitably disadvantages or burdens the defendant.[68] A court considers the passage of time between knowledge of the infringement to the filing of the claim.[69] A court measures the resulting prejudice in either evidentiary or economic terms.[70] Evidentiary harm can include everything from the loss of physical evidence to a witness's fading memory.[71] Economic prejudice includes

[63] *See* Freeman v. Gerber Prod. Co., 466 F. Supp. 2d 1242, 1247 (D. Kan. 2006) (stating that "pervasive, open, and notorious" activity, that reasonable patentee would suspect as infringing, determines constructive knowledge). *See generally* 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 12.06[B] (2006) [hereinafter NIMMER] (noting process of defining unreasonable delay).

[64] *See* O'Brien v. Wheelock, 184 U.S. 450, 493 (1902) (holding that application of laches depends on circumstances of particular case); A.C. Aukerman Co. v. R.L. Chaides Constr. Co., 960 F.2d 1020, 1032 (Fed. Cir. 1992), *vacated en banc*, 935 F.2d 1262 (Fed. Cir. 1991); *Freeman*, 466 F. Supp. 2d at 1246-47 (stating that length of time deemed unreasonable is not absolute and depends on circumstances of case); *see e.g.*, Roulo v. Russ Berrie & Co., 886 F.2d 931, 942 (7th Cir. 1989) (finding that delay of two years has rarely been held to be sufficient to invoke laches); Piper Aircraft Corp. v. Wag-Aero, Inc., 741 F.2d 925, 933 (7th Cir. 1984) (same).

[65] Garret v. Gen. Motors Corp., 844 F.2d 559, 562 (8th Cir. 1988).

[66] *See id.*

[67] *See* Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946) (holding that laches is generally question of inequity, based on change in condition or relations of property or parties); Vineberg v. Bissonnette, 548 F.3d 50, 57 (1st Cir. 2008); Robins Island Pres. Fund v. Southold Dev. Corp., 959 F.2d 409, 424 (2d Cir. 1992).

[68] 11A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2946, at 117 (2d ed. 1995); *see* Goodman v. McDonnell Douglas Corp., 606 F.2d 800, 804 (8th Cir. 1979); Law v. Royal Palm Beach Colony, Inc., 578 F.2d 98, 101 (5th Cir. 1978); Wheat v. Hall, 535 F.2d 874, 876 (5th Cir. 1976).

[69] *See Freeman*, 466 F. Supp. 2d at 1247 (defining time frame as beginning when plaintiff knew, or should have known, to date of suit); Lemelson v. Carolina Enters., 541 F. Supp. 645, 657 (S.D.N.Y. 1982); *see also* NIMMER, *supra* note 63, § 12.06[B].

[70] Danjaq LLC v. Sony Corp., 263 F.3d 942, 956 (9th Cir. 2001); McKesson Info. Solutions LLC v. Trizetto Group, Inc., 426 F. Supp. 2d 203, 208 (D. Del. 2006); *Freeman*, 466 F. Supp. 2d at 1247.

[71] Smith v. Caterpillar, Inc., 338 F.3d 730, 734-36 (7th Cir. 2003) (holding that

the loss of monetary investments or damages that occur because the claimant needlessly delayed filing suit.[72] Courts have also held, however, that the costs of marketing a product that incorporates an unlicensed patent does not constitute a prejudicial change against an infringer.[73] If the defendant has not suffered a change in position due to the plaintiff's delay, the doctrine of laches will not apply.[74] Thus, the court requires that the delay proximately caused the defendant's resulting harm.[75]

Because laches is an equitable defense, the court must also weigh other relevant factors that could excuse the plaintiff's delay.[76] Justifications for delay could include poverty or illness, other litigation, and ongoing negotiations with the defendant.[77] Finally,

passage of eight years contributes to unavailability of critical physical evidence and witnesses' failed memories); *Danjaq*, 263 F.3d at 955; *see* Boone v. Mech. Specialties Co., 609 F.2d 956, 959 (9th Cir. 1979) (holding that unavailability of witnesses to testify is sufficiently prejudicial to invoke laches).

[72] *See Danjaq*, 263 F.3d at 956; *Freeman*, 466 F. Supp. 2d at 1248; Gossen Corp. v. Marley Mouldings, Inc., 977 F. Supp. 1346, 1355 (E.D. Wis. 1997).

[73] *See* Meyers v. Brooks Shoe, Inc., 912 F.2d 1459, 1463 (Fed. Cir. 1990) (holding that time and money spent on marketing or developing product does not show prejudice).

[74] Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008); A.C. Aukerman Co. v. R.L. Chaides Constr. Co., 960 F.2d 1020, 1032 (Fed. Cir. 1992); *Meyers*, 912 F.2d at 1463.

[75] *See* Precision Inst. Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945) (noting that courts should consider other equitable doctrines, like clean hands, in laches analysis); Gasser Chair Co. v. Infanti Chair Mfg., 60 F.3d 770, 773 (Fed. Cir. 1995); Hemstreet v. Computer Entry Sys. Corp., 972 F.2d 1290, 1294 (Fed. Cir. 1992). *See generally* Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240 (1933) (holding that before complainant can have standing in court, he must come into court with "clean hands"); Robert S. Summers, *"Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 VA. L. REV. 195, 210 (1968) (discussing how courts ruled out types of bad faith in contract performances).

[76] Serdarevic v. Advanced Med. Optics, Inc., No. 06 CIV 7107, 2007 WL 2774177, at *5 (S.D.N.Y. Sept. 25, 2007); *see* Jamesbury Corp. v. Litton Indus. Prods., 839 F.2d 1544, 1552 (Fed. Cir. 1988) (considering litigation as justification for delay); Hottel Corp. v. Seaman Corp., 833 F.2d 1570, 1572-73 (Fed. Cir. 1987) (same); Am. Home Prod. Corp. v. Lockwood Mfg. Co., 483 F.2d 1120, 1123 (6th Cir. 1973) (same); Baker Mfg. Co. v. Whitewater Mfg. Co., 430 F.2d 1008, 1013 (7th Cir. 1970) (considering ongoing negotiations as justification for delay); Armstrong v. Motorola, Inc., 374 F.2d 764, 769 (7th Cir. 1967), *cert. denied*, 389 U.S. 830 (1967) (considering wartime as justification for delay); Frank F. Smith Hardware Co. v. S.H. Pomeroy Co., 299 F. 544, 546 (2d Cir. 1924) (considering poverty and illness as justifications for delay).

[77] *Serdarevic*, 2007 WL 2774177, at *5; *see Jamesbury*, 839 F.2d at 1552; *Hottel*, 833 F.2d at 1572; *Am. Home*, 483 F.2d at 1123; *Baker*, 430 F.2d at 1013; *Armstrong*, 374 F.2d at 769; *Frank*, 299 F. at 546.

courts must consider other equitable principles, such as the clean hands doctrine.[78] The clean hands doctrine bars a party from seeking equitable relief if that party violated an equitable principle.[79] Thus, a party with unclean hands cannot bring a laches defense.[80]

II. MODERN APPLICATIONS OF THE DOCTRINE OF LACHES VIS-À-VIS THE COPYRIGHT ACT OF 1976

Federal circuit courts have applied the doctrine of laches unevenly to the Copyright Act.[81] At one extreme, the Ninth Circuit has adopted a permissive stance allowing laches in a wide array of legal contexts.[82] By contrast, the Fourth Circuit has held that laches never applies if a statutory scheme of limitations is in place.[83] The Sixth Circuit, on the other hand, takes a centrist view that laches doctrine can apply

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[78] *See Keystone*, 290 U.S. at 244-45; Deweese v. Reinhard, 165 U.S. 386, 388 (1897); Gaudiosi v. Mellon, 269 F.2d 873, 881-82 (3d Cir. 1959).

[79] BLACK'S LAW DICTIONARY 268 (8th ed. 2004); *see* cases cited *supra* note 78.

[80] *See* cases cited *supra* note 78.

[81] *See* Peter Letterese & Assocs. v. World Inst. of Scientology Enters., Int'l, 533 F.3d 1287, 1320 (11th Cir. 2008) (finding no categorical denial of laches to copyright infringement, unlike Fourth Circuit); Jacobsen v. Deseret Book Co., 287 F.3d 936, 950-51 (10th Cir. 2002) (holding that courts should generally follow three-year statute of limitations, rather than apply laches); Danjaq LLC v. Sony Corp., 263 F.3d 942, 951-52 (9th Cir. 2001) (applying laches to copyright infringement); Kling v. Hallmark Cards, Inc., 225 F.3d 1030, 1032 (9th Cir. 2000) (same); Hot Wax, Inc. v. Turtle Wax, Inc., 191 F.3d 813, 821-22 (7th Cir. 1999) (applying laches to trademark infringement with consideration to state statute of limitations); Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187, 191 (2d Cir. 1996) (same); Sara Lee Corp. v. Kayser-Roth Corp., 81 F.3d 455, 461 (4th Cir. 1996) (applying laches to trademark infringement where plaintiff unreasonably delayed pursuit of equitable remedy); Jackson v. Axton, 25 F.3d 884, 887-88 (9th Cir. 1994) (analogizing application of laches in co-authorship to application of laches in copyright infringement); Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 365-66 (6th Cir. 1985) (applying laches to trademark infringement where analogous state statute of limitations has yet to elapse); Hoste v. Radio Corp. of Am., 654 F.2d 11, 12 (6th Cir. 1981) (applying laches to copyright infringement); Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 339-40 (5th Cir. 1971) (same); Haas v. Leo Feist, 234 F. 105, 108 (S.D.N.Y. 1916) (applying laches to copyright infringement). Federal circuit courts have also applied laches inconsistently outside the copyright context. *See* Herman Miller, Inc. v. Palazzetti Imps. & Exps., Inc., 270 F.3d 298, 321 (6th Cir. 2001) (applying laches in noncopyright case); United States v. Rodriguez-Aguirre, 264 F.3d 1195, 1207-08 (10th Cir. 2001) (same); Patton v. Bearden, 8 F.3d 343, 348 (6th Cir. 1993) (same); ITT Corp. v. GTE Corp., 518 F.2d 913, 928 (9th Cir. 1975) (discussing laches in context of antitrust suit).

[82] *See Danjaq*, 263 F.3d at 959-60.

[83] *See infra* Part II.B.

narrowly against the three-year statute of limitations of the Act.[84] Consequently, under some circumstances a court could reduce the filing period to two years or fewer.[85]

A. *The Sixth Circuit: Doctrine of Laches Could Apply Narrowly in Cases Involving the Copyright Act*

In *Chirco v. Crosswinds Communities, Inc.*, the Sixth Circuit allowed the defendant to raise a defense of laches against the Copyright Act's three-year statute of limitations.[86] Michael Chirco obtained copyrights on November 28, 1997, for architectural plans for a residential development.[87] Chirco alleged that on December 31, 2000, rival property developer Bernard Glieberman began developing a separate complex using Chirco's plans.[88]

On April 1, 2001, Chirco filed suit against Glieberman, alleging copyright infringement.[89] During discovery, Chirco learned Glieberman, partnered with Crosswinds Communities, Inc., intended to build another complex using the same plans.[90] In May 2002, Glieberman and Crosswinds broke ground on that complex, alerting Chirco to the actual infringement.[91]

On November 14, 2003, Chirco brought a second suit, alleging that Crosswinds had infringed on a copyright-protected architectural design.[92] The district court ruled that although Chirco's copyright was valid, his unreasonable delay in filing suit had prejudiced Crosswinds.[93] Chirco filed suit in November 2003, just fifteen months after he became aware of the infringing construction and well within the three-year statue of limitations.[94] Nevertheless, Chirco failed to justify why he took no action since May 2002.[95] As a result, the district

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[84] *See infra* Part II.A.

[85] *See* Adams v. Comm'r, 170 F.3d 173, 179 (3d Cir. 1999) (noting carve-out exceptions create problems in uniform applications of statutes); New Era Publ'ns Int'l, ApS v. Henry Holt & Co., 873 F.2d 576, 584 (2d Cir. 1989).

[86] Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 236 (6th Cir. 2007).

[87] *Id.* at 230.

[88] *Id.*

[89] *Id.*

[90] *Id.* (discussing date plaintiff was on notice of infringement, including October 16, 2001, when plaintiff requested copies of defendant's plans).

[91] *Id.*

[92] *Id.* at 229-30 (noting that copyright gave Chirco exclusive rights to construct twelve-plex building per plans).

[93] *Id.* at 230, 234.

[94] *Id.* at 229.

[95] *Id.*

court allowed Glieberman's laches defense, despite Chirco's timely filing within the three-year statue of limitations.[96]

On appeal, the Sixth Circuit evaluated whether laches doctrine could trump statutorily prescribed filing periods under the Act.[97] The court found the extraordinary facts of the case warranted a narrow exception to the general rule of deference to statutory limitations.[98] The court did not allow the plaintiffs to pursue injunctive relief.[99] This limitation, while allowing Chirco to collect monetary damages, barred him from forcing Crosswinds to demolish the complex.[100] Thus, the Sixth Circuit recognized a middle ground between the Fourth Circuit's rejection of the laches defense and the Ninth Circuit's embrace of that doctrine.[101]

In carving out a laches exception to established statutory limitations, the court first reiterated a presumption in favor of the plaintiff.[102] Further, it recognized that statutory provisions clarify and stabilize judicial decisions.[103] The court did not preclude a laches defense, however, simply because a statute otherwise referenced an

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[96] *Id.*

[97] *See id.* at 236.

[98] *Id.*

[99] *Id.* (giving effect to Sixth Circuit's presumption that statute of limitations must prevail to the extent that plaintiffs seek only monetary damages and injunctive relief).

[100] *Id.*

[101] *Compare* Broadcast Music, Inc. v. Roger Miller Music, Inc., 396 F.3d 762, 783 n.13 (6th Cir. 2005) (holding that although circuits split over whether laches is available defense under Act, laches is available as defense in copyright action in Sixth Circuit), *with* Danjaq LLC v. Sony Corp., 263 F.3d 942, 942 (9th Cir. 2001), *and* Kling v. Hallmark Cards, Inc., 225 F.3d 1030, 1030 (9th Cir. 2000), *and* Jackson v. Axton, 25 F.3d 884, 884 (9th Cir. 1994).

[102] *Chirco*, 474 F.3d at 233 (affirming rule that if limitations period has not elapsed, there is strong presumption that plaintiff's delay in bringing suit for monetary relief is reasonable). *Compare* Ford Motor Co. v. Catalanotte, 342 F.3d 543, 550 (6th Cir. 2003) (presuming that trademark infringement action is alive if brought within analogous state of limitations period), *and* Patton v. Bearden, 8 F.3d 343, 348 (6th Cir. 1993) (noting presumption that laches will not apply when state limitations period in contract action has not run, absent compelling reason), *and* Elvis Presley Enters. v. Elvisly Yours, Inc., 936 F.2d 889, 894 (6th Cir. 1991) (ruling that strong presumption in trademark infringement case that delay within statute of limitations period is reasonable absent compelling reasons), *and* Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 366 (6th Cir. 1985) (holding that only rarely should laches bar case before statute has run), *with* Telink, Inc. v. United States, 24 F.3d 42, 45 (9th Cir. 1993) (stating that defendants can rarely raise laches in timely filed claims), *and* Bouman v. Block, 940 F.2d 1211, 1227 (9th Cir. 1991), *cert. denied*, 502 U.S. 1005 (1991) (stating that applying laches before expiration of limitations period is extremely rare).

[103] *Chirco*, 474 F.3d at 233.

explicit limitations period.[104] The court rejected a flat proscription against laches as both unnecessary and unwise.[105] It sought to preserve discretion to achieve fairness and equity.[106] The court reasoned the degree of prejudice the defendant might suffer outweighed the need for a bright-line rule.[107]

B. The Fourth Circuit: Doctrine of Laches Inapplicable to Cases Involving the Copyright Act

In *Lyons Partnership v. Morris Costumes, Inc.*, the Fourth Circuit rejected the availability of laches as an affirmative defense to copyright infringement.[108] On April 5, 1992, "Barney," the famous purple dinosaur, made his television debut and viewers greeted him with unprecedented enthusiasm.[109] Lyons owned the intellectual property rights to Barney, yet did not license his character for fear of losing control over its wholesome reputation.[110]

On May 2, 1997, Lyons sought to enjoin Morris Costumes, Inc., from marketing three purple dinosaur costumes.[111] Lyons alleged that the costumes led children to believe that the look-alikes were in fact Barney.[112] The district court recognized Lyon's intellectual property rights, yet refused to enforce them against Morris.[113] The court held that all claims were invalid because the statute of limitations on some of the claims had expired.[114] The court noted that four years had elapsed since Lyons learned of the first infringement lawsuit.[115] The district court termed this four-year delay in filing suit "inexcusable," and barred all claims, whether inside or outside of the limitations period.[116]

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[104] *Id.* at 234; *see also Broadcast Music*, 396 F.3d at 783 n.13 (holding that Sixth Circuit permits laches as affirmative defense in copyright action), *cert. denied*, 546 U.S. 871 (2005).

[105] *Chirco*, 474 F.3d at 234.

[106] *See id.*

[107] *See id.* at 235-36 (noting inequity, which Judge Hand cautioned against in *Haas*, and which judicial system should abhor).

[108] Lyons P'ship v. Morris Costumes, Inc., 243 F.3d 789, 797-98 (4th Cir. 2001).

[109] *Id.* at 795.

[110] *Id.*

[111] *Id.* at 794.

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.* at 797.

On appeal, the Fourth Circuit recognized those claims filed upon acts that occurred within the statute of limitations.[117] The court reasoned that laches could only bar claims outside the statutory period.[118] Therefore, it found the district court had erred in barring timely filed claims.[119]

The Fourth Circuit reversed the district court to the extent that laches could not bar timely claims against the defendants.[120] The court reasoned that laches is a doctrine that applies only in equity to bar equitable actions.[121] It upheld the importance of retaining the traditional English distinction between law and equity.[122] The court noted that while equitable principles mirror the "soft and fuzzy" nature of Barney, they provide no defense of laches in actions at law.[123] Legal claims, such as infringement, require analysis under statutes and common law.[124] Equitable claims are appropriate when relief under a court of law is inadequate.[125] Here, the court did not address whether relief was adequate, instead ruling that even in equity laches does not bar claims for prospective injunctive relief.[126]

Furthermore, the Fourth Circuit held that separation of powers principles set forth an equitable timeliness rule.[127] The rule states that courts cannot bar suits brought within the legislatively prescribed limitations period.[128] It ruled that deference to congressional intent

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.* at 798; *see also* Newman, *supra* note 55, at 413.

[122] *Lyons,* 234 F.3d at 798. *See generally* Commercial Nat'l Bank v. Parsons, 144 F.2d 231, 240-41 (5th Cir. 1944) (noting that despite Federal Rules of Civil Procedure's merger of law and equity, substantive difference in federal judicial power between law and equity remains embedded in federal law).

[123] *Lyons*, 243 F.3d at 798.

[124] *See id.* (citing County of Oneida v. Oneida Indian Nation, 470 U.S. 226, 244 n. 16 (1985); United States v. Mack, 295 U.S. 480, 489 (1935); Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir. 1997)); Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164, 168-69 (8th Cir. 1995).

[125] *Lyons*, 243 F.3d at 798 (citing Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)); Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946).

[126] *Lyons*, 243 F.3d at 797-98.

[127] *Id.* at 797.

[128] *Id.*; *see also* Oneida County v. Oneida Indian Nation, 470 U.S. 226, 262 n.12 (1985) (Stevens, J., dissenting in part) (deferring to doctrine of separation of powers and noting Supreme Court has been cautious in adopting principles of equity when enforcing federal statutes); *Holmberg*, 327 U.S. at 395 (noting that explicit congressional statute of limitation is definitive).

precludes courts from applying laches to timely filed claims under explicit legislation.[129] Thus, the court rejected the laches claim in favor of the Act's three-year statute of limitations.[130] In rejecting outright a laches defense in copyright cases, the Fourth Circuit established a more strict view from which the Sixth Circuit later split.[131]

III. THE DOCTRINE OF LACHES IS INAPPLICABLE IN COPYRIGHT INFRINGEMENT CASES

In *Chirco*, the Sixth Circuit impermissibly carved out an exception to the statutory filing period and allowed the defense of laches in a copyright infringement case.[132] The court's narrow exception for the *Chirco* defendants was incorrect for three reasons.[133] First, courts should respect statutorily mandated filing periods, deferring to congressional intent and the separation of powers doctrine.[134] Second, even if the laches doctrine applies, the *Chirco* court misapplied it as an equitable defense.[135] Third, as a matter of public policy, upholding *Chirco* is contrary to the Act's primary aim of promoting creative expression.[136]

A. *Courts Should Not Violate Statutorily Mandated Filing Periods*

When Congress enacts a statutory scheme, the judiciary should not rule in direct opposition to such a scheme for two main reasons.[137]

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[129] *Lyons*, 243 F.3d at 798 (holding that separation of powers precludes court from applying laches to bar federal statutory claim that defendants have filed timely under express statute of limitations); *see* Ashley, 66 F.3d at 168-69; Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 586 (9th Cir. 1993); *see also* Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984); Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir. 1997). *See generally* ROBERT A. KATZMANN, INSTITUTIONAL DISABILITY: THE SAGA OF TRANSPORTATION POLICY FOR THE DISABLED 9 (1986) (noting that policymaking is complex and involves judicial and institutional processes that often influence each other); Robert A. Katzmann, *Making Sense of Congressional Intent: Statutory Interpretation and Welfare Policy*, 104 YALE L.J. 2345 (1995) (claiming that when judiciary interprets statute, it ultimately affects administrative process).

[130] *Lyons*, 243 F.3d at 798.

[131] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 229 (6th Cir. 2007).

[132] *See id.*

[133] *See infra* Part III.A-B.

[134] *See infra* Part III.A.

[135] *See infra* Part III.B.

[136] *See infra* Part III.B.

[137] *See infra* Part III.A.

First, courts should defer to the original intent of the legislature.[138] Second, courts must respect the separation of powers doctrine set forth in the U.S. Constitution.[139]

In construing statutes, courts generally should defer to congressional intent.[140] Congress enacted the original Copyright Act to promote creative and original works of authorship as well as endow authors with clarified rights.[141] If the intent of Congress is unambiguously clear, courts must give effect to the statute's expressed articulation.[142]

The recodification of subsequent versions of the Act sought to resolve the disparities between courts across the nation.[143] A congressional decision to revise or preserve specific sections illuminates and reinforces the intended objectives of the legislature.[144]

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[138] *See* Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984); FMC v. Seatrain Lines, Inc., 411 U.S. 726, 745-46 (1973); FTC v. Colgate-Palmolive Co., 380 U.S. 374, 385 (1965); Webster v. Luther, 163 U.S. 331, 342 (1896).

[139] Lyons P'ship v. Morris Costumes, Inc., 243 F.3d 789, 798 (4th Cir. 2001) (holding that separation of powers precludes court from applying laches to bar federal statutory claim timely filed under express statute of limitations); *see* Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir. 1997); Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164, 168-69 (9th Cir. 1995); Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 586 (9th Cir. 1993).

[140] *See Chevron*, 467 U.S. at 859-62 (examining congressional intent by analyzing statutory language, legislative history, and policies surrounding statute); *see, e.g.*, Blum v. Stenson, 465 U.S. 886, 896-97 (1984) (holding that statute and legislative history establishes calculation of "reasonable fees" and Congress should address policy arguments against standard); Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 123-24 (1980) (concluding that, after examining language and legislative history, Congress did not intend provision to apply only to forms of affirmative disclosure).

[141] U.S. CONST. art. I, § 8, cl. 8.

[142] *See Chevron*, 467 U.S. at 842-43; *e.g.*, FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 32 (1981); SEC v. Sloan, 436 U.S. 103, 117-18 (1978); *FMC*, 411 U.S. at 745-46.

[143] *See* H.R. REP. NO. 94-1476, at 164 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5780. *See generally* Viva R. Moffat, *Super-Copyright: Contracts, Preemption, and the Structure of Copyright Policymaking*, 41 UC DAVIS L. REV. 45, 95-97 (2007) (stating that one of main objectives of 1976 recodification was to ensure "greater uniformity in the resolution of copyright disputes").

[144] *See* Stewart v. Abend, 495 U.S. 207, 208 (1990) (holding that renewal provisions and legislative history in 1909 and 1976 Copyright Acts establish congressional intent of providing author with fair remuneration); Am. Mining Congress v. EPA, 824 F.2d 1177, 1189-90 (D.C. Cir. 1987) (holding that Congress's intended definition of "discard" did not include EPA's interpretation of "discarded material").

Congress sought to bring uniformity to the Act with respect to the statute of limitations and the available remedies.[145]

Congress unambiguously sets forth limitations on actions, as the plain language of the Act demonstrates.[146] In the absence of such explication, a court might lean towards discretionary rulings.[147] When Congress sets forth a cause of action and provides both legal and equitable remedies, however, the proposed statute of limitations should govern.[148] Furthermore, courts should rule consistently, regardless of the remedy sought.[149] The intent of Congress in passing the Act was to create uniformity — Congress intended to discourage "forum shopping," a practice where plaintiffs file suit in a particular jurisdiction simply because they believe the court there will rule in their favor.[150] Laches, if allowed, would destroy that uniformity.[151]

Courts should not violate the separation of powers doctrine on a case-by-case basis because the Constitution limits their authority to do so.[152] The power to legislate allows Congress to execute its constitutional duties and responsibilities.[153] Allowing courts to

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[145] *See* H.R. REP. NO. 94-1476, at 164; *see also Stewart*, 495 U.S. at 208.

[146] 17 U.S.C. § 507(b) (2006).

[147] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 236 (6th Cir. 2007) (emphasizing that judiciary must not make judgments that legislature has never envisioned).

[148] Lyons P'ship v. Morris Costumes, Inc., 243 F.3d 789, 798 (4th Cir. 2001); *cf.* Hot Wax, Inc. v. Turtle Wax, Inc., 191 F.3d 813, 821 (7th Cir. 1999) (using state statute of limitations as guidance because no federal statute of limitation applied); Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187, 191 (2d Cir. 1996) (same); Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 365-66 (6th Cir. 1985) (same).

[149] *See Lyons*, 243 F.3d at 798. *See generally* 17 U.S.C. § 503(b) (2006) (discussing remedy that court may order destruction or reasonable disposition of copies or phonorecords made or used in violation of copyright owner's rights).

[150] *See* H.R. REP. NO. 94-1476, at 164. Congress brought copyright matters under exclusive federal jurisdiction to minimize forum shopping. *See* Jacqueline D. Ewenstein, *Seminole Tribe: Are States Free to Pirate Copyrights with Impunity?*, 22 Colum. – VLA J.L. & Arts 91, 104 (1997); Susan C. Hill, Note, *Are States Free to Pirate Copyrighted Materials and Infringe Patents?* Pennsylvania v. Union Gas *May Mean They Are Not*, 92 W. VA. L. REV. 487, 518-19 (1990).

[151] *Compare Chirco*, 474 F.3d at 236, *with Lyons*, 243 F.3d at 797.

[152] *See* Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir. 1997); Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164, 170-71 (8th Cir. 1995); *see also* Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 586 (9th Cir. 1993). *See generally* Katzmann, *supra* note 129, at 2345 (claiming that when judiciary interprets statute, it ultimately affects administrative process).

[153] U.S. CONST. art. I, §§ 1, 8, cl. 18 (stating that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives").

override statutory enactments would disrupt the separation of powers between Congress and the judiciary.[154] Specifically, a court's decision to disregard a three-year statute of limitations undermines Congress's power to legislate.[155] A court's decision to override a carefully constructed statute not only jeopardizes the people's well-being, it also shifts the balance of power to the judiciary.[156] The cost of destabilizing the balance among the three branches outweighs the inequity any one defendant may face.[157] The Constitution does not endow the judiciary with unfettered, discretionary power.[158]

Some courts view statutory limitations as mere guidelines to aid courts in rendering decisions.[159] Courts that adopt this stance note that statutory limitation periods on filing suit need not always trump equitable principles.[160] Some of these courts hold that the judiciary should generally defer to the three-year statute of limitations.[161] Others reason that, in the absence of unusual circumstances, courts should not bar a suit if the statute of limitations has not expired.[162] Thus,

[154] *See Lyons*, 243 F.3d at 797-98; *Ivani*, 103 F.3d at 260; *Ashley*, 66 F.3d at 168-69; *see also Miller*, 991 F.2d at 586; Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S 837, 842-43 (1984).

[155] *See also Ivani*, 103 F.3d at 260; *Ashley*, 66 F.3d at 170-71; *Miller*, 991 F.2d at 586. *See generally* Katzmann, *supra* note 129, at 2345 (discussing limitations on statutory construction).

[156] *See Ivani*, 103 F.3d at 260; *Ashley*, 66 F.3d at 170-71. *See generally* KATZMANN, *supra* note 129, at 13-14 (noting that policy-making is complex and involves judicial and institutional processes that often influence each other).

[157] *See* cases cited *supra* note 156.

[158] *See* U.S. CONST. art. III, § 2 (enumerating specific powers of judiciary); Buckley v. Valeo, 424 U.S. 1, 122 (1976) (noting that framers regarded checks and balances as self-executing safeguard against encroachment of one branch at expense of other); Pacemaker Diagnostic Clinic of Am., Inc. v. Instromedix, Inc., 725 F.2d 537, 544 (9th Cir. 1984) (noting that separation of powers doctrine protects whole constitutional structure by requiring that each branch retain its essential powers and independence).

[159] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 235 (6th Cir. 2007); Fox v. Riverdeep, Inc., No. 07-13622, 2008 WL 5244297, at *5 (E.D. Mich. Dec. 16, 2008); Iverson Indus., Inc. v. Metal Mgmt. Ohio, Inc., 525 F. Supp. 2d 911, 920 (E.D. Mich. 2007). *But see* United States v. RePass, 688 F.2d 154, 158 (2d Cir. 1982).

[160] *Chirco*, 474 F.3d at 235; *see Fox*, 2008 WL 5244297, at *5; *Iverson*, 525 F. Supp. 2d at 920.

[161] Jacobsen v. Deseret Book Co., 287 F.3d 936, 950 (10th Cir. 2002); *see* Lyons P'ship v. Morris Costumes, Inc. 243 F.3d 789, 797-98 (4th Cir. 2001); *see also* United States v. Rodriguez-Aguirre, 264 F.3d 1195, 1207-08 (10th Cir. 2001).

[162] *See* Patton v. Bearden, 8 F.3d 343, 348 (6th Cir. 1993) (noting strong presumption against laches when analogous state statute of limitations has not run, absent compelling reason); Elvis Presley Enters. v. Elvisly Yours, Inc., 936 F.2d 889, 894 (6th Cir. 1991); Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 365 (6th Cir. 1985).

proponents argue that such an approach provides needed flexibility in meting out justice.[163]

Arguments construing precedent as permitting a narrow exception fail, however, because they assume that such exceptions are constitutional.[164] The Constitution does not state that Congress can command the Supreme Court to reopen final judgments in civil lawsuits.[165] Such an order would violate the separation of powers doctrine.[166] This limitation applies reciprocally; just as the legislature may not impose its will on the judiciary, the judiciary may not frivolously ignore congressional intent.[167] Consequently, the courts must not rule contrarily to a congressional statute unless that statute is unconstitutional.[168] Because a three-year statute of limitations poses no threat to any constitutional right, courts should not take corrective measures by ruling inconsistently with this constitutional statute.[169] These actions would ultimately result in judicial statute making, which is contrary to the aims of the tripartite system.[170]

B. The Chirco *Court Improperly Applied the Doctrine of Laches*

The Sixth Circuit found that the particular facts of *Chirco* warranted a laches application.[171] Even assuming the doctrine of laches applies to the *Chirco* case, however, the defendants failed to satisfy all the

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[163] *See generally Patton*, 8 F.3d at 348; Consumer Credit Union v. Hite, 801 S.W.2d 822, 825 (Tenn. Ct. App. 1990) (holding that court applies doctrine to bar claim only in cases of gross laches in prosecution); Clark v. Am. Nat'l Bank & Trust Co., 531 S.W.2d 563, 572 (Tenn. Ct. App. 1974) (same).

[164] *See* Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 218-20 (1995).

[165] *Id.* at 226 (citing Chicago & Southern Air Lines, Inc., 333 U.S., 103, 113 (1948)); United States v. Barber, 219 U.S. 72, 78 (1911); United States v. O'Grady, 89 U.S. 641, 647-648 (1875); Gordon v. United States, 117 U.S. 697, 700-04 (1864) (opinion of Taney, C.J.) (stating judgments of Article III courts are "final and conclusive upon the rights of the parties").

[166] *See Plaut*, 514 U.S. at 218-20.

[167] *See* Carr v. Beech Aircraft Corp., 758 F. Supp. 1330, 1332-34 (D. Ariz. 1991).

[168] *See* Silver v. Silver, 280 U.S. 117, 122 (1929); Mathis v. Eli Lilly & Co., 719 F.2d 134, 146-47 (6th Cir. 1983); *Carr*, 758 F. Supp. at 1334.

[169] *See* United States v. Mack, 295 U.S. 480, 489 (1935); United States v. RePass, 688 F.2d 154, 158 (2d Cir. 1982); *Carr*, 758 F. Supp. at 1334 (holding that, under rational basis scrutiny, only clear showing of arbitrariness and irrationality can overcome presumption of rationality that implicates social and economic legislation).

[170] Frank B. Cross & Stefanie A. Lindquist, *The Scientific Study of Judicial Activism*, 91 MINN. L. REV. 1752, 1758-61 (2007); *see Plaut*, 514 U.S. at 218-20; Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir. 1997); Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164, 168-69 (8th Cir. 1995).

[171] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 236 (6th Cir. 2007).

elements of the equitable defense.[172] The court erred in its factual analysis, and therefore incorrectly allowed the laches defense.[173]

The application of laches doctrine was incorrect for two reasons.[174] First, if willful infringement gives rise to a defense of laches, the courts should similarly permit the doctrine of clean hands.[175] Second, courts should not weigh ambiguity in determining unreasonable delay in favor of the defendant.[176]

If the court permits one equitable doctrine, it should permit any equitable doctrine.[177] Logically, if the courts allow a defense of laches under willful infringement, they should also permit the doctrine of clean hands.[178] Courts also occasionally permit the doctrine of clean hands to bar equitable relief.[179] According to the clean hands doctrine, acting in bad faith can invalidate a claim or a defense.[180] The *Chirco*

[172] *See id.*; *see also* Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1933); Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 365 (6th Cir. 1985).

[173] *See* cases cited *supra* note 172.

[174] *See* cases cited *supra* note 172.

[175] *See Keystone*, 290 U.S. at 244-45; *In re* New Valley Corp., 181 F.3d 517, 525 (3d Cir. 1999); Monsanto v. Rohm & Haas Co., 456 F.2d 592, 597-99 (3d Cir. 1972), *cert. denied*, 407 U.S. 934 (1972).

[176] *See* Anderson v. Liberty Lobby, 477 U.S. 242, 255 (1986) (noting that court views all facts and reasonable inferences in light most favorable to plaintiff); Hutchinson v. Pfeil, 105 F.3d 562, 564-65 (10th Cir. 1997); *Tandy*, 769 F.2d at 365.

[177] *See* N.Y. Football Giants, Inc. v. L.A. Chargers Football Club, Inc., 291 F.2d 471, 474 (5th Cir. 1961) (noting that equitable relief is not available to those who act in bad faith relative to matter in which they seek relief); *see also Keystone*, 290 U.S. at 244-45; *New Valley*, 181 F.3d at 525; *Monsanto*, 456 F.2d at 597-99.

[178] *See* Morton Salt Co. v. G.S. Suppiger Co., 314 U.S. 488, 492-93 (1942) (noting that party seeking equitable remedy must come to court with clean hands); *Keystone*, 290 U.S. at 244-45. *See generally* Alfred Bell & Co. v. Catalda Fine Arts, 191 F.2d 99, 106 (2d Cir. 1951) (stating under doctrine of "unclean hands," court must balance comparative innocence of parties, extent of harm to public interest, and effect on plaintiff of denying relief); Patsy's Italian Rest. v. Banas, 575 F. Supp. 2d 427, 457 (E.D.N.Y. 2008) (holding that defendants' actions in bad faith with intent to infringe on plaintiff's mark foreclose assertion of laches).

[179] Precision Inst. Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945) (defining party with unclean hands as one who acted in bad faith relative to matter in which he seeks relief); *see* Hermes Int'l v. Lederer de Paris Fifth Ave., Inc., 219 F.3d 104, 107 (2d Cir. 2000) (noting that district court misapplied laches because it is not defense when defendant intended infringement); Harlequin Enters. Ltd. v. Gulf & W. Corp., 644 F.2d 946, 950 (2d Cir. 1981) (noting that laches is not defense against injunctive relief when defendant intended infringement); Tri-Star Pictures, Inc. v. Unger, 14 F. Supp. 2d 339, 362 (S.D.N.Y. 1998) (holding defendants' laches defense is invalid because of intentional infringement).

[180] *See* BLACK'S LAW DICTIONARY, *supra* note 79, at 268; *see also* Nihon Keisai Shimbun, Inc. v. Comline Bus. Data, Inc., 166 F.3d 65, 75 (2d Cir. 1999); *Harlequin*, 644 F.2d at 950 (holding that laches is not defense against injunctive relief when

defendants acted in bad faith when they proceeded with the second construction while the court was adjudicating the first lawsuit.[181] The defendants had actual notice that the plaintiffs were pursuing infringement claims.[182] Additionally, defendants were on constructive notice that the plaintiffs would ultimately claim infringement of the second development.[183] On the date Chirco filed the first lawsuit, the second development had not yet begun.[184] Crosswinds's conscious choice to proceed with the second construction project showed clear, willful behavior and bad faith.[185] Courts recognize bad faith where a defendant willfully continued the allegedly infringing activity during the pendency of litigation.[186]

Furthermore, the court misapplied doctrine of laches because the plaintiffs' delay in filing suit was not unequivocally unreasonable.[187] In determining unreasonable delay, courts should not resolve the ambiguity in favor of the infringer.[188] Initially, a strong presumption exists that laches will not apply when the analogous statute has not expired, absent compelling circumstances.[189] Therefore, defendants

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defendant intended infringement).

[181] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 235 (6th Cir. 2007).

[182] *See id.*

[183] *See id. See generally* Peter T. Wendel, *Examining the Mystery Behind the Unusually and Inexplicably Broad Provisions of Section Seven of the Uniform Trustees' Power Act: A Call for Clarification*, 56 MO. L. REV. 25, 33 n.32 (1991) (noting courts using constructive notice to presume party knows something, even if party does not have actual knowledge).

[184] *See Chirco*, 474 F.3d at 235.

[185] *Id.*; *see* Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945) (defining "bad faith"); *see also* Hermes Int'l v. Lederer de Paris Fifth Ave., Inc., 219 F.3d 104, 107-08 (2d Cir. 2000) (holding that "intentional infringement is a dispositive, threshold inquiry that bars further consideration of the laches defense").

[186] *See* Sharper Image Corp. v. Honeywell Int'l, Inc., 222 F.R.D. 621, 630 (N.D. Cal. 2004); *see also* Read Corp. v. Portec, Inc., 970 F.2d 816, 828 (Fed. Cir. 1992); Bott v. Four Star Corp., 807 F.2d 1567, 1572 (Fed. Cir. 1992). Courts, both within and outside of the copyright context, find bad faith in several forms. *See* Summers, *supra* note 75, at 210 (stating that bad faith cases include terms like "feigns ignorance," "pretends belief," "negligent failure to give timely notice," and "taking unfair advantage"); *see also* Johnson v. Yellow Cab Transit Co., 321 U.S. 383, 385 (1944); Harlequin Enters. Ltd. v. Gulf & W. Corp., 644 F.2d 946, 950 (2d Cir. 1981) (noting that laches is not defense against injunctive relief when defendant intended infringement).

[187] *See Chirco*, 474 F.3d at 230.

[188] Courts should refrain from favoring the infringer due to summary judgment standards. *See* Hutchinson v. Pfeil, 105 F.3d 562, 564 (10th Cir. 1997); Tandy Corp. v. Malone & Hyde, Inc., 769 F.2d 362, 365-66 (6th Cir. 1985); *see also* Anderson v. Liberty Lobby, 477 U.S. 242, 255 (1986).

[189] *Tandy*, 769 F.2d at 365-66 (observing as long as limitations period has not

must prove more than an ordinary showing of unreasonable delay and prejudice.[190] In *Chirco*, the plaintiffs did not file an infringement suit for the second development until two years later.[191] However, courts rarely find a delay of only two years sufficient to justify a defense of laches.[192] Furthermore, the court concluded that the delay did not unduly prejudice the defendants with respect to monetary damages.[193]

C. *The* Chirco *Decision Is Contrary to Sound Public Policy*

As a matter of public policy, upholding *Chirco* suppresses the Constitution's aim of fostering creative expression with respect to the arts.[194] The *Chirco* decision destabilizes the copyright holders' reliance on their statutory rights.[195] While narrow exceptions may serve the individual defendant, they simultaneously risk destroying any reliance expectation under the Act.[196] Though the court may rule to avoid waste, the countervailing aim of protecting the expected rights of a copyright holder is significant.[197] A copyright holder's inability to rely

elapsed, strong presumption exists that plaintiff's delay in bringing suit for relief is not unreasonable); Gruca v. U.S. Steel Corp., 495 F.2d 1252, 1259 (3d Cir. 1974); Layton Pure Food Co. v. Church & Dwight, 182 F. 35, 40 (8th Cir. 1910) (holding that except under unusual conditions or extraordinary circumstances, court will not bar damages in infringement action if statute of limitations would not bar it).

[190] *Tandy*, 769 F.2d at 366 n.2 (noting that in trademark litigation some affirmative estoppel conduct or conduct amounting to virtual abandonment is necessary); *see* Shouse v. Pierce County, 559 F.2d 1142, 1147 (9th Cir. 1977); *Gruca*, 495 F.2d at 1258-59 (noting that laches focuses on excusability of delay, not length of delay per se).

[191] *Chirco*, 474 F.3d at 229-30.

[192] *See* Roulo v. Russ Berrie & Co., 886 F.2d 931, 942 (7th Cir. 1989); Piper Aircraft Corp. v. Wag-Aero, Inc., 741 F.2d 925, 933 (7th Cir. 1984); Siegerist v. Blaw-Knox Co., 414 F.2d 375, 381 (8th Cir. 1969).

[193] *Chirco*, 474 F.3d at 235 (concluding delay did not unduly prejudice defendants and that consequence of limitations period is left to discretion of legislature).

[194] *See* U.S. CONST. art. I, § 8, cl. 8.

[195] *See* Ledbetter v. Goodyear Tire & Rubber Co., 127 S. Ct. 2162, 2170 (2007). *See generally* Adams v. Comm'r, 170 F.3d 173, 179 (3d Cir. 1999) (holding that in income tax collection court discourages less restrictive approach in interest of uniform administration and problems with carve-out exceptions).

[196] *See Ledbetter*, 127 S. Ct. at 2170; *Adams*, 170 F.3d at 179.

[197] *See* DeVetter v. Principal Mut. Life Ins. Co., 516 N.W.2d 792, 794-95 (Iowa 1994) (noting public policy discourages wasting physical or economic resources); Eyerman v. Mercantile Trust Co., 524 S.W.2d 210, 217 (Mo. Ct. App. 1975) (holding that society cannot tolerate waste and destruction of resources when doing so affects interests of others); *In re* Estate of Pace, 400 N.Y.S.2d 488, 488 (N.Y. Sur. 1977) (holding that will provision to destroy house is contrary to public policy against waste); RESTATEMENT (SECOND) OF TORTS § 918 (1965). *See generally* Keith P. Ray, *An Analysis of the Architectural Works Copyright Protection Act of 1990*, 15 CONST. LAW.

on statutorily mandated clauses will stunt the fostering of useful arts.[198] The entertainment industry, for example, would decline if courts indiscriminately barred suits against infringers.[199] The Sixth Circuit noted that extraordinary circumstances may permit a laches defense.[200] However, allowing even a single equitable exception to a general statute undercuts its purpose and integrity.[201]

The integrity of a statute rests on the judiciary's decisions to uphold it.[202] When courts of appeals vary in their interpretation, they undermine the uniform application of federal law sought by drafters of the Act.[203] Failing to uphold congressional enactments leads directly to consequences legislators sought to avoid: forum shopping and inconsistent judgments.[204] Applying neutral rules instead of discretionary guidelines preserves definitiveness and uniformity.[205]

Some judges argue that permitting laches would allow the judiciary to avoid inequitable outcomes.[206] When blameless third parties face

23, 31 (1995) (noting that courts will consider possible economic waste in issuing injunction for building's destruction).

[198] *See* U.S. CONST. art. I, § 8, cl. 8; Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975) (noting that immediate effect of copyright law is to secure fair return for author's creative labor); Data Gen. Corp. v. Grumman Sys. Support Corp., 36 F.3d 1147, 1186-87 (1st Cir. 1994) (noting that Copyright Act creates system of incentives that promotes consumer welfare by encouraging investment in creative works); *see also* Arthur H. Seidel, *The Constitution and a Standard of Patentability*, 48 J. PAT. OFF. SOC'Y 5, 9-11 (1966) (interpreting "useful [a]rts" as set forth in Constitution).

[199] *See Twentieth Century Music*, 422 U.S. at 156; Fox Film Corp. v. Doyal, 286 U.S. 123, 127-28 (1932).

[200] Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 229 (6th Cir. 2007).

[201] *See* Zygmunt J.B. Plater, *Statutory Violations and Equitable Discretion*, 70 CAL. L. REV. 524, 590 n.317 (1982). Even exceptions that are not based on equitable principles should be discouraged. *See* PrimeCo Pers. Commc'ns, Ltd. v. City of Mequon, 352 F.3d 1147, 1152 (7th Cir. 2003); United States v. Patrick, 248 F.3d 11, 19 (1st Cir. 2001); *Adams*, 170 F.3d at 179 ("If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be impaired or even destroyed.").

[202] *See PrimeCo*, 352 F.3d at 1152; *Patrick*, 248 F.3d at 19; *Adams*, 170 F.3d at 179. *See generally* Lafferty v. St. Riel, 495 F.3d 72, 78 n.7 (3d Cir. 2007) (holding that forum-shopping would not be problematic because both jurisdictions observed same two-year statue of limitations period).

[203] *See Lafferty*, 495 F.3d at 78 n.7; Maurizio v. Goldsmith, 84 F. Supp. 2d 455, 462 (S.D.N.Y. 2000) (citing Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 339-40 (5th Cir. 1971)).

[204] *See* cases cited *supra* note 203.

[205] *See* cases cited *supra* note 203.

[206] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 235 (6th Cir. 2007);

undue prejudice, a defense of laches provides a more equitable result.[207] Thus, awarding an injunction could cause unconscionable and significant loss to the infringer.[208]

This argument fails, however, because it assumes protecting the infringer and third-party victims trumps protecting the copyright holder.[209] Courts note that they must endeavor to preserve general welfare before they strike down a contract based on public policy.[210] This practice reflects that the general welfare element outweighs the social interest in freedom to contract.[211] Thus, the public's general welfare is more important than the welfare of one individual.[212] According to this framework, the importance of legislative deference and separation of powers outweighs the interests of third-party victims of infringement, a minority population.[213]

Smith v. Caterpillar, Inc., 338 F.3d 730, 734-36 (7th Cir. 2003); Herman Miller, Inc. v. Palazzetti Imps. & Exps., Inc., 270 F.3d 298, 321 (6th Cir. 2001); Danjaq LLC v. Sony Corp., 263 F.3d 942, 951 (9th Cir. 2001); Elvis Presley Enters. v. Elvisly Yours, Inc., 936 F.2d 889, 894 (6th Cir. 1991).

[207] *See Chirco*, 474 F.3d at 236 (taking into consideration innocent third parties that inhabited complexes); *see also* Johnson v. Atl., G. & W.I. Transit Co., 156 U.S. 618, 647 (1895) (holding that laches could preclude enforcing original mortgage bond holders' claims that would harm innocent holders); Underwood v. Dugan, 139 U.S. 380, 384 (1891) (recognizing laches as complete bar where judgment affects those who were not party to any wrong); Hall v. Law, 102 U.S. 461, 466 (1880) (holding that claim to recover property held by third parties was stale).

[208] *See* Dun v. Lumbermen's Credit Ass'n, 209 U.S. 20, 23 (1908) (holding that injunction would be unconscionable); Nerney v. N.Y., N.H. & H.R. Co., 83 F.2d 409, 410 (2d Cir. 1936) (stating that patent cases do not always warrant injunction and balancing conveniences will determine its denial); James Thompson, Note, *Permanent Injunctions in Copyright Infringement: Moral and Economic Justifications for Balancing Individual Rights Instead of Following Harsh Rules*, 7 S. CAL. INTERDISC. L.J. 477, 478 (1998); *see also* Spur Indus. v. Del E. Webb Dev. Co., 494 P.2d 700, 706 (Ariz. 1972) (ruling against all-or-nothing injunctive relief when allowing it would tip balance of conveniences); Boomer v. Atl. Cement Co., 257 N.E.2d 870, 873 (N.Y. 1970).

[209] *But see* Thompson, *supra* note 208, at 478.

[210] *See* Walker v. Am. Family Mut. Ins. Co., 340 N.W.2d 599, 601 (Iowa 1994) (holding that court will not enforce contract that contravenes public policy); Wunschel Law Firm, P.C. v. Clabaugh, 291 N.W.2d 331, 335 (Iowa 1980).

[211] *See* cases cited *supra* note 210.

[212] *See* cases cited *supra* note 210.

[213] *See Walker*, 340 N.W.2d at 601; Ligget v. Shriver, 164 N.W. 611, 612 (Iowa 1917).

CONCLUSION

Defendants cannot appropriately invoke the equitable defense of laches in a copyright infringement case.[214] A court cannot justify superseding legislative limitations periods — the separation of powers doctrine precludes the judiciary from overriding constitutional, congressionally enacted statutes.[215] Assuming *arguendo* that courts may allow the laches defense in copyright cases, the Sixth Circuit did not properly apply it in *Chirco*.[216] The particular facts of *Chirco* simply do not warrant an exception to the general proscription of laches.[217] The defendants did not satisfy the necessary elements of the laches defense in *Chirco* and, therefore, the Sixth Circuit erred in allowing it.[218] Finally, any deviation from strict adherence to statutory law harms the public who relies on the expected promises of the Act.[219] A three-year statute of limitations is one such promise.[220] When public interest demands revisions of a law, the judiciary must not circumvent that law to fit the needs of a specific case.[221] Rather, the legislature must recognize the validity of that particular need and recodify the laws accordingly.[222] Should the Supreme Court choose to resolve this conflict, it should reject the *Chirco* approach.[223]

[214] *See supra* Part III.A-B.
[215] *See supra* Part III.A.
[216] *See supra* Part III.B.
[217] *See supra* Part III.B.
[218] *See supra* Part III.B.
[219] *See supra* Part III.C.
[220] *See supra* Part III.C.
[221] *See supra* Part III.C.
[222] *See* Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227, 235 (6th Cir. 2007).
[223] *See supra* Part III.