

JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10	SEVEN ARTS FILMED ENTERTAINMENT)	CASE NO.: CV 11-4603 ABC (FMOx)
	LIMITED, an English)	
11	Corporation,)	
)	ORDER RE: DEFENDANT PARAMOUNT'S
12	Plaintiff,)	MOTION TO DISMISS
)	
13	v.)	
)	
14	CONTENT MEDIA CORP., PLC, an)	
	English corporation; PARAMOUNT)	
15	PICTURES CORP., a Delaware)	
	corporation, DOES 1-10,)	
16)	
	Defendants.)	

18

19 Pending before the Court is Defendant Paramount Pictures Corp.'s

20 ("Paramount's") Motion to Dismiss Case, filed on July 11, 2011.

21 (Docket No. 30.) Plaintiff Seven Arts Filmed Entertainment Limited

22 ("Plaintiff") opposed on July 26, 2011, and Paramount replied on

23 August 8, 2011. Finding oral argument unnecessary, the Court took

24 this matter under submission on September 12, 2011. (Docket No. 54.)

25 For the reasons below, the motion is GRANTED and the Complaint is

26 DISMISSED WITH PREJUDICE.

27
28

1 **BACKGROUND**

2 In this case, Plaintiff once again raises the same dispute
3 involving the rights to five films¹ that has been repeatedly raised by
4 Plaintiff's predecessors-in-interest against Content Media Corp.'s
5 ("Content's") predecessors-in-interest in several cases in three
6 different fora. The twist in this case is that Plaintiff has now sued
7 Paramount, which is alleged to be "the licensee of certain
8 distribution rights in and to the Pictures from Plaintiff's
9 Predecessors . . . and has paid and continues to pay all receipts from
10 distribution of the Pictures to Content . . . despite demands from
11 Plaintiff and the Predecessors requiring payment of such receipts to
12 Plaintiff." (2011 Compl. ¶ 3.) Plaintiff voluntarily dismissed
13 Content, leaving Paramount as the lone defendant in this case.

14 (Docket No. 52.)

15 Plaintiff's first case was filed nine years ago on September 26,
16 2002, in Los Angeles Superior Court by Plaintiff's predecessor
17 Cinevisions against Content's predecessors Fireworks Entertainment
18 ("Fireworks") and CanWest Entertainment International Distribution
19 ("CanWest"). See Cinevisions v. Fireworks Entm't, Inc., Case No. BC
20 282277 (L.A. Super. Ct. filed Sept. 26, 2002) (the "2002 case").²
21 The complaint in that case alleged that the parties "entered into a

22 _____
23 ¹The works at issue are the screenplay and film "An American
24 Rhapsody"; the screenplay and film "The Believer"; the screenplay "Who
25 is Cletis Tout?"; the film "Rules of Engagement"; and the film
26 "Onegin" (the "disputed pictures"). The complaint lists the alleged
copyright registration numbers. (2011 Compl. ¶¶ 12, 13.) Paramount
is a licensee of certain rights in "An American Rhapsody," "Who is
Cletis Tout?," and "Rules of Engagement."

27 ²The Court GRANTS Defendants' unopposed request for judicial
28 notice of court documents in the prior cases. (Docket No. 31.) See
Wyatt v. Terhune, 315 F.3d 1108, 1114 & n.5 (9th Cir. 2003).

1 contract with respect to the [disputed pictures] and certain other
2 motion pictures" described in an August 31, 1999 contract called
3 "Heads of Agreement." (2011 Compl. ¶ 14.) Cinevisions specifically
4 alleged that it had co-ownership stakes in the disputed pictures by
5 way of the Heads of Agreement (which was called the "Master Structure
6 Agreement" in the complaint in the 2002 case). (Paramount's Request
7 for Judicial Notice ("RJN") Ex. 2 ¶¶ 8(h), 9.)³

8 That case was removed to federal district court and dismissed by
9 Judge Rafeedie based on a clause in the Heads of Agreement/Master
10 Structure Agreement that selected Ontario, Canada as the proper forum.
11 (2011 Compl. ¶ 14.) Although Cinevisions appealed, the appeal was
12 dismissed for the failure to prosecute. See Cinevisions v. Fireworks
13 Entm't, Inc., Case No. CV 02-9259 ER (MANx) (C.D. Cal. filed Dec. 5,
14 2002). Paramount was not a party to that lawsuit at any time.

15 Pursuant to the forum selection clause in the Heads of
16 Agreement/Master Structure Agreement, Cinevisions filed a second case
17 in Canada on April 23, 2003, alleging the same co-ownership claims
18 against Fireworks and CanWest as those raised in the 2002 case. (2011
19 Compl. ¶ 15.) See Cinevisions v. Fireworks Entm't, Inc., Case No. 03-
20 CV-247553CM2 (Ontario Super. Ct. of Justice, filed April 23, 2003).
21 Importantly, in a statement of defense filed in that case on July 11,
22 2003, Fireworks and CanWest "specifically denied that the [Heads of
23 Agreement/Master Structure Agreement] was a contract (the same
24 contract which the CanWest Parties sought to enforce before this
25 Court) or that the CanWest Parties were bound to the terms of that

26
27 ³That complaint alleged that Plaintiff Seven Arts Pictures was an
28 entity "owned and controlled by the owner of Cine[v]isions."
(Paramount's RJN Ex. 2 ¶ 8(a).)

1 contract or any other contract" with Cinevisions. (2011 Compl. ¶ 15.)

2 Once again, Paramount was not named as a defendant in that action.

3 That case remained pending when Plaintiff's predecessors Seven
4 Arts Pictures PLC and Seven Arts Pictures Inc. filed another case in
5 this Court on April 20, 2005 against CanWest, Fireworks, CanWest
6 Entertainment Inc. (another one of Content's predecessors), and
7 eventually Content (under its prior name ContentFilm PLC). (2011
8 Compl. ¶ 16.) See Seven Arts Pictures PLC v. Fireworks Entm't, Inc.,
9 Case No. CV 05-2905 ABC (FMOx) (C.D. Cal. filed April 20, 2005) (the
10 "2005 case"). In the operative second amended complaint filed on June
11 17, 2005, Plaintiffs in that case alleged claims of copyright
12 infringement, declaratory relief, and for an accounting, and listed,
13 inter alia, the disputed pictures with their copyright registration
14 numbers. (Paramount RJN, Ex. 4 ¶¶ 1, 7-8.) The complaint alleged
15 that Plaintiffs were either "the registered owners or assignees" or
16 "the grantees of exclusive rights under copyright" of the disputed
17 pictures and that Fireworks and CanWest had repudiated the Heads of
18 Agreement/Master Structure Agreement when they filed the statement of
19 defense in the Canadian action. (Id. ¶¶ 8-9.) As a result, they were
20 "bound by no written agreement or grant of rights to Defendants under
21 copyright in respect to Plaintiff's Rights in the Pictures" (id. ¶ 10)
22 and, although "Defendants contend that they may use and exploit the
23 copyrights and rights under copyright in the Pictures and transfer
24 such to others without authorization from Plaintiffs," they have "no
25 right to use or exploit the copyrights and rights under copyright in
26 the Pictures or to transfer such to Defendant Content without
27 authorization from Plaintiffs and Defendants are not the owner or

28

1 grantee of any copyright in the Pictures" (id. ¶ 16). Plaintiffs
2 again did not sue Paramount.

3 This Court stayed the 2005 case on August 16, 2005 so Plaintiffs
4 could prosecute the Canadian action. (2011 Compl. ¶ 16.) Between the
5 stay in August 2005 and February 2008, however, Plaintiffs failed to
6 pursue the Canadian action, causing it and the 2005 case in this Court
7 to languish. The Court twice ordered Plaintiffs to show cause why the
8 case should not be dismissed for their failure to prosecute the
9 Canadian action. (Paramount RJN Ex. 5, Docket Nos. 65 (October 2007),
10 73 (February 2008).) "[F]irmly convinced that Plaintiffs will not
11 pursue this action, despite the many opportunities the Court has
12 provided," the Court dismissed the case with prejudice in February
13 2008 for Plaintiffs' failure to prosecute. (Paramount RJN, Ex. 6 at
14 2.) This Court's ruling was affirmed on appeal. See Seven Arts
15 Pictures PLC v. Fireworks Entm't, Inc., 329 F. App'x 726 (9th Cir.
16 2009) (unpublished).

17 After almost eight years, Plaintiff's predecessors finally
18 obtained a summary judgment order in the Canadian action in February
19 2011. (2011 Compl. ¶ 17, Ex. A.) It was not an adversarial
20 proceeding because the initially named defendants had entered
21 bankruptcy and had not opposed the motion, so the Canadian court
22 reviewed only the evidence presented by Plaintiffs. (Id., Ex. A at 5,
23 ¶¶ 3, 4.) The Canadian court's order declared that "Plaintiffs are,
24 and have been at all times relevant to this action, the owner" of the
25 disputed pictures. (Id., Ex. A at 1, 2, ¶¶ 1, 2.) As a result, the
26 court declared that "Defendants have infringed and continue to
27 infringe the Plaintiffs' rights in the Copyrights and the Copyrighted
28 Works by using, granting to others the right to use, and continuing to

1 use and grant to others the right to use the Copyrights and
2 Copyrighted Works." (Id., Ex. A at 3, ¶ 4.)

3 With the summary judgment order in hand, Plaintiff, successor in
4 interest to the Plaintiffs in the prior cases, has returned to this
5 Court and filed this case, a near duplicate of the 2005 case, that
6 reasserts claims for copyright infringement, for a declaratory
7 judgment that Plaintiff is the owner of the disputed films, and for an
8 accounting, all involving the same five disputed pictures.⁴ In
9 addition to the earlier allegations, Plaintiff now alleges for the
10 first time that the Canadian summary judgment order has established
11 Plaintiff's ownership rights. (2011 Compl. ¶ 22.) It has also added
12 Paramount for the first time as a defendant, although it devotes only
13 one paragraph in the 2011 complaint to Paramount individually:

14 Plaintiff's Predecessors gave notice to
15 Paramount in three letters dated January 20, 2005,
16 March 18, 2005, and May 5, 2005 . . . that all
17 sums due to the CanWest Parties with respect to
18 the Pictures was and would become due to
19 Plaintiff's Predecessors. Paramount failed and
20 refused to comply with Plaintiff's Predecessors'
demand. Plaintiff gave prompt notice to Paramount
of both the Summary Judgment Order and the Denial
Order and demanded that Paramount pay all sums due
to the CanWest Parties or Content to Plaintiff.
Paramount has failed and refused to comply with
Plaintiff's demand.

21 (Id. ¶ 18.) The three letters, which are attached to the Complaint,
22 stated unequivocally that "Seven Arts claims ownership of the Pictures
23 in this litigation" (id., Ex. B at 1), and that "CanWest in their
24 answer in [Plaintiff's] litigation in Canada has denied there is any
25 agreement between Seven Arts and Cine[v]isions and CanWest" over
26 ownership of the disputed pictures (id., Ex. B at 4). It also warned

27
28 ⁴Plaintiff also now asserts a fourth claim against Content for
attorney's fees awarded in the Canadian action.

1 Paramount that Content's predecessors had no further rights to
2 distribute or collect fees for the disputed pictures, and that
3 Paramount must "pay all sums due with respect to such Pictures to
4 Seven Arts and not to pay such sums to [Content's predecessor] until
5 resolution of the litigation currently pending in Canada." (Id., Ex.
6 B at 1.)

7 Content and Paramount separately moved to dismiss this case. The
8 Court had not reached the merits of Content's motion when Plaintiff
9 voluntarily dismissed Content from this case in order to pursue relief
10 from Content in yet another forum⁵, which rendered the motion moot.
11 (Docket Nos. 52, 53.) In light of the dismissal of Content, Paramount
12 has now separately sued both Content and Plaintiff, seeking a
13 declaration as to which of those parties owns the copyrights to the
14 disputed pictures so that Paramount can pay the license fees to the
15 proper owner. See Paramount Pictures Corp. v. Seven Arts Filmed
16 Entm't Ltd., Case No. CV 11-7748 ABC (FMOx) (C.D. Cal., filed Sept.
17 19, 2011).

18 LEGAL STANDARD

19 A complaint survives a motion to dismiss under Rule 12(b)(6) if
20 it contains a "short and plain statement of the claim showing that the
21 pleader is entitled to relief," which does not require "detailed
22 factual allegations," but it "demands more than an unadorned, the-
23 defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, __
24 U.S. __, __, 129 S. Ct. 1937, 1949 (2009). A claim must be "plausible
25 on its face," which means that the Court can "draw the reasonable
26

27 ⁵Plaintiff has raised the same claims at issue here against both
28 Content and Paramount in a case filed in England on September 7, 2011.
(See Docket No. 58 at Ex. A.)

1 inference that the defendant is liable for the misconduct alleged."
2 Id.; see Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). In
3 other words, "a plaintiff's obligation to provide the grounds of his
4 entitlement to relief requires more than labels and conclusions, and a
5 formulaic recitation of the elements of a cause of action will not
6 do." Twombly, 550 U.S. at 555 (internal quotations and alterations
7 omitted). Allegations of fact are taken as true and construed in the
8 light most favorable to the nonmoving party. See Newdow v. Lefevre,
9 598 F.3d 638, 642 (9th Cir. 2010), cert. denied, 131 S. Ct. 1612
10 (2011).

11 In analyzing the sufficiency of the complaint, the Court must
12 first look at the requirements of the causes of action alleged. See
13 Iqbal, 129 S. Ct. at 1947. The Court may then identify and disregard
14 any legal conclusions, which are not subject to the requirement that
15 the Court must accept as true all of the allegations contained in the
16 complaint. Id. at 1949. The Court must then decide whether well-
17 pleaded factual allegations, when assumed true, "plausibly give rise
18 to an entitlement to relief." Id. at 1950. In doing so, the Court
19 may not consider material beyond the pleadings, but may consider
20 judicially noticeable documents, documents attached to the complaint,
21 or documents to which the complaint refers extensively or which form
22 the basis of the plaintiff's claims in the complaint. See United
23 States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

24 DISCUSSION

25 Paramount asserts two grounds for dismissal: (1) the statute of
26 limitations applicable to Plaintiff's copyright ownership claims has
27 expired; and (2) Plaintiff's current claims are barred by collateral
28 estoppel based on the dismissal of the 2005 case. The Court finds

1 that dismissal is warranted on the first ground, so it will not
2 address the second.

3 **A. Statute of Limitations**

4 Because issues involving the statute of limitations often turn on
5 disputed facts, they are "not ordinarily amenable to resolution under
6 Rule 12(b)(6)." Pesnell v. Arsenault, 543 F.3d 1038, 1042 (9th Cir.
7 2008). Nevertheless, "[w]hen the running of the statute [of
8 limitations] is apparent from the face of the complaint . . . then the
9 defense may be raised by a motion to dismiss." Conerly v.
10 Westinghouse Elec. Corp., 623 F.2d 117, 119 (9th Cir. 1980). In this
11 circumstance, "[a] dismissal motion should be granted, 'only if the
12 assertions of the complaint, read with the required liberality, would
13 not permit the plaintiff to prove that the statute was tolled.'" Id.

14 The Copyright Act bars claims not brought within three years
15 after the claim has accrued. See 17 U.S.C. § 507(b); Zuill v.
16 Shanahan, 80 F.3d 1366, 1369 (9th Cir. 1996). Although "[i]n a case
17 of continuing copyright infringements, an action may be brought for
18 all acts that accrued within the three years preceding the filing of
19 the suit," Roley v. New World Pictures, Ltd., 19 F.3d 479, 481 (9th
20 Cir. 1994), when the gravamen of the claim is a dispute over
21 ownership, "[a] claim for copyright ownership is barred three years
22 from the 'plain and express repudiation' of copyright ownership,"
23 Welles v. Turner Entm't Co., 503 F.3d 728, 734 (9th Cir. 2007); see
24 also Aalmuhammed v. Lee, 202 F.3d 1227, 1230–31 (9th Cir. 2000)
25 ("Because creation rather than infringement is the gravamen of an
26 authorship claim, the claim accrues on account of creation, not
27 subsequent infringement, and is barred three years from 'plain and
28 express repudiation' of authorship.").

1 Likewise, when claims for both ownership and infringement are
2 asserted, both claims will be time-barred if the ownership claim is
3 the dispositive issue and it is untimely. See Kwan v. Schlein, 634
4 F.3d 224, 230 (2d Cir. 2011) ("Where, as here, the ownership claim is
5 time-barred, and ownership is the dispositive issue, any attendant
6 infringement claims must fail."); see also Roger Miller Music, Inc. v.
7 Sony/ATV Publ'g, LLC, 477 F.3d 383, 389-90 (6th Cir. 2007) ("When
8 claims for both infringement and ownership are alleged, the
9 infringement claim is timely only if the corresponding ownership claim
10 is also timely."); Zuill, 80 F.3d at 1371 ("Creation, rather than
11 infringement, was the gravamen of plaintiffs' co-ownership claim, so
12 the claim did not accrue upon subsequent publication.").

13 Here, the gravamen of Plaintiff's ongoing dispute with Content is
14 ownership of the disputed pictures, so, unlike claims of ongoing
15 infringement, the statute of limitations began to run upon the "plain
16 and express repudiation" of ownership. There is no dispute over
17 copying in this case; both Content and Paramount are alleged to have
18 been exploiting the same disputed pictures that Plaintiff claims to
19 own. This is consistent with the Complaint, which alleges that
20 Plaintiff is entitled to a declaratory judgment that "Defendants have
21 no right to use or exploit Plaintiff's Rights in the copyrights and
22 rights under the copyright in the Pictures without authorization from
23 Plaintiff" and "neither Content nor the CanWest Parties is the owner
24 or grantee of Plaintiff's rights in any Picture." (2011 Compl. ¶ 24.)

25 In seeking a preliminary injunction in this case, Plaintiff also
26 repeatedly argued that ownership is the central issue: "For more than
27 nine years, Plaintiff and its Predecessors . . . have sought to obtain
28 redress for the wrongful unjustified conduct of [Content's

1 predecessors] in denying Plaintiffs' Predecessors['] interest in the
2 copyrights to five motion pictures" at issue. (Docket No. 9 at 1
3 (identifying Defendants' wrongful conduct "in denying Plaintiffs'
4 Predecessors['] interest in the copyrights to five motion pictures
5 described below"); id. at 2 (arguing that Content's predecessors
6 "repudiated any contracts with Plaintiff's Predecessors which may have
7 assigned Plaintiff[']s Predecessors['] copyright interests" to
8 Content); id. at 11 (arguing that the issues in the Canadian action
9 and this case are whether "the rights under copyrights in the Pictures
10 . . . are owned by Plaintiff, and as a result Plaintiff not Content is
11 entitled to receive the revenues from those copyrights".) Even more
12 generally, this new lawsuit rests on the ruling in the Canadian case
13 that purported to find Plaintiff was the owner of the copyrights to
14 the disputed pictures, demonstrating the crux of the issue here is, in
15 fact, ownership.⁶

16 In light of Content's absence in this case, however, Plaintiff
17 contends that its dispute with Paramount is not over ownership of the
18 copyrights, but Paramount's continued infringement as a licensee.
19 That is a distinction without a difference. Paramount is alleged to
20 be a "licensee of certain distribution rights in and to the Pictures
21 from Plaintiff's Predecessors," which, if taken as true, would allow
22 Paramount to defend against Plaintiff's ownership claims just as
23 Content would have, but for Plaintiff's dismissal of Content from this
24 case. Thus, Plaintiff can only prevail against Paramount if it can
25 establish that it owns the copyrights to the disputed pictures, not
26

27 ⁶Similarly, in the 2005 case, "Defendants argue[d], and the Court
28 agree[d], that the central issue here [was] which party actually owns
these copyrights[.]" (Paramount RJN, Ex. 1 at 6.)

1 Content, and Content therefore did not have the authority to license
2 the disputed pictures to Paramount. Like Plaintiff's dispute with
3 Content, then, the gravamen of its claim against Paramount is
4 ownership.

5 Plaintiff also suggests that the cases applying a fixed date for
6 commencing the statute of limitations in ownership disputes were
7 limited to disagreements between co-owners, and Plaintiff claims to be
8 the sole owner of the disputed pictures. Plaintiff is correct that
9 some cases have addressed the timeliness issue in disputes between co-
10 owners. See, e.g., Kwan, 634 F.3d at 228 (claim of co-authorship);
11 Aalmuhammed, 202 F.3d at 1230 (dispute between authors of joint work);
12 Zuill, 80 F.3d at 1369 (claim of co-ownership). However, as one
13 leading commentator explained, "the same considerations would seem at
14 least equally applicable to claims of sole authorship." 3 M. Nimmer &
15 D. Nimmer, Nimmer on Copyright § 12.05[C][2] (2011). And other cases
16 have applied the same test in disputes over sole ownership, not just
17 co-ownership. See, e.g., Welles, 503 F.3d at 733 (claim of sole
18 ownership of film and rights to home video distribution); Roger
19 Miller, 477 F.3d at 386 (dispute over sole ownership of songs).⁷
20 Thus, notwithstanding Plaintiff's attempt to limit the fixed accrual
21 date to disputes between co-owners, that test applies to its claim of
22 sole ownership here.

23
24
25 ⁷In a case decided before Roger Miller, the Sixth Circuit
26 explained that it was "extending" the test for the accrual date of
27 ownership claims between co-owners to "others in close relationships,
28 such as those who transfer copyright ownership via contract." Ritchie
v. Williams, 395 F.3d 283, 288 n.5 (6th Cir. 2005). Even if this test
applied here, it is met because Plaintiff alleges that it had a
contractual relationship with Content, Paramount's licensor, that has
since been repudiated.

1 The face of Plaintiff's Complaint demonstrates that its ownership
2 claims in this case accrued no later than 2005, and likely even as
3 early as 2002, when it filed multiple complaints against Content's
4 predecessors alleging ownership interests in the disputed pictures and
5 admitting that Content was signaling "plain and express repudiation"
6 of Plaintiff's ownership. The 2002 complaint claimed that Plaintiff's
7 predecessor Cinevisions had at least a co-ownership interest in the
8 disputed pictures by way of the Heads of Agreement/Master Structure
9 Agreement, and that Content's predecessors had interfered with those
10 rights. Then, in 2003, Plaintiff's predecessors filed the Canadian
11 action, asserting the same claims; in response, Plaintiff received
12 unequivocal confirmation that Content's predecessors denied that the
13 Heads of Agreement/Master Structure Agreement "was a contract . . . or
14 that [they] were bound to the terms of that contract or any other
15 contract" with Cinevisions. (2011 Compl. ¶ 15.) Even Plaintiff
16 admits that this amounted to a "plain and express repudiation" of
17 Plaintiff's ownership interest from Content. (Opp. 20.) Based on
18 this repudiation, Plaintiff then filed the 2005 case, alleging that it
19 owned the copyrights of the disputed films and that Content was
20 infringing. (Id. ¶ 16.) All of these acts indicate that Plaintiff
21 knew no later than 2005 that Content plainly and expressly repudiated
22 Plaintiff's ownership interests in the disputed pictures.

23 During that same period in 2005, because Paramount was Content's
24 licensee, Plaintiff also informed Paramount that Content was
25 repudiating Plaintiff's ownership interest in the disputed pictures,
26 which compelled Paramount to pay any licensing fees to Plaintiff.
27 (2011 Compl., Ex. B.) In a series of letters Plaintiff attached to
28 the current Complaint, Plaintiff told Paramount that "Seven Arts

1 claims ownership of the Pictures in this litigation" and "CanWest in
2 their answer in [Plaintiff's] litigation in Canada has denied there is
3 any agreement between Seven Arts and Cine[v]isions and CanWest" over
4 ownership of the disputed pictures. It also warned Paramount that
5 Content's predecessors had no further rights to distribute or collect
6 fees for the disputed pictures, and that Paramount must "pay all sums
7 due with respect to such Pictures to Seven Arts and not to pay such
8 sums to [Content's predecessor] until resolution of the litigation
9 currently pending in Canada." As a result, as of 2005 Plaintiff knew
10 that Paramount's licenses with Content would also have been repudiated
11 in light of Content's repudiation of Plaintiff's ownership interests
12 in the disputed films.

13 Plaintiff argues that there could not have been a "plain and
14 express repudiation" of ownership until the Canadian court's ruling on
15 summary judgment in 2011 that Plaintiff owned the copyrights to the
16 disputed pictures. This contention fails because nothing in the case
17 law suggests that the issue of ownership must be finally adjudicated
18 before the statute of limitations begins to run. See Zuill, 80 F.3d
19 at 1369 (requiring only that the "plain and express repudiation" be
20 "communicated to the claimant" in order to trigger the limitations
21 period). Plaintiff's argument, if accepted, would turn the statute of
22 limitations on its head by requiring a decision on the merits before
23 the limitations period even begins.

24 Plaintiff also argues that the ruling in the Canadian action as
25 to Plaintiff's ownership of the copyrights gave rise to an entirely
26 new cause of action for infringement triggering a three-year
27 limitations period starting on the date that decision was issued.
28 However, Plaintiff's claims remain the same, even in light of the

1 Canadian ruling, and Plaintiff cannot use the Canadian ruling to
2 resurrect them if they are time-barred.

3 Therefore, because the dispositive issue in this case is
4 ownership, and the limitations period began to run no later than 2005,
5 Plaintiff's infringement and declaratory relief claims are time-barred
6 unless the limitations period is tolled.

7 **B. Equitable Tolling**

8 "Generally, the applicability of equitable tolling depends on
9 matters outside the pleadings, so it is rarely appropriate to grant a
10 Rule 12(b)(6) motion to dismiss . . . if equitable tolling is at
11 issue." Huynh v. Chase Manhattan Bank, 465 F.3d 992, 1003-04 (9th
12 Cir. 2006). Nevertheless, as with the running of the statute of
13 limitations, equitable tolling may be determined on a motion to
14 dismiss, so long as it can be determined from the face of the
15 Complaint; after all, "by its very nature, equitable tolling concerns
16 itself with the equities of dismissal for untimely filing caused by
17 factors independent of the plaintiff," so the Court must "ask whether
18 it would be unfair or unjust to allow the statute of limitations to
19 act as a bar to [the plaintiff's] claims." Id. at 1004 (emphasis in
20 original) (affirming rejection of equitable tolling based on pleadings
21 alone).⁸

22 A limitations period may be tolled when "the complainant has
23 been induced or tricked by his adversary's misconduct into allowing
24 the filing deadline to pass," Supermail Cargo, Inc. v. United States,

26 ⁸Federal law applies to determine whether the statute of
27 limitations in the Copyright Act should be equitably tolled. See
28 Prather v. Neva Paperbacks, Inc., 446 F.2d 338, 340 (5th Cir. 1971); 3
Nimmer on Copyright § 12.05[B][3]. Plaintiff's reliance on California
law is therefore unavailing.

1 68 F.3d 1204, 1207 (9th Cir. 1995), or when "the statute of
2 limitations was not complied with because of defective pleadings,"
3 Scholar v. Pac. Bell, 963 F.2d 264, 268 (9th Cir. 1992). "Courts have
4 been generally unforgiving, however, when a late filing is due to the
5 claimant's failure 'to exercise due diligence in preserving his legal
6 rights." Scholar, 963 F.2d at 268. For example, in Kregos v.
7 Associated Press, 795 F. Supp. 1325, 1331 (S.D.N.Y. 1992), aff'd 3
8 F.3d 656, 662 (2d Cir. 1993), the court refused to equitably toll the
9 statute of limitations during a two-year period in which the
10 plaintiff's copyright registration was pending because that delay was
11 "self-inflicted injury": the plaintiff knew the Copyright Office had
12 been delaying approval of certain types of applications, yet he waited
13 to file his application, which delayed the filing of his suit beyond
14 the limitations period. Id.

15 Here, Plaintiff claims that the limitations period must be tolled
16 during the eight years the Canadian action was pending from the filing
17 of the action in 2003 until the issuance of the summary judgment
18 ruling in 2011. Yet, Plaintiff's inordinate delay in prosecuting that
19 action cannot justify tolling that period because it was a "self-
20 inflicted injury" and inconsistent with the principles of equity. As
21 the Complaint in this case explains, Plaintiff knew in 2005 that
22 Paramount was licensing the disputed pictures and that the outcome of
23 the Canadian action could affect those licenses. After Plaintiff
24 filed the 2005 case, the Court stayed that case to give them the
25 opportunity to return to the Canadian court to pursue the Canadian
26 action. Had it diligently pursued this opportunity, it might have
27 obtained a timely summary judgment order in the Canadian case and,
28

1 with that judgment in hand, it could have returned to this Court to
2 reactivate the 2005 case.

3 In that scenario, the 2005 case would have looked very much like
4 this one, with Plaintiff offering the summary judgment order for
5 whatever evidentiary value it held. But instead of diligently
6 pursuing its claims at that time, Plaintiff delayed the Canadian
7 action so long that this Court was compelled to dismiss the 2005 case
8 almost three years after the stay was imposed. Like the plaintiff in
9 Kregos, whose inexcusable delay in filing a copyright application was
10 of his own making, Plaintiff here was responsible the delay by not
11 diligently prosecuting the Canadian action and cannot now appeal to
12 equity to excuse it.

13 Plaintiff relies on two cases to avoid this result, neither of
14 which justifies tolling here. See Young v. United States, 535 U.S.
15 43, 49–50 (2002); O'Donnell v. Vencor, Inc., 465 F.3d 1063, 1068 (9th
16 Cir. 2006) (per curiam). In Young, the Supreme Court applied
17 equitable tolling to avoid the effect of a bankruptcy stay because
18 successive bankruptcy petitions had prevented the Internal Revenue
19 Service from taking timely steps to protect its claims against the
20 claimants. 535 U.S. at 50. Similarly, in O'Donnell, the court relied
21 on Young to toll the limitations period in light of a bankruptcy stay
22 because the defendants' act of filing bankruptcy prevented the
23 plaintiff from timely protecting her claim against the claimants. 465
24 F.3d at 1068. In both cases, tolling was justified based on the
25 defendants' acts of filing bankruptcy; here, in contrast, Defendants
26 did nothing to prevent Plaintiff from pursuing its rights. In fact,
27 the Court stayed the 2005 case to enable Plaintiff to pursue its
28 claims in Canada and then return to this Court with the Canadian

1 judgment. Plaintiff's own actions delayed the Canadian case and
2 caused the dismissal of the 2005 case, so Young and O'Donnell are
3 inapposite.

4 Thus, the running of the limitations period was not equitably
5 tolled while the Canadian action was pending. Plaintiff's current
6 claims are therefore untimely under the Copyright Act.

7 **CONCLUSION**

8 Plaintiff's Complaint demonstrates that its claims accrued no
9 later than 2005, and because equitable tolling does not apply,
10 Plaintiff's claims are therefore untimely. Plaintiff's Complaint is
11 DISMISSED WITH PREJUDICE, as any amendment would be futile.

12 **IT IS SO ORDERED.**

13 **DATED:** _____

14 **AUDREY B. COLLINS**
15 **CHIEF UNITED STATES DISTRICT JUDGE**
16
17
18
19
20
21
22
23
24
25
26
27
28