

# JENNER & BLOCK

*Content, Media & Entertainment*



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JENNER & BLOCK LLP

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# Content, Media & Entertainment

Jenner & Block's Content, Media & Entertainment practice unites a set of highly skilled and nationally known attorneys who use their legal experience and business savvy to help content providers succeed. Whether they are known as copyright lawyers, technology attorneys, business litigators, First Amendment advocates, IP transactional attorneys, trademark litigators, or something else, these lawyers have one thing in common: They understand the highly complex and constantly changing challenges distinct to companies in the content, media and entertainment industries.

The Content, Media & Entertainment practice and its attorneys are widely recognized as among the best in the country. The *Legal 500* has twice heralded Jenner & Block's copyright practice as No. 1 in the United States – “a pre-eminent choice for copyright litigation”; “widely regarded as one of the elite class” of copyright practices, with a “looming presence in the entertainment industry” and a client base “dominated by A-list heavyweights in the entertainment field.” *Chambers* too has awarded the practice its highest “Band 1” ranking. *The National Law Journal*, *Chambers*, *Legal 500*, *The Legal Times*, the *Washington Business Journal*, and others, all have recognized our Content, Media & Entertainment attorneys as top in their field. And for two consecutive years, in 2010 and 2011, *Managing Intellectual Property* magazine has named Jenner & Block the Copyright Firm of the Year.

We recognize that in the current environment companies in the content, media and entertainment sectors need multi-faceted strategies to best protect their business interests, to leverage the content they create and to secure that content from piracy and other threats. To meet these needs, Jenner & Block lawyers have experience:

- » Helping content industries develop strategies, and secure critical litigation victories, in the fight to stop piracy of their creative properties online and through new products and technologies.
- » Litigating disputes that arise from all forms of commercial exploitation of intellectual property, including issues relating to copyright infringement, rights of publicity, theft of ideas, renewal and termination rights, works-for-hire, fair use, and royalty accounting.
- » Serving as ‘go to’ business litigators for entertainment sector clients in their most important cases across a range of issues from antitrust to consumer class actions to securities, and many others.
- » Advising clients on complex issues regarding the application of copyright and related laws to new business models and evolving technologies.

*A nationwide leader  
in helping content  
creators safeguard their  
intellectual property  
on the internet and in  
other advanced media*

*Our lawyers have handled some of the most important copyright and  
new media cases of the last several decades*



*Our attorneys are  
versed in all aspects  
of U.S. copyright law  
. . . and have been at  
the forefront of issues  
of importance to  
content creators*

- » Assisting companies in a broad range of transactions to develop, acquire and commercialize intellectual property and technology.
- » Litigating rate-setting proceedings to ensure that copyright holders and artists receive fair royalty rates when their creations are performed over the internet, via satellite, and over other media.
- » Counseling copyright holders on policy and legislative efforts.
- » Fighting against governmental efforts to regulate entertainment properties on the basis of their content or expression.
- » Litigating trademark infringement, unfair competition, trade secret, and similar cases to help content companies protect their valuable brands, goodwill and ingenuity from all forms of unlawful misappropriation.

Within the Content, Media & Entertainment practice, attorneys focus in several interrelated areas: Advanced Media | Content Protection; Copyright and Entertainment Litigation; Business Litigation for Entertainment Sector Companies; IP Transactions; Copyright Policy and Counseling; Royalty and Rate-Setting Litigation; Media and First Amendment; and Trademark and Unfair Competition.

## ADVANCED MEDIA | CONTENT PROTECTION

Jenner & Block is a nationwide leader in helping content creators safeguard their intellectual property on the internet and in other advanced media. Our attorneys have worked in and with the entertainment community. We combine deep insight of the affected industries, broad legal experience, and the technological knowledge and sophistication to help our clients protect their content in all forms of advanced media. Because of this experience, a broad array of companies with copyrights in valuable intellectual property – from record companies to motion picture studios to publishers to technology companies – regularly call upon the Firm for representation and counsel.

Our lawyers have handled some of the most important online copyright cases of our time, starting with the seminal *Napster* case, and including *MGM Studios v. Grokster*, which *The National Law Journal* described as “the most important copyright challenge in decades,” and *Viacom v. YouTube*, which has been called “the most high profile and momentous case in the copyright market.”



We understand the challenges of protecting creative content in an ever-changing technology environment. Indeed, believing that lawyers, not just technologists, must gain intimate familiarity with the technologies of interest to our clients, the Firm pioneered the launch of an “Advanced Media Lab” to allow our attorneys to work hands-on with the latest products and technologies. Chances are, if a new platform or technology is emerging, we are following it and studying its implications for the content, media and entertainment industries.

Our attorneys are versed in all aspects of U.S. copyright law, including the Digital Millennium Copyright Act (DMCA), and have been at the forefront of issues of importance to content creators, including those related to:

- » Online “lockers” and “cloud” computing.
- » Peer-to-peer networks, whether website or application based.
- » User uploaded content sites.
- » Link sites and search engines.
- » Webcasting, internet radio and other audio and video streaming services.
- » Satellite radio services.
- » USENET and other server-based systems.
- » Portable and mobile devices.
- » Commercial hosting services.
- » DMCA notices and safe harbors.
- » Copyright filters and content protection technologies.
- » Circumvention of access and copy control technologies under the DMCA and related laws.
- » Identification of online infringers through DMCA subpoenas, “Doe” suits and otherwise.
- » Establishing U.S. jurisdiction over foreign infringers.
- » Cross-border copyright enforcement.

*Chances are, if a new platform or technology is emerging, we are following it and studying its implications for the content, media and entertainment industries*

We regularly counsel clients on content protection and enforcement strategies, and help them analyze complex issues concerning the application of copyright and related laws to evolving technologies and to new business models, platforms and products.

We recently have led negotiations with major Chinese websites that have resulted in seminal content protection agreements to prevent infringement of our clients’ entertainment properties in that important market.

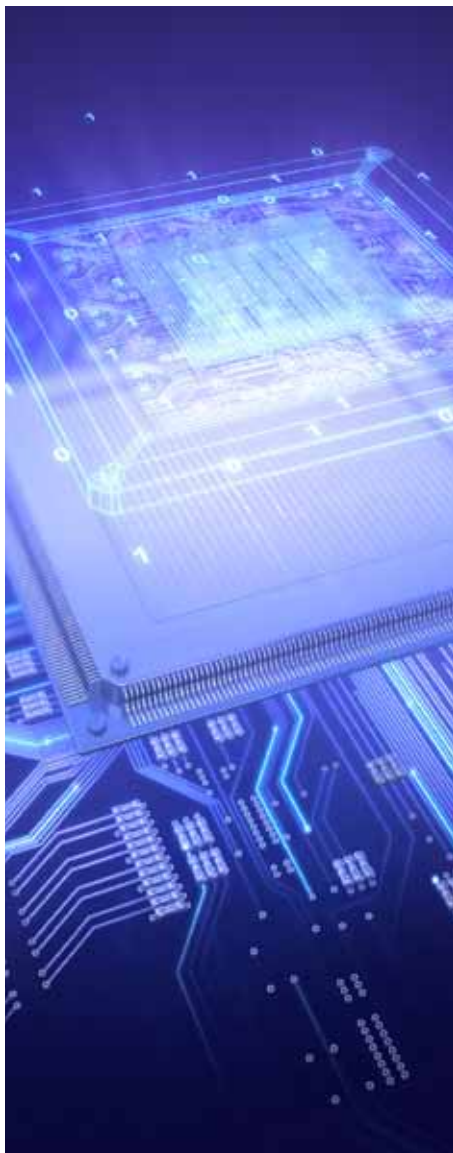
Representative cases handled by our Advanced Media | Content Protection team include:

- » *MGM Studios v. Grokster*: Jenner & Block represented every major U.S. motion picture studio and record company in the landmark copyright case involving peer-to-peer file-sharing services Grokster and Streamcast. A unanimous Supreme Court adopted the “inducement” theory of copyright liability, holding that “one who distributes a device with the object of promoting its use to infringe copyright” is liable for the resulting infringement. The victory made clear that those who intend to foster copyright infringement by others are liable as contributory infringers. On remand, our team secured summary judgment against Streamcast for inducing copyright infringement. The Firm also led negotiations on behalf of record companies worldwide resulting in a \$115 million settlement with defendant Kazaa. The settlement (among the highest in copyright history) resolved litigation on three continents and resulted in Kazaa implementing sophisticated copyright filters to prevent further infringement.
- » *Viacom v. YouTube*: Jenner & Block represents Viacom in its \$1 billion lawsuit against YouTube and Google for “massive intentional copyright infringement” of Viacom’s entertainment properties on the YouTube website. The Firm recently argued the case to the Second Circuit Court of Appeals. The decision is widely anticipated to set critical precedent interpreting the Digital Millennium Copyright Act’s “safe harbors” and establishing the legal standard for copyright protection on websites like YouTube that depend upon user uploaded content to attract viewers and advertising revenue.
- » *Disney Enterprises v. Hotfile Corp.*: In a case being closely watched by the worldwide copyright community, the Firm is representing the major motion picture studios in an infringement action against Hotfile Corp. and one of its principals. As alleged in the complaint, Hotfile is an infringing “download hub” (sometimes referred to as a “one-click host” or “cyberlocker”) that openly encourages users to upload popular infringing content to its computer servers so it can charge other users to access and download that content. Such pirate download hubs are the fastest growing source of online copyright infringement, affecting every copyright industry, and have emerged very quickly to rival peer-to-peer networks as the largest vehicle for online copyright infringement.
- » *Columbia Pictures v. Fung (Isohunt)*: Jenner & Block won summary judgment in favor of the major motion picture studios in the first-ever U.S. decision to address the merits of copyright claims against a peer-to-peer BitTorrent file trading service. The court held that the Isohunt website and its owner were liable for inducing copyright infringement of the studios’ works. In another first ruling of its kind, the court also held that defendants could not rely on the “safe harbors” in the Digital Millennium Copyright Act because defendants actively promoted copyright infringement. The Firm argued the case to the Ninth Circuit Court of Appeals in May 2011. The decision is expected to set important precedent governing the interplay between *Grokster* “inducement” liability and the “safe harbors” of the Digital Millennium Copyright Act.

*Our attorneys have been intimately involved in industry negotiations leading to enactment of most of the significant copyright legislation over the last 20 years, including the Digital Millennium Copyright Act*

- » *Arista Records v. Usenet.com*: Jenner & Block represented all major U.S. recording companies in a copyright infringement action against a commercial USENET server operator. USENET is a network of online bulletin boards where subscribers obtain access to files posted by other users and distributed by USENET operators. Accepting each of the Firm's arguments, the court granted summary judgment, holding that the defendants, Usenet.com, Inc. and its owner, were liable for both direct and secondary copyright infringement. The Firm also won broad evidentiary sanctions based on defendants' destruction of evidence and other egregious litigation misconduct. The case represents the first published decision holding a USENET operator liable for copyright infringement.

*Helping content  
companies protect  
their valuable brands,  
goodwill and ingenuity  
from unlawful  
misappropriation*



- » *Ventura Content v. Mansef*: The Firm successfully represented a leading adult entertainment company in a copyright infringement suit against the owners of several popular "tube" sites that provide users with access to adult videos, the vast majority of which were infringing. In a case that had important ramifications for the broader adult entertainment industry, the Firm successfully engineered a settlement that, in addition to providing compensation for our client, required the defendants to implement video "fingerprinting" copyright filters to prevent further infringement of copyrighted works belonging to the entire adult entertainment industry.
- » *Capitol Records v. MP3tunes*: Jenner & Block currently represents EMI Music North America and several of its record label affiliates in an action against a web service (MP3tunes) alleging that, among other copyright violations, MP3tunes encourages users to copy (or "sideload") music found on the internet to online "lockers" provided by MP3tunes. MP3tunes' principal, Michael Robertson, is named as a defendant on the basis of his widespread participation in and control over MP3tunes' infringing activities.
- » *Universal Recordings v. Escape Media Group*: The Firm currently represents Universal Music Group in a novel case involving the scope of protection for "pre-1972" sound recordings under New York State common law copyright and unfair competition laws. (Pre-1972 sound recordings pre-date the Congressional grant of federal copyright protection for sound recordings and, as a result, are not subject to the U.S. Copyright Act.) Through the popular website grooveshark.com, defendant operates a music service that provides users with free access to a vast library of sound recordings, both copyrighted and pre-1972. Because Universal's claims are premised exclusively on New York common law, the case could set the standard for liability of online service providers for common law infringement and establish the inapplicability of defenses arising under the U.S. Copyright Act.



- » *Columbia Pictures v. Bunnell (TorrentSpy)*: Jenner & Block represented the major U.S. motion picture studios against TorrentSpy, a now-defunct BitTorrent website that openly encouraged its users to download infringing copies of popular movies and television programs. After the Firm uncovered defendants' massive destruction of evidence, the court granted terminating sanctions and entered default against defendants. Following a contested damages hearing, the court entered judgment against defendants for more than \$110 million, and also enjoined defendants from further infringement. All of the individual defendants then filed for bankruptcy in an attempt to nullify the judgment. However, with the Firm representing the studios in the bankruptcy proceedings, the bankruptcy court held that the \$110 million judgment was a product of defendants' "willful and malicious" conduct and therefore ineligible to be discharged through bankruptcy.
- » *Atlantic Recording Corp. v. XM Satellite Radio*: The Firm successfully represented all major record companies in an action against XM Satellite Radio over XM's "inno" portable device. The inno enabled users to make permanent digital copies of any song being played on XM's radio service simply by pushing a record button at any time during the playing of the song – thereby converting XM's licensed radio service into an unauthorized download service in violation of the Copyright Act. The case resolved on terms favorable to the Firm's clients after the district court rejected XM's principal defense that the inno device was immunized from copyright liability by the Audio Home Recording Act of 1992.
- » *Motown Records v. iMesh.com*: The Firm represented major record companies in a copyright infringement suit against peer-to-peer company iMesh. The litigation successfully concluded when iMesh implemented the first-ever commercial audio fingerprinting copyright filter.
- » *321 Studios v. MGM and Atari v. 321 Studios*: Jenner & Block attorneys successfully represented the Motion Picture Association of America and the Entertainment Software Association, and their respective member companies, in separate litigations to enforce the Digital Millennium Copyright Act's "anti-circumvention" provisions against distributors of software that unlawfully circumvented the access and copy protections incorporated into commercial motion picture and video game DVDs.
- » *Arista Records v. Sakfield*: Jenner & Block represented major record companies in a suit against a Spanish company unlawfully distributing music from Canadian servers to U.S. customers through a service called PureTunes. The case ended in a consent judgment shutting down PureTunes after the Firm successfully dissected more than a half dozen layers of foreign shell companies put in place to conceal the true identities of PureTunes' U.S. operators.
- » *UMG Recordings v. MP3.com*: Jenner & Block lawyers represented the recording industry in their successful efforts to shut down and obtain significant damages from the infamous illegal music service MP3.com.
- » *A&M Records v. Napster*: Jenner & Block lawyers successfully represented all major U.S. record companies in the landmark case against Napster, the first peer-to-peer music trading service. Napster closed operations shortly after the Ninth Circuit affirmed the preliminary injunction against it.



## COPYRIGHT AND ENTERTAINMENT LITIGATION

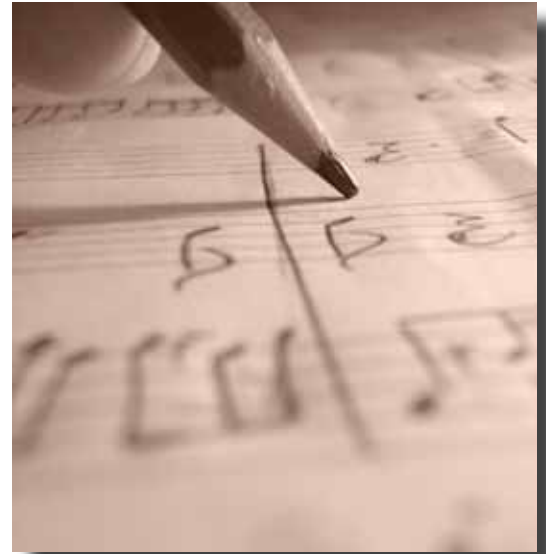
In addition to Jenner & Block's preeminence in high tech content protection litigation, we are among the nation's leading practitioners in traditional copyright and entertainment litigation. Clients look to the Firm to handle all manner of disputes concerning their valuable intellectual property. Whether the actions are based on copyright, contract, statutory rights, tort, accounting, or otherwise, we help content owners enforce their rights and defend against claims brought by others. Jenner & Block regularly represents entertainment companies, authors and publishers, and copyright owners of all kinds in high-profile disputes, spanning issues such as substantial similarity, fair use, renewal and termination rights, rights of publicity, theft of ideas, and works-for-hire.

Jenner & Block is regularly engaged to handle contractual disputes relating to licensing rights, talent and distribution agreements, and royalty accountings. These claims are most commonly asserted by artists and composers and relate to subjects as varied as the scope of rights granted, the applicable rates for digital exploitation, the propriety of deductions taken, exploitation and collections by foreign subsidiaries, joint authorship, and many more. The Firm's extensive experience with the intricacies of entertainment contracts and royalty accountings has proven to be a great asset to clients in navigating these complex actions.

Representative cases handled by our Copyright and Entertainment Litigation team include:

- » *Fifty-Six Hope Road Music Limited v. UMG Recordings*: Jenner & Block represents UMG Recordings in a case involving the heirs of Bob Marley, one of the most iconic performers in the recent history of popular music. The heirs claimed ownership of the renewal copyrights in some of Marley's famous sound recordings. In a significant victory for our client, the U.S. District Court for the Southern District of New York granted UMG's motion for partial summary judgment, dismissing plaintiffs' claim to the copyrights in question. The court held that, through its predecessor-in-interest, UMG is the statutory "author" of the recordings, which were "works for hire" for purposes of the Copyright Act of 1909. As such, UMG is the owner of the initial and renewal term copyrights in the recordings. In the remaining claims, the heirs have raised contractual issues relating to the appropriate rate of royalties to be paid on digital downloads, and other accounting issues arising from UMG's distribution of albums containing these sound recordings. The court denied the plaintiffs' motion for summary judgment on the royalty accounting claims and subsequently granted UMG's motion for summary judgment as to a substantial portion of the remaining accounting claims based on the contractual limitations period.
- » *Penguin Group (USA) v. Steinbeck*: Jenner & Block won a victory in the U.S. Court of Appeals for the Second Circuit for the Estate of Elaine Steinbeck, widow of author John Steinbeck, in litigation over copyright to his works. The case put to rest a decades-long dispute over the rights to John Steinbeck's classic literary works such as *Of Mice and Men* and *The Grapes of Wrath* when the Second Circuit held that the rights to the author's best-known early works lawfully belong to the Estate of Elaine Steinbeck.

*We are among the nation's leading practitioners in traditional  
copyright and entertainment litigation*





- » *Anthony v. The Walt Disney Co.*: Represented Disney and Pixar in their defense of a copyright infringement and breach of implied contract lawsuit in which the plaintiff claimed that our clients' *Cars* motion pictures and animated shorts infringed his copyrighted materials and misappropriated a concept he had purportedly submitted to defendants. On behalf of our clients, we successfully obtained dismissal of all claims. That order of dismissal is currently on appeal to the Court of Appeals for the Ninth Circuit.
- » *DiTocco v. Riordan*: Represented author Rick Riordan and Disney Book Group in a copyright infringement lawsuit over Riordan's blockbuster series of novels, *Percy Jackson & The Olympians*. In 2011, secured a decision dismissing all claims. That order of dismissal is currently on appeal to the Court of Appeals for the Second Circuit.
- » *Connie Franconero v. UMG Recordings*: Jenner & Block represents UMG Recordings in a case brought by singer Connie Francis. Initially, Francis alleged an eight figure tort claim for intentional infliction of emotional distress. That claim was dismissed on a motion for summary judgment. The principal remaining claim alleged that UMG improperly allowed Francis' recorded music to be used on albums not composed entirely of her own material. On a subsequent motion for summary judgment, the court dismissed the "coupling" claim, thereby reducing Francis' claim by more than 90%.
- » *Greenfield v. Philles Records*: Jenner & Block attorneys represented the copyright holder in this seminal 2002 decision from the New York Court of Appeals confirming the unlimited right of recording companies to exploit performances created under recording agreements.
- » *Jobim v. Songs of Universal*: Jenner & Block is currently defending Songs of Universal in an action brought by the heirs of songwriter Antonio Carlos Jobim relating to the exploitation of "The Girl from Ipanema," and other famous Jobim compositions, pursuant to a series of sub-publishing agreements between the parties. The case raises complicated issues of international exploitation of copyrights and foreign collection of royalties. The two primary claims in the litigation sought termination of the agreements and calculation of royalties based on income received by Universal's international licensees "at source" rather than the income ultimately received by Universal from those licensees. The Jenner & Block team achieved a considerable victory when the U.S. District Court for the Southern District of New York, in ruling on the parties' cross-motions for summary judgment, rejected plaintiffs' claims for "at source" accounting and for termination of the sub-publishing agreements.
- » *Marvel Enterprises v. Walt Disney Company*: Our attorneys represented Disney in the successful resolution of a multimillion dollar lawsuit by Marvel. Marvel alleged numerous counts of copyright infringement and breach of contract arising out of Disney's exploitation and licensing of animated television programs based on Marvel's well-known superhero characters including Spider-Man, X-Men, and The Incredible Hulk.



- » *Astaire v. McKenzie Astaire*: Representing the daughter of Fred Astaire, Jenner & Block attorneys secured dismissal at the pleading stage of a claim for violation of the California posthumous right of publicity brought by Mr. Astaire's widow.
- » *Sheldon Abend Revocable Trust v. NBC Universal*: Jenner & Block is defending NBC Universal, Universal Studios, and a dozen related companies in a copyright and breach of contract action brought by the Sheldon Abend estate. The suit alleges that the 2007 motion picture *Disturbia*, which Universal distributed in certain overseas territories, infringed plaintiff's rights in the 1942 short story on which the classic Alfred Hitchcock film *Rear Window* was based. The estate claimed that license agreements dating from 1991 and 1992 concerning Universal's distribution of *Rear Window* contained implied negative covenants that prohibited any exploitation of a film using ideas or themes similar to the 1942 short story. After removing the case from state to federal court on copyright preemption grounds, Jenner & Block obtained the dismissal of all claims against the defendants in October 2011.
- » *Saregama India v. Taylor*: Jenner & Block achieved a significant victory for two major recording industry clients, UMG Recordings and WB Music Group, when the U.S. Court of Appeals for the Eleventh Circuit affirmed the dismissal of copyright claims alleging that the rap producer Timbaland used a sample from the soundtrack of a 1969 Indian film entitled *Aradhana* in the song "Put You on the Game" (a song that was performed by the rap artist The Game and appeared on The Game's 2005 album, *The Documentary*). The district court had dismissed the complaint on the grounds that there was no evidence that the soundtrack was created during the term of the agreement at issue, and that the plaintiff therefore lacked standing to pursue the infringement action. The district court also found an absence of substantial similarity, refusing to follow the Sixth Circuit's decision in *Bridgeport Music v. Dimension Films*, which had held that plaintiffs in infringement actions based on the sampling of a sound recording are not required to prove substantial similarity. The district court awarded attorneys' fees and costs to our clients.
- » *Mena v. Fox Entertainment Group*: Jenner & Block is defending Fox and Warner Bros. in a copyright infringement suit based on the television series *Past Life*, brought by the author of an unproduced film script that also involves elements of crime-solving and recovered memories of past lives.
- » *BMS Entertainment/Heat Music v. Bridges*: Jenner & Block defended Universal Music Group and Universal Music & Video Distribution Corp. in a jury trial in the U.S. District Court for the Southern District of New York against copyright claims alleging Universal manufactured and distributed a record that infringed a song written by the plaintiff rap group. The Firm successfully persuaded the jury that any musical content shared by the two songs was not original to the plaintiff and therefore not protectable under copyright law.
- » *Crowder v. Universal Pictures*: Jenner & Block attorneys defended Universal Pictures in a suit for copyright infringement and "theft of ideas" in which the plaintiffs sought to enjoin the imminent release of a motion picture. The court denied the plaintiffs' TRO request, finding that the film was not similar to the plaintiffs' screenplay, and the motion picture opened nationwide on schedule.

*Providing full service  
to copyright owners in  
disputes arising from  
all forms of commercial  
exploitation of their  
intellectual property*

- » *Johnson v. Cypress Hill*: Jenner & Block successfully defended Sony Music and UMG Recordings against plaintiff Syl Johnson's claims of copyright infringement and unfair competition relating to the sampling of a small portion of one of his 1960s hits on a recording released by Cypress Hill in 1993. On behalf of our clients, we moved for summary judgment after discovering that Johnson's recording was not covered by any federal copyright registration. The district court granted the motion for summary judgment, denied Johnson's motion to amend, and awarded attorneys' fees to our clients. Thereafter, the plaintiff filed a new complaint in Cook County Circuit Court, mirroring the amended complaint disallowed in the dismissed federal suit and seeking relief under Illinois common law. In February 2010, after removal to federal court, the court granted our clients' motion for summary judgment on the grounds of *res judicata*, dismissing the suit with prejudice. On appeal, the Court of Appeals for the Seventh Circuit affirmed all of the district court's rulings.
- » *Robinson v. Sanctuary Records Group*: Jenner & Block represented defendants in an action for alleged non-payment of royalties under a variety of recording agreements and an asset purchase agreement, which together transferred to our clients the rights to exploit certain recordings by the Sugar Hill Gang and other artists. Plaintiffs sought damages or, in the alternative, rescission of the recording agreements. Prior to the Firm's engagement, the court had entered a default judgment against defendants, but found that plaintiffs had not proven damages. The Second Circuit vacated the default judgment without disturbing the district court's damages ruling. On remand, represented by the Firm, defendants filed a motion for summary judgment arguing that the district court's prior damages ruling was *res judicata* or "law of the case," and that plaintiffs' claim for rescission was barred as a matter of law. The U.S. District Court for the Southern District of New York granted defendants' motion in its entirety and dismissed the case.
- » *Santryall v. Burrell*: Jenner & Block attorneys successfully defended Capitol Records and recording artist MC Hammer against a multimillion dollar copyright infringement claim alleging that a rhythmic chant in a song MC Hammer wrote and recorded was identical to a chant in one of plaintiffs' songs. A jury found for the Firm's clients after a full trial in the U.S. District Court for the Southern District of New York.
- » *Inter-Avid Productions v. Ventura Content*: Jenner & Block is representing an internet entertainment company against copyright infringement claims brought by the creator of numerous episodes of adult video content previously licensed by our client. The case raises important issues concerning the interpretation and termination of exclusive license agreements, as well as work-for-hire issues.



*Our attorneys counsel clients on sophisticated content protection and enforcement strategies*



- » *Shivers v. Friedman*: Our attorneys successfully defeated false light and defamation claims brought against an online entertainment news reporter for FoxNews.com. All of the plaintiff's claims were dismissed under California's anti-SLAPP statute. The team then obtained a dismissal of the appeal with prejudice under California's vexatious litigant rules.
- » *Kent v. Universal Pictures*: Jenner & Block attorneys defended Universal Pictures, BBC Worldwide Americas, and various production companies and DVD distributors in a copyright and trademark infringement lawsuit based on the use of a portion of the plaintiff's news report in the motion picture *Charlie Wilson's War*. The case settled favorably for our clients after we obtained dismissal of the Lanham Act false endorsement claims and all state law claims, and a secured ruling that the plaintiff could not recover statutory damages or attorneys' fees on his copyright claim.
- » *Milton H. Greene Archives v. BPI Communications*: Jenner & Block attorneys defended the publisher of a biography of Marilyn Monroe against copyright infringement claims arising from the use of publicity photos distributed in the 1950s to promote the films *Bus Stop* and *The Prince and the Showgirl*. On behalf of our publisher client, we obtained summary judgment on the grounds that all of the photographs in question were published without copyright notices in advertisements and promotional materials and thus fell into the public domain. The team subsequently obtained an award of more than 97% of the attorneys' fees incurred. Both decisions were affirmed on appeal by the Court of Appeals for the Ninth Circuit.
- » *ABKCO Music v. Stellar Records*: Jenner & Block lawyers represented ABKCO Music in a copyright case of first impression in the Second Circuit involving the rights of music publishers to compositions being used in the karaoke industry. ABKCO owned the copyrights to seven musical compositions by Mick Jagger and Keith Richards of the Rolling Stones, including the rock-and-roll classics "Satisfaction (I Can't Get No)," "Jumping Jack Flash," and "Brown Sugar," which it had not licensed for commercial use. The Second Circuit affirmed the lower court's order granting summary judgment and enjoining defendant from publishing the lyrics to the copyrighted songs.
- » *Ellison v. Fantagraphics Books*: Jenner & Block attorneys defended a comic book and graphic novel publishing company, Fantagraphics Books, against claims of defamation and violation of the right of publicity brought by science fiction writer Harlan Ellison, who challenged our client's references to Mr. Ellison in an anthology of essays and on a book cover.
- » *Diaz v. Universal Pictures*: Jenner & Block attorneys successfully defended Universal Pictures in a putative libel class action brought by a class of former and current federal drug enforcement officers who claimed they were defamed by the film *American Gangster*. The district court denied the TRO request and dismissed the lawsuit. The Court of Appeals for the Second Circuit unanimously affirmed.
- » *Broadcast Music Inc. v. Claire's Boutiques*: Jenner & Block lawyers represented Claire's Boutiques in a Seventh Circuit decision interpreting Section 110(5) of the Copyright Act. The case involved the question of whether a corporate owner of a chain of retail stores must pay copyright license fees for playing radio broadcasts. The Court of Appeals for the Seventh Circuit affirmed summary judgment in favor of Claire's on the basis that, under certain circumstances, Section 110(5) exempts persons who play their radio or television in a public place if received by a single receiving apparatus of a kind commonly used in private homes.



## BUSINESS LITIGATION FOR ENTERTAINMENT SECTOR COMPANIES

Beyond traditional copyright and entertainment litigation, companies in the content, media and entertainment industries need tough business litigators who understand their businesses, the economics of their industries, and the real-world drivers of their financial success. Together, Jenner & Block lawyers have decades of experience working in and with these industries. We bring that experience to bear in representing content, media and entertainment industry clients in business litigation across a diverse range of issues, including:

- » Antitrust
- » Consumer class actions
- » Data privacy and security
- » Commercial fraud and related business torts
- » Unfair competition
- » Patent
- » Trade secrets
- » Securities
- » Bankruptcy
- » Insurance coverage
- » Contract

Our Content, Media & Entertainment business litigators are some of the best and most accomplished in the country. Collectively, our litigators have handled scores of jury trials, and countless bench trials, arbitrations and appeals, including many cases before the United States Supreme Court. We count among our business litigators two Fellows of the prestigious American College of Trial Lawyers (an invitation extended to less than 1% of the top trial lawyers in the country), former prosecutors and public defenders, and litigators who have been recognized as “The Decade’s Most Influential Lawyers” and “Outstanding Women of the Bar.” Our business litigators are driven and deliver results.

Representative cases handled by our Business Litigation team include:

- » *FX Networks v. DISH Network*: Jenner & Block is representing FX against DISH and Starz Entertainment in an action aimed at upholding the windowing system upon which motion picture licensors and licensees have relied for years. FX’s claims arise from DISH’s yearlong free giveaway of multiple pay television channels to existing DISH subscribers. The action seeks redress for the violations of FX’s exclusive rights to distribute certain motion pictures in the movies’ first free television/basic cable windows.
- » *In re News Corporation Shareholder Derivative Litigation*: Jenner & Block represents News Corporation in multiple pending derivative actions and class actions arising from the alleged news gathering practices of News of the World, a newspaper once operated by News International, a subsidiary of News Corp. Some of the pending cases also involve claims arising from News Corp.’s acquisition of Shine Group, an international production company in which Elisabeth Murdoch held the majority interest. The claims include breach of fiduciary duty, corporate waste, and violations of sections 10(b) and 14(a) of the Securities Exchange Act of 1934.

*Our litigators have handled scores of jury trials, and countless bench trials, arbitrations and appeals*

» *EchoStar Satellite Corporation v. NDS Group*: Our litigators represented News Corporation's NDS Group companies (NDS) in a piracy lawsuit brought by DISH Network (formerly Echostar) – a case the news media described as the largest corporate espionage case in U.S. history. After a five-week trial in the U.S. District Court for the Central District of California, the jury ruled in favor of satellite television technology company NDS on the majority of the charges. In denying many of the claims, the jury awarded actual damages of \$45.69 relating to a single incident involving a test card used by NDS. Plaintiffs had requested statutory damages of \$1.6 billion dollars.

» *LiveUniverse v. MySpace*: Our litigators achieved a significant victory for MySpace, successfully obtaining the dismissal of antitrust claims brought by LiveUniverse, the owner of a social networking website that had alleged MySpace was unlawfully monopolizing the market for social networking. The case was the first antitrust case ever to address whether a social networking website can prevent its users from posting links to competitors' webpages on its website. The district court ruled that excluding a competitor's webpage links from MySpace.com was not anticompetitive and did not cause antitrust injury. The court found that MySpace had no duty to promote its competitors' websites by displaying active links to those sites. The Ninth Circuit Court of Appeals affirmed the dismissal.



» *Meredith Corp. v. SESAC*: Jenner & Block is currently representing SESAC in a high stakes antitrust suit brought by a putative class of independent television stations. SESAC is a performance rights organization that licenses musical compositions on behalf of affiliated composers and music publishers. The plaintiffs allege that SESAC has violated antitrust laws in the way it licenses musical works for television programming.

» *Cleveland v. Twentieth Century Fox*: Our litigators represented Twentieth Century Fox Entertainment, along with Blockbuster and the videocassette distribution divisions of the six other major Hollywood movie studios, in two antitrust putative class actions, one in the U.S. District Court for the Western District of Texas, San Antonio Division, and the other in the complex panel of the Los Angeles Superior Court. Plaintiffs alleged that the studio defendants agreed among themselves, and separately with Blockbuster, not to offer videocassettes of newly-released motion pictures to independent video retail stores in the United States on the same "revenue sharing" terms on which they offer them to Blockbuster. Plaintiffs alleged that these "discriminatory terms and agreements" caused independent retailers to lose customers and profits to Blockbuster, and brought suit under the Sherman and Cartwright Acts alleging, among other things, price fixing, price discrimination and unfair business practices. Defendants successfully defeated class certification in both venues. Moreover, in the federal action, after a three-week trial, the defendants won their motion for directed verdict, which was upheld on appeal by the Court of Appeals for the Fifth Circuit. In the Los Angeles state court action, defendants won summary judgment, which was upheld in nearly all respects by the California Court of Appeal.





- » *Jim Brown v. Brett Brewer*: Jenner & Block represents former officers and directors of Intermix Media, which owned the majority stake in MySpace.com, in a class action alleging breaches of fiduciary duty under Delaware law and violation of Section 14(a) of the Securities Exchange Act of 1934 relating to the sale of Intermix, including MySpace.com. Our team also secured dismissal of other defendants in the action (investment banks), as well as three of the six counts that plaintiff originally brought against the director defendants. The matter was subsequently settled and the settlement is pending approval by the court.
- » *Brad Greenspan v. Intermix Media*: Jenner & Block litigators represented the former CEO and COO of Intermix, and other former Intermix directors, in an action brought by Intermix's largest individual shareholder, Brad Greenspan. Greenspan alleged various breaches of fiduciary duty under Delaware law relating to the sale of Intermix, including MySpace.com, to News Corporation. The case was dismissed at the pleading stage with the California Court of Appeal upholding the dismissal.
- » *Insignia Systems v. News America Marketing*: Our litigators represented one of the nation's largest providers of advertising and promotions in supermarkets and drugstores in connection with various state and federal antitrust and false advertising claims. The multi-million dollar lawsuit was eventually settled during trial.
- » *Doe v. MySpace*: Our litigators obtained a closely-watched victory for MySpace in the California Court of Appeal. In 2007, four sets of plaintiffs and their parents sued MySpace for negligence and strict products liability seeking to hold the social networking site liable for damages suffered by their teenage daughters who were sexually assaulted, offline, by men the teens had encountered via Myspace.com. On behalf of MySpace, the team obtained a dismissal of all claims on the grounds that they were barred by Section 230 of the federal Communications Decency Act. The Court of Appeal unanimously affirmed the trial court's dismissal, and the California Supreme Court denied plaintiffs' petition for review.
- » *Kirch v. Embarq* and *Mortenson v. CenturyTel*: Jenner & Block recently won dismissal of putative class actions against two internet service providers alleged to have violated the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act in connection with the provision of behavioral advertising. The ISPs had allowed NebuAd, a now-defunct online advertising company, to engage in "deep packet inspection" of their customers' internet communications to facilitate the delivery of targeted ads. In *Kirch v. Embarq*, the U.S. District Court for the District of Kansas granted our motion for summary judgment, ruling that the ISP did not intercept or have access to the communications that NebuAd culled to target consumers with advertisements, and that the ISP's privacy policy sufficiently disclosed NebuAd's activities. In *Mortenson v. CenturyTel*, the U.S. District Court for the District of Montana granted our motion to dismiss, finding the claims foreclosed by disclosures in our client's online privacy policy.
- » *DIRECTV v. Lifetime Entertainment Services*: Jenner & Block litigators represented DIRECTV in an action to uphold DIRECTV's most favored nation rights in connection with DIRECTV's carriage of television channels Lifetime and Lifetime Movie Network.

- » *DIRECTV v. Paxson Communications*: Represented by Jenner & Block litigators, DIRECTV successfully defended against a TRO/preliminary injunction seeking to prevent DIRECTV from taking down Paxson's channel.
- » *EchoStar Satellite v. DIRECTV*: Our litigators successfully represented DIRECTV in an action brought by EchoStar Satellite (owner of Dish Network). EchoStar had sued DIRECTV and GlobeStar (a distributor of Greek-language programming) after GlobeStar ceased licensing its programming to EchoStar, and began distributing its programming through DIRECTV. EchoStar claimed that GlobeStar breached its affiliate agreement with EchoStar and that DIRECTV tortiously interfered with EchoStar's contractual relations. The court entered summary judgment in favor of DIRECTV, ordering EchoStar to pay DIRECTV's costs.
- » *UMI v. Exigen*: Jenner & Block represents Universal Music Investments in a substantial breach of contract action pending in Delaware state court against Exigen USA. Exigen contracted to develop a music royalty accounting software system for UMI, but failed to deliver a functional system. The complaint seeks damages in excess of \$20 million. Cross-motions for summary judgment currently are pending.
- » *News Digital Media Pty v. Adicio*: Our litigators successfully represented CareerOne and News Digital Media, operators of Australia's most popular job search website, when their web hosting company breached its contract and threatened to disrupt the website's multi-million dollar operation. Within weeks of our team filing for a temporary restraining order and preliminary injunction in the Southern District of California, the defendant web hosting company ceased its breaching conduct and the matter was successfully resolved without any disruption for our clients.

*Our litigators understand  
our clients' businesses, the  
economics of their industries,  
and the real-world drivers of  
their financial success*

## IP TRANSACTIONS

Jenner & Block provides sophisticated transactional services to assist content, media and entertainment companies in achieving their global business objectives. Our attorneys regularly represent industry clients, both public and privately held, in mergers and acquisitions, financing transactions, joint ventures, strategic investments and alliances, public equity and debt securities offerings, and tender offers.

We also have broad experience structuring and negotiating agreements for the development, acquisition and commercialization of intellectual property assets and technology. In particular, our transactional attorneys have strong cable television experience, representing media companies in joint ventures, and content and rights acquisitions and distribution.



Representative matters handled by our IP Transactions team include:

- » *Fox Regional Sports Networks:* Jenner & Block attorneys routinely advise Fox on strategic joint ventures, rights agreements and related arrangements with professional sports teams, including the development and launch of new regional sports networks.
- » *Big Ten Network:* Jenner & Block attorneys represented Fox Cable Networks in the creation of the Big Ten Network, a 20-year joint venture with an affiliate of the Big Ten Conference. The Big Ten Network is the first collegiate conference sports network to offer a full-time channel to cable systems nationwide, with programming 24 hours per day, 365 days per year.
- » *Gemstar-TV Guide International:* Jenner & Block attorneys advised Gemstar-TV Guide International in its acquisition of Aptiv Digital, a developer of interactive programming guide software for television set-top boxes.
- » *Digital Music Marketplace:* Jenner & Block attorneys represented the recording industry in structuring and negotiating formative agreements for the development of the digital music marketplace. These included industry-wide agreements providing frameworks for licensing sound recordings and musical works to digital music services, and individual-company agreements licensing the use of sound recordings and musical compositions in new media products and services.
- » *National Geographic Channels:* Jenner & Block attorneys represent Fox Networks in connection with its joint ventures with the National Geographic Society; those joint ventures own and operate the National Geographic Channel and Nat Geo Wild.

*We have broad experience structuring and negotiating  
agreements for the development, acquisition  
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assets and technology*



- » *News Corporation:* Jenner & Block attorneys represented News Corporation in an approximately \$11 billion transaction involving News Corporation's buyback of Liberty Media Corporation's 16% interest in News Corporation in exchange for cash, News Corporation's 41% stake in The DIRECTV Group, and three regional sports networks.
- » *Advanced Technologies for the Intelligence Community:* Jenner & Block attorneys regularly represent In-Q-Tel, which is sometimes described as the strategic venture capital fund of the Central Intelligence Agency and broader U.S. Intelligence Community, in negotiating agreements with new portfolio companies. These agreements are intended to adapt and deliver technology solutions to the Intelligence Community in areas such as software, infrastructure, security, and physical and biological technologies.
- » *Fox Sports Interactive Media:* Jenner & Block attorneys represented Fox in its acquisition of Yarbarker, Inc., then the largest network of sports blogs on the web, to complement Fox Sports' array of websites including FoxSports.com, the websites for Fox Sports' regional sports networks, Scout Media, and WhatIfSports.com. Our attorneys also represented Fox in its acquisitions of Scout Media and WhatIfSports.com.



## COPYRIGHT POLICY AND COUNSELING

Jenner & Block is home to some of the most experienced and sophisticated copyright practitioners in the country. When it comes to understanding the intersection of copyright law and new technologies, our copyright lawyers are second to none.

Because of this, clients regularly call upon us to analyze their most complex copyright issues, particularly as they relate to new business models, products and services, and the implications of new and evolving technologies. We also help steer clients through their most difficult copyright policy debates.

Our attorneys are equally adept in the legislative arena. We have been intimately involved in industry negotiations leading to enactment of most of the significant copyright legislation over the last 20 years, including the Digital Millennium Copyright Act. We regularly represent clients in rulemaking and other administrative proceedings before the U.S. Copyright Office.

Representative matters handled by our Copyright Policy and Counseling team include:

- » *Planning for Termination of Copyright Transfers:* Jenner & Block is representing numerous clients in diverse content industries in structuring and negotiating agreements with authors and others to provide for continued commercialization of works as the original agreements covering those works potentially become terminable under statutory provisions for termination of copyright transfers. We are also working with clients in planning strategies for anticipated litigation over efforts to terminate copyright transfers.
- » *Complex Copyright Analyses and Counsel:* Among many other copyright issues, Jenner & Block has been analyzing and counseling clients as to the copyright, content protection and business issues that arise in connection with new business models based on online "lockers" or "cloud" computing, as well as internet retransmissions of broadcast and other television programming.



- » *Recorded Music and Music Publishing Industry Royalty Payments Settlement:* Jenner & Block represented the Recording Industry Association of America in negotiating a settlement with the music publishing industry concerning payment of potentially hundreds of millions of dollars in accrued “pending and unmatched” royalties. As a result, certain royalties have been and will be distributed on a market share basis pursuant to a process managed by a third-party administrator, and the industries have agreed to streamlined clearance processes going forward.
- » *Recent Legislation:* Jenner & Block represents the Recording Industry Association of America in drafting and negotiating proposed state and federal legislation, including most recently the Performance Rights Act and the PROTECT IP Act. Firm lawyers also represented the RIAA in industry negotiations leading to the enactment of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (the PRO IP Act), the Family Entertainment and Copyright Act of 2005, the Intellectual Property Protection and Courts Amendments Act of 2004, and the Copyright Royalty and Distribution Reform Act of 2004, among others.
- » *Webcasting Royalties:* Jenner & Block represented SoundExchange in drafting and securing passage of the Webcaster Settlement Acts of 2008 and 2009. The Firm then represented SoundExchange in structuring and negotiating settlements of webcasting royalty rates pursuant to those Acts with the National Association of Broadcasters, the Corporation for Public Broadcasting, College Broadcasters, Inc., SiriusXM Satellite Radio, and certain “pureplay” and commercial webcasters.

*Jenner & Block is home to some of the most experienced and sophisticated copyright practitioners in the country*

*We are regularly called upon to analyze complex issues concerning the application of copyright and related laws to evolving technologies and to new business models, platforms and products*



## ROYALTY AND RATE-SETTING LITIGATION

Our Content, Media & Entertainment lawyers also provide clients with litigation and counseling services in royalty rate-setting and related matters.

A centerpiece of this practice is Jenner & Block's unparalleled experience in litigation before the Copyright Royalty Board (CRB), a federal administrative court that presides over rate-setting and distribution of royalties under compulsory licenses established by federal law. These proceedings determine the rates to be paid to copyright owners and artists for various uses of their works that are statutorily prescribed. For example, one federal statute addresses certain types of digital performances of sound recordings in defined technologies (internet webcasts, satellite radio); another governs the "mechanical" licenses between the owners of sound recording copyrights and the owners of musical compositions. Other proceedings concern allocation of royalties paid by cable and satellite television providers. With hundreds of millions of dollars at stake over the rate periods, these cases are critically important to the affected industries and parties. Jenner & Block has served as lead counsel for the recording industry and recording artists in all major litigated rate-setting proceedings before the CRB, and has obtained significant gains on their behalf.

Representative matters handled by our Royalty and Rate-Setting Litigation team include:

- » *In re Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services (Satellite Radio Royalties for 2013-2017)*: Jenner & Block represents SoundExchange (a performance rights collection society that represents the interests of all record companies and recording artists in the country) against SiriusXM Satellite Radio in rate-setting litigation over the royalties that SiriusXM will owe to SoundExchange for satellite transmissions of sound recordings for the years 2013-2017. The proceeding also will set the rates that Music Choice and Muzak pay for their noninteractive audio streaming of sound recordings received over television services.

*Jenner & Block has served as lead counsel for the recording industry and recording artists in all major litigated rate-setting proceedings before the Copyright Royalty Board*

- » *In re Digital Performance in Sound Recordings and Ephemeral Recordings (Webcasting Royalties for 2011-2015)*: In 2010, Jenner & Block represented SoundExchange in rate-setting litigation before the Copyright Royalty Board to determine the royalty rates that noninteractive internet radio services must pay for their transmission of sound recordings. Jenner & Block successfully advocated for a significant increase in rates that will result in payment of hundreds of millions of dollars in royalties. Our team also represented SoundExchange in negotiating settlements with certain major webcasters, including helping SoundExchange secure federal legislation to facilitate such settlements.
- » *In re Preexisting Services and Satellite Digital Audio Radio Services (Satellite Radio Royalties for 2007-2012)*: Jenner & Block represented SoundExchange against the satellite radio services XM and Sirius Satellite Radio. The litigation concerned the royalty that XM and Sirius would owe to SoundExchange for their performances of sound recordings. In 2008, after 25 days of trial and thousands of pages of written submissions, the court ordered a substantial increase in the rates for the rate period of 2007-2012, which has ensured payments of hundreds of millions of dollars to record companies and performers.



## *Unparalleled experience in litigation before the Copyright Royalty Board*

- » *In re Mechanical and Digital Phonorecord Delivery Proceeding (Mechanical Royalties)*: Jenner & Block represented the Recording Industry Association of America against music publishers in litigation setting rates and terms for musical compositions used in CDs, digital downloads, and other products. The Firm successfully defeated the publishers' arguments that rates should be increased dramatically, and was counsel to the recording industry in the landmark settlement of the portion of this case relating to interactive streaming and limited downloads.
- » *In re Digital Performance in Sound Recordings and Ephemeral Recordings (Webcasting Royalties for 2006-2010)*: Jenner & Block represented SoundExchange in the very first CRB proceeding to set rates and terms for noninteractive webcasting. In litigation against internet portals such as AOL, Yahoo! and Microsoft, as well as radio stations such as Clear Channel, the Firm helped achieve a significant increase over the pre-existing royalty rates, ensuring that record companies and recording artists received fair compensation for their creative endeavors. The team also successfully represented SoundExchange in the appeal of the case in the U.S. Court of Appeals for the D.C. Circuit.

As the need to bring entertainment products to market quickly has increased, so-called "rateless" agreements have become more common. These are agreements to bring products to market with an "agreement to agree" on the royalty rate at a later time backed by private arbitration. Our attorneys represent clients in negotiating and drafting "rateless" agreements and in the ensuing arbitrations, bringing to bear the Firm's significant experience in the economic complexities of rate-setting for intellectual property.

### **MEDIA AND FIRST AMENDMENT**

*Paul M. Smith, Co-Chair, Media and First Amendment Practice*

Jenner & Block is nationally renowned for its work defending the First Amendment rights of creative content providers. In addition to providing regulatory advice and pre-publication review of content, Jenner & Block is the Firm that the content, media and entertainment industries turn to when they need to challenge local, state and federal regulations, whether in state or federal courts across the country or in the U.S. Supreme Court. Jenner & Block attorneys have been involved in many of the most significant First Amendment cases in the last two decades. Our extensive practice includes both litigation and counseling on a wide variety of media law and First Amendment issues, including:

- » Defense of libel and invasion of privacy cases.
- » Litigating challenges to statutes and regulations restricting "violent" video games and defending against tort claims based on the actions of third parties.
- » Litigating challenges to statutes restricting content that may be sent over the internet.
- » Litigating challenges to statutes and regulations restricting commercial speech.



- » Litigating a range of newsgathering issues, including access to judicial proceedings and records, resistance to subpoenas served upon members of the media, intrusions into the newsgathering process, prior restraints, and Freedom of Information Act proceedings.
- » Litigating cases involving censorship of books and computers in libraries.
- » Counseling on non-litigation media matters, including pre-publication advice on defamation and privacy issues for television stations, newspapers, magazines, and book publishers.

Representative matters handled by our Media and First Amendment team include:

- » *Brown v. Entertainment Merchants Association, formerly Schwarzenegger v. EMA*: We represented the video game and software industries in a successful First Amendment challenge to a California law that would have restricted the sale or rental of “violent” video and computer games to anyone under the age of 18. The case ultimately resulted in a 7-2 United States Supreme Court decision striking down the law as unconstitutional.

Over the past several years, Jenner & Block has served as lead counsel to the video game industry in numerous lawsuits challenging state and municipal laws seeking to restrict video games based on “violent” content. Nine such laws have been passed – in California, Michigan, Illinois, Oklahoma, Louisiana, Minnesota, Washington, St. Louis County, and Indianapolis – and every court has upheld our constitutional challenge, enjoining the laws on the grounds that they violate the First Amendment.

- » *James v. Meow Media*: We represented most of the leading companies in the video game industry, including Nintendo, Sega and Sony, in this lawsuit involving claims that a troubled teenager’s exposure to video games led to a high school shooting in Paducah, Kentucky. The district court dismissed the case on state law grounds without reaching the First Amendment defenses we raised. The Court of Appeals for the Sixth Circuit affirmed on state law grounds, but recognized that holding the defendants liable for the reaction of listeners and viewers to the content of their speech would present substantial First Amendment problems. The U.S. Supreme Court denied certiorari.
- » *Sanders v. Meow Media*: We represented a number of video game defendants in a case stemming from the Columbine shooting. The federal district court dismissed the suit on both state law and First Amendment grounds.
- » *Reno v. ACLU*: We represented the American Library Association and a several other plaintiffs in consolidated cases challenging the federal Communications Decency Act (CDA), which imposed restrictions on distribution of so-called “indecent” content over the internet. The U.S. Supreme Court struck down the CDA in a landmark decision confirming that the First Amendment provides the strongest level of protection to expression on the internet.

*Jenner & Block is the Firm  
that the content, media and  
entertainment industries  
turn to when they need to  
challenge local, state and  
federal regulations*

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- » *United States v. American Library Association*: We represented the American Library Association in its challenge to the constitutionality of the Children's Internet Protection Act, a federal law mandating the use of "blocking software" on all computers allowing access to the internet in any library receiving certain federal funds. On direct appeal from a three-judge court in Philadelphia, a divided U.S. Supreme Court narrowly upheld the law against a facial challenge, while holding that any application of the law that burdened patrons' First Amendment rights would be subject to an as-applied challenge.
  - » *Turner Broadcasting System v. FCC*: We represented the National Association of Broadcasters (NAB) in this long-running case over the constitutionality of the federal law requiring cable companies to carry local broadcast stations. Ultimately, the U.S. Supreme Court accepted our argument on behalf of the NAB that the First Amendment was not violated by this requirement.
  - » *Global Relief Foundation v. The New York Times Co.*: Jenner & Block represented ABC and one of its reporters in a high-profile libel action brought by an Islamic charitable organization alleging that ABC News (and five other news organizations) falsely accused it in a news report of having financial ties to terrorists. We obtained summary judgment in favor of ABC on the grounds that its news report was substantially true. The Court of Appeals for the Seventh Circuit affirmed the summary judgment ruling in an opinion that broadly expanded the scope of the substantial truth defense available to news organizations reporting on government investigations.
  - » *Muzikowski v. Paramount Pictures*: We represented Paramount Pictures in a precedent-setting case that protects the right of movie studios to produce films that are "inspired by a true story." Demanding damages in excess of \$30 million, the plaintiff filed suit claiming that a character in the movie *Hardball* portrayed his own life and, paradoxically, that the movie defamed him because it was an inaccurate portrayal. Jenner & Block successfully argued that the defamation claim had no merit because the movie was not about Muzikowski and it did not purport to be a documentary or even a dramatized account of actual events. In granting summary judgment for our client, the court rejected the plaintiff's Lanham Act claim, agreeing that Paramount's First Amendment rights must include the flexibility to incorporate real life aspects into creative works. The United States Court of Appeals affirmed the summary judgment for Paramount on all claims.
    - » *Food Lion v. Capital Cities/ABC*: We successfully represented ABC on appeal in this highly publicized case involving tort liability for use of undercover reporters to investigate conditions and practices in a grocery store chain. The U.S. Court of Appeals for the Fourth Circuit ruled that the plaintiff's fraud claim was legally insupportable, thereby reducing the damages awarded by a jury to the nominal sum of \$3.



## TRADEMARK AND UNFAIR COMPETITION

*Susan J. Kohlmann, Chair, Trademark and Unfair Competition Practice*

Jenner & Block's Trademark and Unfair Competition practice helps brand owners confront the full spectrum of trademark issues they encounter in the marketplace, including trademark and trade dress infringement, false advertising, dilution, and cybersquatting cases. We litigate cases in federal courts and before the Trademark Trial and Appeal Board. We also counsel clients in disputes involving the protection of their internet domain names, keyword advertising, meta-tags, linking, and online branding issues. The practice has a particular focus on the convergence of trademark law, technology and the internet.

*Our Trademark  
lawyers help brand  
owners confront the full  
spectrum of trademark  
issues they encounter in  
the marketplace*

Representative matters handled by our Trademark and Unfair Competition team include:

- » *AOL Advertising.com v. Advertise.com*: Jenner & Block currently represents AOL in a case involving claims for trademark infringement and unfair competition regarding use of AOL's ADVERTISING.COM and AD.COM marks for an online display advertising network. The case involves cutting-edge issues regarding the scope of trademark protection for domain names.
- » *Friendly Family Productions v. Little House on the Prairie*: Jenner & Block attorneys successfully represented the owner of trademark and merchandising rights in connection with the television series "Little House on the Prairie" (and the books on which it was based) in a trademark infringement action against a museum engaged in unauthorized merchandise sales on the internet.
- » *DirecTV v. DISH Network*: Jenner & Block attorneys defended DISH Network in litigation brought by DirecTV, alleging trademark infringement and other claims arising from the use of a competitor's trademarks in internet search engine advertising.
- » *NY Times Co. v. AOL and Huffingtonpost.com*: Jenner & Block is representing AOL and the Huffington Post in a high profile trademark infringement lawsuit filed by the NY Times in the Southern District of New York arising from the use of the mark PARENTLODE by the Huffington Post in connection with a new parenting blog by well known author Lisa Belkin.
- » *Fleshwound Films v. Rush Sports & Events International*: Jenner & Block attorneys represented one of Australia's largest live-action sports promoters in an international arbitration and state court proceedings concerning trademark licensing rights. We successfully opposed a preliminary injunction motion and secured a favorable settlement for our client.
- » *Sly Magazine v. Weider*: Jenner & Block attorneys prevailed in a trademark infringement case on behalf of our clients, Weider Publications and American Media, successfully arguing that their trademark, "SLY Magazine," for a Sylvester Stallone-themed magazine, did not infringe the trademark of a women's online magazine with a similar name.

- » *Mansef v. Ventura Content*: Jenner & Block attorneys defended an adult entertainment company in a lawsuit alleging claims for trademark infringement and unfair competition arising from the alleged use of a competitor's trademarks in internet search engine advertising.
- » *Current Communications v. Current Television*: Jenner & Block attorneys successfully represented a television station in defending against a preliminary injunction action brought by an internet service provider. The case addressed cutting-edge issues relating to the convergence of television media and the internet.
- » *Jaguar Land Rover North America v. Premier Automotive Imports of CA*: Successfully represented Jaguar Land Rover North America, Jaguar Cars Limited and Land Rover, in a Lanham Act trademark infringement and unfair competition lawsuit against a dealership and its purported assignee. On behalf of our clients, we secured a preliminary injunction that effectively ended the dispute and prompted a favorable settlement.
- » *Momentum Luggage v. JanSport*: Jenner & Block attorneys obtained summary judgment dismissing a suit filed in the United States District Court for the Southern District of New York that sought to enjoin our client's launch of a luggage line under the name MOMENTUM. The Second Circuit Court of Appeals affirmed the dismissal.
- » *Prime Healthcare Anaheim v. AHMC Anaheim Regional Medical Center*: Jenner & Block attorneys defended a hospital owner in a bench trial in a trade name lawsuit filed by a rival hospital owner concerning priority of use and state law rights in the business name "Anaheim Regional Medical Center."







## **Content, Media & Entertainment Co-Chairs**

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