

ANDREW J. THOMAS, Partner

Andrew J. Thomas is a media and entertainment litigator who focuses on copyright and trademark matters, First Amendment cases, and complex business litigation. Clients ranging from motion picture studios and television networks to book publishers and video game companies seek his representation at the trial and appellate levels in matters including intellectual property rights, defamation and privacy, unfair competition claims, and prior restraints on speech.

For more than a decade, *Chambers USA* has consistently named Mr. Thomas a leading California Media and Entertainment Litigation lawyer. He was recognized as a *California Lawyer* Attorney of the Year in 2018 for the firm's jury trial victory in a suit over rights to the works of author John Steinbeck. He also has been recognized twice in *Variety's* "Legal Impact Report," a listing of the top lawyers in the entertainment industry. Mr. Thomas was named twice as one of the "Top 50 Entertainment Lawyers" in California, as published by the *Daily Journal*. The *Daily Journal* also recognized him as one of the state's "Top IP Litigators." In addition, the *Los Angeles Business Journal* previously recognized him as a top entertainment lawyer in its edition of "Who's Who in L.A. Law."

Mr. Thomas is a member of the firm's Content, Media and Entertainment and Complex Commercial Litigation Practices. He is an officer and two-term board member of the Los Angeles Copyright Society and regularly writes and speaks on topics relating to intellectual property and entertainment law. Mr. Thomas was an adjunct lecturer on media law at the University of Southern California and a lecturer on defamation and privacy law at the Southwestern University School of Law.

In his more than 25 years of practice, Mr. Thomas has litigated and tried a variety of media, entertainment and complex commercial cases in state and federal court. He has successfully handled bench trials, jury trials, and arbitrations and has litigated more than 50 appeals in the California appellate courts and in the Second, Third, Sixth, Seventh, and Ninth Circuits and the US Supreme Court.

Representative cases over the course of his career include:

Copyright/Idea Submission

- *Kaffaga v. Steinbeck et. al.* (C.D. Cal., 9th Cir. and U.S. Supreme Court): As trial counsel with NY partner Susan Kohlmann, won a federal jury verdict of \$13.15 million in compensatory and punitive damages after a week-long trial over the rights to writer John Steinbeck's works. The jury's liability determinations (affirmed by the Ninth Circuit), confirm that the copyrights are controlled by the Estate of Elaine Steinbeck, the author's late third wife, and clear the way for developing motion pictures based on *East of Eden* and *The Grapes of Wrath*. The Supreme Court denied review in 2020.
- *Tanksley v. Daniels* (E.D. Pa. and 3rd Cir.): Secured a precedential victory when the US Court of Appeals for the Third Circuit affirmed a Pennsylvania federal court's dismissal of a copyright infringement lawsuit against Fox and



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PRACTICE GROUPS

Complex Commercial Litigation
Content, Media and Entertainment
Intellectual Property
Litigation
Media and First Amendment
Sports and Gaming
Trademark, Advertising and Unfair
Competition Practice

EDUCATION

Harvard Law School, JD, 1991; *cum laude*;
Editor, *Harvard Law Review*

Stanford University, BA in Economics and
Political Science, 1988; with distinction and
department honors; Phi Beta Kappa;
Reporter and Editor, *The Stanford Daily*

ADMISSIONS

California, 1992

COURT ADMISSIONS

US Supreme Court

US Court of Appeals, Second Circuit

US Court of Appeals, Sixth Circuit

US Court of Appeals, Seventh Circuit

US Court of Appeals, Ninth Circuit

US District Court, Northern District of
California

US District Court, Central District of
California

US District Court, Eastern District of
California

US District Court, Southern District of

other parties arising from Fox's hit television show *Empire*. The published decision clarifies the law in the Third Circuit for dismissing copyright infringement cases at the pleading stage.

- *Brighter Sky Productions v. Marriott International* (N.D. Ill.): Defending a number of individual and corporate defendants in a copyright infringement lawsuit arising from the performance of the NBCUniversal stage musical *October Sky* in 2015 at the Marriott Lincolnshire Theatre near Chicago.
- *WNET v. Aereo* (S.D.N.Y., 2nd Cir. and U.S. Supreme Court): Represented a consortium of broadcast television companies (including Fox Television Stations, PBS, Univision, and WNET) in a copyright infringement case against Aereo, Inc., a company that captured over-the-air television programming and retransmitted it over the Internet without the authority of the copyright owners. The Supreme Court's ruling in favor of our clients established an important precedent for broadcasters and copyright owners.
- *Fox Broadcasting v. DISH Network* (C.D. Cal. and 9th Cir.): Represented several Fox entities in a copyright infringement and breach of contract action against DISH Network, relating to its "PrimeTime Anytime" and "AutoHop" services, which made unauthorized copies of the entire primetime broadcast schedule for all four major networks every night and then provided the programs to subscribers "on demand" in a commercial-free format. Fox is also sued over the "DISH Anywhere" service, which streamed Fox's program over the Internet without authorization.
- Defended NBCUniversal and numerous foreign distributors in *Sheldon Abend Revocable Trust v. NBC Universal* (S.D.N.Y., C.D. Cal. and 9th Cir.), in obtaining dismissals of two lawsuits involving claims of copyright infringement and breach of license agreements over the distribution of the motion picture *Disturbia*, based on alleged similarities between the film and a short story owned by the plaintiff on which the film *Rear Window* was based.
- Represented as co-counsel a nationwide class of songwriters and music publishers in *MGM Studios, Inc. v. Grokster, Ltd.* (C.D. Cal., 9th Cir. and U.S. Supreme Court), a lawsuit by copyright owners in the music and motion picture industries asserting claims for contributory and vicarious copyright infringement against peer-to-peer file sharing services Grokster, Kazaa and Streamcast. In ruling for the plaintiffs, 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.
- *Milton H. Greene Archives v. BPI Communications* (C.D. Cal. and 9th Cir.): Defended 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*. Defendants 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, and subsequently obtained an award of more than \$750,000 in

California

JUDICIAL CLERKSHIPS

Hon. Alfred T. Goodwin, US Court of Appeals, Ninth Circuit

attorneys' fees. Both decisions were affirmed on appeal by the Ninth Circuit.

- *Brower v. E! Entertainment Television* (Los Angeles Sup. Ct. and Cal. Ct. App.): Defended a cable network and various producers in an idea submission lawsuit arising from the television program Fashion Emergency. A two-week jury trial resulted in a directed verdict for the defendants, which was affirmed on appeal.

Trademark/Right of Publicity/False Advertising/Trade Secrets

- *Warner Bros. Entm't v. Random Tuesday, Inc* (C.D. Cal.): Representing motion picture and television studio in a lawsuit for trademark infringement, copyright infringement, and trademark dilution against a business operating "virtual running clubs" that make unauthorized uses of Warner Bros' *Harry Potter* and *Gilmore Girls* trademarks and copyrighted images in their business names, websites, marketing materials and merchandise sales.
- *Move, Inc. v. Zillow, Inc.*: Represented News Corp subsidiary Move, Inc., as well as the National Association of Realtors and multiple subsidiary companies in a lawsuit against online real estate portal Zillow and two of its senior executives. The plaintiffs, who own and operate the realtor.com website, brought claims for trade secret misappropriation, breach of contract, and breach of fiduciary duty, among others, in Washington state court. The allegations focused on Zillow's \$3.5 billion acquisition of Trulia, including the misappropriation of trade secrets related to a new product strategy and the destruction of evidence. The case ended with a \$130M settlement on the first day of trial in 2016.
- Defended Universal Studios and two of its senior executives in a lawsuit brought by author Homer Hickam in *Hickam v. Universal Pictures* (Los Angeles Sup. Ct. and Cal. Ct. App.), in which he asserted right of publicity, contract and fraud claims based on Universal's adaptation of material from Hickam's memoir *Rocket Boys* and its own 1999 motion picture *October Sky* in a live stage musical also called *October Sky*. After Universal obtained dismissal of most of Hickam's claims on a California anti-SLAPP motion and prevented an injunction against the stage musical, the case resolved on appeal.
- Represented leading sports media licensing firms in *Marshall v. ESPN (M.D. Tenn. and 6th Cir.)*, a putative class action brought by former NCAA college athletes alleging antitrust and right of publicity violations. The defendants successfully obtained a dismissal of all claims, which was affirmed by the Court of Appeals.
- Defended Warner Bros. in *Fortres Grand Corp. v. Warner Bros. Entm't* (N.D. Ind. and 7th Cir.) in obtaining dismissal, affirmed on appeal, of a trademark infringement action based on the use of the phrase "clean slate" to describe a fictional software program depicted in the motion picture *The Dark Knight Rises* and in related social media promotions.
- Represented Metro-Goldwyn-Mayer Studios and Orion Pictures in *Robocopp, LLC v. Orion Pictures (N.D. Cal.)*, in prosecuting counterclaims for trademark infringement and dilution and false advertising against a company that marketed a personal security device under the brand name ROBOCOPP. The matter resolved with the entry of a permanent injunction against Robocopp, LLC.
- Represented Warner Bros., New Line, MGM and The Saul Zaentz Co. in *Warner Bros. Entertainment v. Global Asylum* (C.D. Cal. and 9th Cir.) in prosecuting trademark and false advertising claims and obtaining a permanent injunction against a company that produced and sought to distribute a low-budget "mockbuster" movie originally titled *Age of the Hobbits* at the same time as the theatrical release of the major studio film *The Hobbit*.
- Defended KO Beverages in *Hansen Beverage Co. v. KO Beverages LLC (C.D. Cal.)*, a trademark infringement and false advertising lawsuit based on allegations that the logo and packaging for defendant's "Knockout" energy drinks infringed the trademarks and trade dress of "Monster" energy drinks.
- Defended hospital group in *Prime Healthcare Anaheim v. AHMC Anaheim Regional Medical Center* (Orange County Sup. Ct.), a suit for trade name infringement between rival hospital owners. A week-long bench trial resulted in a defense verdict for our client AHMC.

- Represented the composer and recording artist Prince in a variety of trademark, copyright and right of publicity disputes with merchandise companies and distributors of bootleg recordings.

Media and First Amendment Law

- Defended Warner Bros., NBCUniversal, and various individual producers and talent in *Peltier v. Mathis* (Los Angeles Sup. Ct. and Cal. Ct. App.), a lawsuit brought by a disgruntled participant in the *Judge Mathis* television program. The plaintiff asserted claims for defamation, invasion of privacy, fraud, breach of contract, and infliction of emotional distress arising on his unsuccessful attempt to have a small claims dispute arbitrated on the program. All claims were dismissed at the pleading stage based on the litigation privilege, the opinion doctrine, arbitrator immunity, and the releases and consents the plaintiff executed at the time he appeared on the show.
- Defended advertising agency Saatchi & Saatchi in a trade libel lawsuit filed by a company that provided product placement and brand integration services to Saatchi client Toyota Motor Sales for many years. In *Brand Arc LLC v. Saatchi & Saatchi North America* (Los Angeles Sup. Ct.), Saatchi twice moved to dismiss the claims based on the opinion doctrine, the of-and-concerning doctrine, and the common interest privilege, with the court granting the motion each time and narrowing the number of statements that could support the trade libel and intentional interference claims. Ultimately, with only one alleged statement left as the basis for its claims, the plaintiff dismissed the suit.
- Defended NBCUniversal in *Diaz v. NBC Universal* (S.D.N.Y. and 2nd Cir.), a putative libel class action brought by a group of former drug enforcement officers who claimed they were defamed by the motion picture *American Gangster*. The district court's dismissal of the entire action was affirmed on appeal by the Second Circuit.

Mr. Thomas has an active pro bono practice. Representative cases include:

- Represented, in conjunction with the ACLU of Southern California, a class of tenants and landlords in *Victor Valley Family Resource Center v. City of Hesperia* (C.D. Cal.), a Section 1983 class action raising due process and equal protection challenges to two city ordinances aimed at excluding individuals on criminal probation from the local rental housing market. After plaintiffs obtained a preliminary injunction and completed discovery, the City agreed to repeal the challenged ordinances, rescind all fines and penalties, and pay an attorneys' fees settlement.
- Represented a Southern California artist in *Jimenez v. County of San Bernardino* (C.D. Cal.), a First Amendment challenge to government censorship of the artist's work in connection with a public "Hispanic Heritage Month" exhibition in a government forum. Faced with a complaint and a TRO application, the County agreed to restore the artist's paintings and extend the exhibition.
- Represented, in conjunction with the Western Center on Law and Poverty and Bay Area Legal Aid, a family of tenants who were evicted from a foreclosed property, in *Nativi v. Deutschebank National Trust Co.* (Santa Clara County Sup Ct. and Cal. Ct. App.). The Court of Appeal's 2015 decision established important national precedents protecting the rights of tenants in foreclosed properties, including that a bona fide lease survives foreclosure and that lease rights may be enforced by tenants through affirmative litigation.

Awards

- *Daily Journal*
California Lawyer Attorney of the Year, 2018
Top 50 Entertainment Lawyers, 2014, 2015
Top IP Litigator, 2015
- ACLU Foundation of Southern California
Artistic Expression Award, 2014

Homeless Rights Advocacy Award, 2018

- *Chambers USA*
Media & Entertainment: Litigation (California), 2009-2020
- *Los Angeles Business Journal*
“Who’s Who in L.A. Law -- Top 40 Entertainment Lawyers,” 2010
- *Managing Intellectual Property*
IP Star, 2013-2020
- *Southern California Super Lawyers*
Intellectual Property Litigation, 2004, 2006, 2013-2020
- *Variety*
Legal Impact Report, 2016

Community

- Western Center on Law and Poverty
Board of Trustees, 2011-2013, 2017-2019

Educational

- Southwestern University School of Law
Guest Lecturer, Defamation and Privacy Law, 2003
- University of Southern California Annenberg School of Journalism
Adjunct Lecturer, Media Law, 2003-2005

Industry Organization

- Copyright Society of Los Angeles
Vice-President, 2020-2021
Treasurer, 2019-2020
Board of Trustees, 2007-2009, 2017-2019

Service to the Bar

- Los Angeles County Bar Association
Member, State Appellate Judicial Evaluation Committee
- American Bar Association
Member, Forum on Communications Law
- Media Law Resource Center

Publications

- Co-Author, *Copyright 2020*, Getting the Deal Through, August 26, 2020
- Co-Author, *Copyright 2019*, Getting the Deal Through, January 10, 2020
- Co-Author, "Misuse of Inverse Ratio Copyright Rule Continues in 9th Circ.," *Law360*, January 7, 2020
- Co-Author, *Copyright 2018*, Getting the Deal Through, August 2018
- Co-Author, *Copyright 2017*, Getting the Deal Through, August 2017
- Co-Author and Co-Editor, "Using Trademarks in Expressive Works," Media Law Resource Center, June 2016
- "Batmobile Ruling Not New, But the Test Is," *Los Angeles Daily Journal*, October 12, 2015
- "Clarifying the Jury's Role in Intellectual Property Cases," *Los Angeles Daily Journal*, March 24, 2015
- "The Fading Blogger-Journalist Distinction," *Los Angeles Daily Journal*, July 30, 2014
- "Copyright Limitations: Waiting to Say 'Mine!'" *Los Angeles Daily Journal*, February 3, 2014
- "Paparazzi Law Limits Our First Amendment Rights," *Los Angeles Daily Journal*, December 24, 2013
- "A Not-So-Elementary Copyright Case," *Los Angeles Daily Journal*, November 12, 2013
- "Libel Tourism's Trip Gets Cut Short," *Los Angeles Daily Journal*, September 26, 2013
- "Revived Trademark Doctrine Creates Uncertainty for Entertainment Brands," *Los Angeles Daily Journal*, July 25, 2013
- "Child Privacy and Online Business," *Los Angeles Daily Journal*, June 14, 2013
- "What's Wrong with This Picture?" *Los Angeles Daily Journal*, May 30, 2013
- "High Court's 'First Sale' Ruling Threatens Market Segmentation," *Los Angeles Daily Journal*, April 9, 2013
- "Evolving Standards in Copyright Protection for Dynamic Fictional Characters," *ABA Communications Lawyer*, February 2013
- "Expression Is the Name of the Game in Reality TV," *Los Angeles Daily Journal*, August 16, 2012
- "Fair Use: Market Harm Is Not Merely Academic," *Los Angeles Daily Journal*, July 25, 2012
- "Anonymity in Cyberspace: Courts Shield Speech but not Piracy," *Los Angeles Daily Journal*, April 16, 2012
- "Anti-SLAPP Motions - Still Appealing in Federal Court?" *Los Angeles Daily Journal*, March 5, 2012
- "Copyright Fair Use: Courts Poised to Seek Limiting Principles Amid the Labels," *Los Angeles Daily Journal*, January 27, 2012
- "The Stolen Valor Act: Is Policing Honesty The Best Policy?" *Los Angeles Daily Journal*, December 15, 2011
- "Repose in Cyberspace: The Single Publication Rule Online," *Los Angeles Daily Journal*, November 18, 2011
- "Roommate Issues: Section 230 Immunity in the 9th Circuit," *Los Angeles Daily Journal*, October 13, 2011
- "Copyright Injunctions After eBay," *Los Angeles Daily Journal*, September 8, 2011
- "(Not Quite) As Free as the Air: Damages Remedies in Idea Submission Cases," *MLRC 2009 Report on Significant Developments*, December 2009

- "The Future of Injunctive Relief in Copyright Infringement Cases," *Los Angeles Lawyer*, June 2009
- "Reanimating the Post-Mortem Right of Publicity," *MLRC 2008 Report on Significant Developments*, January 2008
- "Access Hollywood: Ninth Circuit Substantial Similarity Decisions after *Metcalf v. Bochco*," *Los Angeles Lawyer*, May 2005

Speaking Engagements

- Presenter, "You Stole My Screenplay!" Los Angeles County Bar Association, December 04, 2019
- Moderator, "Copyright, Trademark, and the Public Domain: The New Era of Intellectual Property Management," Media Law Resource Center, Entertainment and Media Law Conference, January 17, 2019
- Moderator, "On the Digital Battlements – Dealing with Hackers, Enemy States, and the U.S. Government," Media Law Resource Center, Entertainment and Media Law Conference, January 14, 2016
- International Trademark Association's 137th Annual Meeting, Presenter and Facilitator on "Using Trademarks in Expressive Works" and "Trademark Law and 3-D Printing", May 02, 2015 to May 06, 2015
- Co-Presenter and Session Leader, "Intellectual Property Law: Recent Developments" Media Law Resource Center Annual Conference, Washington, DC, September 2014, September 2014
- Panelist, "First Amendment Challenges in the Digital Age," Stanford Law School Symposium, Palo Alto, CA, February 10, 2012
- Panelist, "Libel Tourism - Why Hollywood Celebrities Flock to the UK Court," Daily Variety and International Esq. Round Table, Los Angeles, CA, 2009
- Panelist, "To Blog or Not to Report - Legal Issues in Web Publishing," National Association of Black Journalists Convention, Las Vegas, NV, 2008
- Co-Presenter, "Churches and Copyright Law - The Pitfalls of Creating in Another's Image," California-Pacific Annual Conference, United Methodist Church Presentation, Redwood, CA, 2008
- Panelist, "Fair Use in the 21st Century - Peer-to-Peer in the Supreme Court," Bay Area Law School Technology Conference, Stanford University, Palo Alto, CA, 2005
- Panelist, "The Right of Publicity and Free Speech," Symposium on Intellectual Property, Free Speech and Economic Rights, Chapman University, Los Angeles, CA, 2001