

ANDREW H. BART (ANDY), Partner

Andrew H. Bart, an experienced trial lawyer and commercial litigator, is Chair of the firm's nationally recognized Content, Media & Entertainment Practice. Clients in the entertainment industry, particularly recording companies, film studios, music publishers and artists, seek his counsel on intellectual property issues and contractual disputes. His cases have resulted in precedent-setting decisions in copyright law, trademark law, the law of privacy and publicity, and artist-label relations.

For the past eight years, *Chambers USA* has named Mr. Bart as one of the country's leading lawyers in Media & Entertainment. In 2015, 2016, 2017 and 2108, he was recognized as a Band 1 attorney for the "New York Media & Entertainment (copyright)" category and was also ranked in the "New York Intellectual Property (copyright and trademark)" category. In 2015, 2016 and 2017, *Legal 500 US* recognized him as a "Leading Lawyer" in the area of Copyright, one of just 12 lawyers to make the elite nationwide list. Mr. Bart has also been named one of the top litigators by *Variety* in its "Legal Impact Report," a listing of the top lawyers in the entertainment industry, for the past three years. In 2016, he was named one of the top 100 entertainment "Power Lawyers" in America by *The Hollywood Reporter*. He was also recognized as a "Top Music Industry Lawyer" by *Billboard* in 2016 and 2017, one of only 10 litigators on this exclusive list. In 2017, Mr. Bart's milestone Second Circuit victory—*Capitol Records v. MP3tunes*—received an "Editor's Choice Award" from *Managing Intellectual Property* magazine and earned him a spot among the *National Law Journal's* "Intellectual Property Trailblazers." In both 2017 and 2013, *Law360* recognized Mr. Bart as an "MVP" in the media and entertainment category.

Under Mr. Bart's leadership, Jenner & Block's Content, Media & Entertainment Practice was named as a "Practice Group of the Year: Media & Entertainment" by *Law360* in 2017 for the fifth consecutive year and recognized by *Legal 500 US* as the #1 copyright practice in the United States in 2016, marking the fourth time the practice has received this honor. The practice was also honored with the *Chambers USA* "Award for Excellence" in 2014 and 2012, which recognizes the top media and entertainment practice in the country.

Mr. Bart has extensive experience litigating jury and bench trials, representing clients in arbitrations and arguing appeals in several federal circuit courts, as well as in the New York State Appellate Division and Court of Appeals. During the course of his 39-year career Mr. Bart has handled and tried a variety of complex commercial cases. His experience runs from securities litigation and SEC proceedings to partnership and joint venture disputes to a wide variety of contractual disputes. He has also conducted and concluded complex, multi-party mediations and settlement negotiations. Mr. Bart also serves as a member of the firm's Management Committee and Diversity & Inclusion Committee.



ANDREW H. BART (ANDY) Partner

NEW YORK

Office: 212 891-1645

Fax: 212 891-1699

Email: abart@jenner.com

PRACTICE GROUPS

Content, Media & Entertainment

Intellectual Property

Litigation

Trademark, Advertising and Unfair

Competition Practice

EDUCATION

Columbia University School of Law, J.D.,
1978; Harlan Fiske Stone Scholar

University of Pennsylvania, B.A., 1975; *cum laude*

ADMISSIONS

New York, 1979

COURT ADMISSIONS

U.S. Supreme Court, 1992

U.S. Court of Appeals, Second Circuit,
1991

U.S. Court of Appeals, Eleventh Circuit

U.S. Court of Appeals, Seventh Circuit,
1991

U.S. District Court, Southern District of New
York, 1981

U.S. District Court, Eastern District of New
York, 1981

For three decades, Mr. Bart has focused on litigation in the entertainment industry, with an emphasis on intellectual property issues and contractual disputes. In the past decade, he has focused on issues involving the intersection of content and technology which has helped to define the parameters of the Digital Millennium Copyright Act (DMCA). In addition, he has successfully represented plaintiffs and defendants in music copyright claims, defended studios and advertising agencies against copyright infringement claims, and addressed issues of copyright termination and joint authorship. Mr. Bart has also been involved in cases addressing contract and accounting claims relating to sound recordings and musical compositions, as well as a variety of other cases involving record labels, music publishers, film studios, production companies, artists, managers, producers, book publishers and music streaming services. He has successfully litigated and tried cases involving claims arising under trademark and Lanham Act, as well as claims under state doctrines of unfair competition and right of publicity.

His representative litigation matters include:

Capitol Records v. MP3tunes: Mr. Bart and his team secured a precedential appellate decision in October 2016 reinstating a \$48 million jury verdict for EMI in a copyright infringement case relating to two online music sites. The US Court of Appeals for the Second Circuit held that the jury properly determined that MP3tunes, LLC (a now-bankrupt online music storage locker service) and its former CEO were willfully blind to and had red-flag knowledge of numerous specific infringements on the site. Moreover, the Court ruled that the district court erred in finding the defendants were entitled to safe-harbor protection under the DMCA since there was a factual issue as to whether they reasonably implemented a repeat infringer policy—a prerequisite to safe harbor protection. This finding opens the door to a further trial and a potentially larger damages award. The decision is perhaps the most significant pro-content appellate decision of the past few years and is a precedential ruling on the contours of the DMCA. This case will impact copyright, media and entertainment law for years to come.

Fahmy v. Jay-Z, et al.: A significant victory for rap superstar Jay Z in a copyright infringement case relating to the use of a sample of a small snippet of an Egyptian song in his hit song “Big Pimpin.” After six days of trial, a federal judge in Los Angeles granted all defendants judgment as a matter of law. An appeal was filed in the Ninth Circuit in August 2016 and the case is ongoing.

UMG Recordings Inc. et al. v. Escape Media Group Inc. et al.: A copyright infringement decision from the Southern District of New York, finding Escape Media Group (parent company of Grooveshark) and its founders responsible for the illegal uploads of 5,977 songs by Escape’s employees. The judge granted the plaintiff record companies’ motion for summary judgment, finding that Escape Media directly and vicariously infringed their copyrights and that it induced copyright infringement by ordering employees to upload copyrighted songs to the service without permission, and subsequently held that such infringements were willful. The judge also granted plaintiffs’ motions for sanctions as a result of defendant’s spoliation of evidence. The win was hailed by the Recording Industry Association of America as “an important victory for artists and the entire music industry” which “ends a major source of infringing activity.”

UMG Recordings, Inc. v. Escape Media Group: A decision from the Appellate Division of the New York Supreme Court dismissing the assertion by the operators of the popular website grooveshark.com that defenses found in the DMCA precluded protection for “pre-1972” sound recordings under New York common law copyright and unfair competition laws. This victory was a precedent-setting result for content owners, which strongly suggests that, in appropriate situations, state common law remedies may be an alternative means of content protection.

Theodore Schroeder, et al. v. Brian S. Cohen et al.: Won summary judgment dismissing all claims against an individual angel investor and not-for-profit consortium of angel investors defending a suit claiming misappropriation of trade secrets and ideas and breach of fiduciary duty over the origins of the popular website Pinterest.com.

Brandon Anthony Parrott et al v. Denaun Porter et al.: Represented UMG Recordings, Inc., Interscope Records, Aftermath Entertainment, Shady Records and Vivendi Universal US Holding Co. (collectively, the “UMG Defendants”) in a copyright infringement action. The lawsuit alleged that the plaintiffs’ musical composition and sound recording “Bamba” were used

without authorization in rap superstar 50 Cent's hit track "P.I.M.P." The UMG Defendants' motion to dismiss was granted in mid-November 2016.

James Croak v. Saatchi & Saatchi, North America, Inc.; Toyota Motor Sales, U.S.A., Inc.: Represented Saatchi & Saatchi and Toyota in a copyright infringement lawsuit arising out of a media advertising campaign that Saatchi developed on behalf of Toyota. The plaintiff claimed that the depictions of a unicorn in the ad campaign infringed his copyright in a 1983 mixed-media sculptural assemblage. In December 2015, US District Court Judge Jed Rakoff granted the defendants' motion to dismiss the case.

Brand Arc LLC v. Saatchi & Saatchi NA, Inc.: Defended Saatchi & Saatchi in a lawsuit filed in June 2016 by Brand Arc LLC, which provided Toyota with television product placement and brand integration services for many years. Brand Arc claimed that Saatchi engaged in trade libel and intentionally interfered with Brand Arc's economic relationship with Toyota. Defendant's motion to dismiss was granted in September 2016 with leave to amend. Brand Arc filed an amended complaint in November 2016, and the firm filed another motion to dismiss which was granted. Brand Arc voluntarily dismissed the action in March 2017.

Mahan v. Roc Nation, LLC et al.: Represented Roc-A-Fella Records and Jay Z in a copyright battle with a sound engineer over ownership to three albums of Jay Z recordings. The Court granted the firm's motion to dismiss all of plaintiff's claims because they were asserted long after the applicable statute of limitations had run out. After winning the underlying case, the firm was successful in obtaining an award of nearly \$200,000 in attorneys' fees against the plaintiff. The order to dismiss was affirmed on appeal by the US Court of Appeals for the Second Circuit in February 2016.

Dodson v. JRL Music Inc. et al.: Represented Universal throughout these proceedings in the district court, Second Circuit, and most recently the Supreme Court of the United States by filing a brief in opposition to a petition for certiorari on the issue of when the three-year limitation period mandated by the Copyright Act begins to run on a copyright co-ownership claim. In late 2017, the high court declined to hear the case, leaving in place a Second Circuit ruling favorable to client Universal.

Arista Music et al. v. United Airlines Inc. et al.: Represented the record label divisions of Sony Music Entertainment (SME) in a matter against United Airlines and two foreign-based suppliers of United relating to the unlicensed use of music used in its in-flight entertainment. The lawsuit accused defendants of willfully infringing thousands of song and music video copyrights with its in-flight passenger services by reproducing and publicly performing SME's copyrighted works without any license or authorization from SME. In September 2014, the parties reached a confidential settlement agreement.

TufAmerica, Inc. v. Michael Diamond, et al.: Served as lead counsel in obtaining a complete defense victory for client Universal-Polygram International Publishing and Capitol Records (UMG) when the US District Court for the Southern District of New York granted a motion for summary judgment dismissing a copyright infringement complaint. The court dismissed four of the six claims in September 2013, and in March 2015, the court concluded that the plaintiff lacked standing to assert the remaining two claims. The Court subsequently awarded more than \$840,000 in attorneys' fees against the plaintiff.

Hickam v. Universal Pictures et al.: Represented Universal Studios in a lawsuit brought by author Homer Hickam over ownership rights of the material contained in the book Rocket Boys, which Universal adapted into the 1999 motion picture "October Sky" and recently into a stage musical of the same title. Asserting contract and right of publicity claims, Hickam sought to enjoin a September production of Universal's musical. Universal largely prevailed on its motion to dismiss the lawsuit under California's anti-SLAPP statute, which enabled the play to run its entire schedule of performances. The court's rulings on the anti-SLAPP motion were appealed in late 2016 and the parties concluded a favorable settlement in August 2017.

Brighter Sky Productions, LLC v. Marriott International, et al.: Representing a number of individual and corporate defendants in a copyright infringement lawsuit in West Virginia federal court, arising from the performance of the Universal "October Sky" stage musical in 2015 at a theatre in the Chicago area (the Marriott Theatre at the Marriott Lincolnshire

Resort). The case is ongoing.

Baker-Rhett v S. Carter Enterprises LLC et al.: Representing a number of individual and corporate defendants in a copyright infringement lawsuit in West Virginia federal court, arising from the performance of the stage musical “October Sky” (which was based on the Universal Pictures motion picture of the same name) in 2015 at a theatre in the Chicago area (the Marriott Theatre at the Marriott Lincolnshire Resort). The case is ongoing.

NPG Records et al v. Roc Nation LLC, et al.: Defending Roc Nation in a copyright lawsuit filed by the estate administrator for late recording artist Prince over the rights to stream the artist’s music catalogue on the music streaming service Tidal. The case is ongoing.

Parlux Fragrances LLC et al v. S. Carter Enterprises LLC et al.: Representing S. Carter Enterprises and Jay Z in a contract dispute in New York state court brought by plaintiffs Parlux Fragrances and Perfumania, who allege that SCE and Jay Z breached certain obligations they had under a license agreement that provided plaintiffs with the right to sell fragrances under Jay Z’s name. SCE and Jay Z deny that they breached the contract and brought a counterclaim for unpaid royalties. The case is ongoing.

Iconix v. Roc Nation Apparel Group, LLC et al.: Representing Roc Nation Apparel Group (“RNAG”) in a dispute in the Southern District of New York with Iconix, a branding company, which alleges trademark infringement and other claims against RNAG and various of its licensees, including New Era and various baseball franchises, as a result of the sale of baseball caps and other items of apparel bearing the Roc Nation mark after the alleged expiration of a licensing agreement between the parties. The case is currently pending.

Panama Music Corp. et al v. Universal Music Group Inc.: Successfully represented Universal Music Group (UMG) in an action filed in the Southern District of Florida asserting that UMG had underpaid royalties on income received from digital downloads, ringtones and streaming. The Court granted UMG’s motion for summary judgment holding that such uses were simply record sales through normal retail channels and that royalties should thus be calculated using the contractual provisions covering such sales. The court rejected the plaintiff’s argument that the contract did not provide a royalty calculation for digital sales and thus fell under a “catch-all” provision providing for payment of 50 percent of net receipts on all income not otherwise addressed in the agreement. This decision has had significant implications in the industry as it serves to limit the holding of the Ninth Circuit in *F.B.T. Productions v. Aftermath Records* awarding the rapper Eminem 50 percent of net receipts on download sales based on markedly different contract terms.

Yngwie J. Malmsteen v. Universal Music Group, Inc.: Obtained a summary judgment dismissal from the Southern District of New York of a breach of contract lawsuit brought by guitarist Yngwie Malmsteen, including a claim relating to the calculation of royalty payments on income derived from the sale of digital downloads through online retailers. Malmsteen alleged that he was entitled to 50 percent of UMG’s net receipts from digital download sales pursuant to a contractual provision that applied the rate in certain limited circumstances.

Connie Franconero v. Universal Music Corp.: Secured a decision from the Central District of California dismissing a lawsuit brought by singer Connie Francis concerning the royalty rate applicable to digital downloads. Francis alleged that she was entitled to a royalty rate of 50 percent of UMG’s net receipts from sales of digital downloads through online retailers. The court agreed that the plain, unambiguous language of the royalty provision was determinative and dismissed Francis’ contract and quasi-contract claims.

Fifty-Six Hope Road Music v. UMG Recordings: Won a decision from the Southern District of New York holding that UMG was the owner of the renewal copyrights in sound recordings containing the performances of Bob Marley, as those recordings were created as works for hire.

Louis Vuitton Mallatier v. Warner Bros. Entertainment: Obtained a decision from the Southern District of New York dismissing a trademark infringement suit filed by Louis Vuitton Mallatier against client Warner Bros. over the moviemaker’s use of an alleged knockoff of a Louis Vuitton travel bag in a scene in the movie “The Hangover Part II.” The

Court held that the use of the bag in the film was noncommercial speech protected by the First Amendment, that the likelihood of public confusion over the accessory's origin was, at best, minimal, and that the use of the trademark was "artistically relevant."

Fortres Grand Corp. v. Warner Bros. Entertainment: Secured a victory for Warner Bros. Entertainment when a judge granted a motion to dismiss a trademark infringement complaint related to the blockbuster movie "The Dark Knight Rises." At issue was Fortres Grand Corp.'s allegation that the movie's references to a fictional software called "Clean Slate" infringed Fortres' real computer security software of the same name. In August 2014, the Seventh Circuit issued its opinion affirming the district court's dismissal of the trademark infringement case.

Awards

- *Billboard*
Top Music Industry Lawyer (Litigation), 2016 and 2017
- *Chambers USA*
Media & Entertainment: Copyright & Contract Disputes (New York), 2009-2018
Intellectual Property: Trademark & Copyright (New York), 2015-2018
- *The Hollywood Reporter*
Top Entertainment "Power Lawyer," 2016
- *Law360*
Media & Entertainment MVP, 2013 and 2017
- *Legal 500*
Media, Technology and Telecoms - Advertising and Marketing - 2017
Media, Technology and Telecoms - Media and Entertainment - 2017
"Leading Lawyer," Copyright (one of 12 recognized), 2015, 2016
Copyright Litigation, 2007, 2008, 2015
Intellectual Property: Copyright, 2007, 2008, 2011, 2013, 2017
Media, Technology and Telecoms: Film, Music, and Television - Advice to Corporates, 2008
- *Managing Intellectual Property*
Editor's Choice Award (*Capitol Records v. MP3tunes*), 2017
IP Star (New York), 2013-2017
IP Star (United States), 2014
- *The National Law Journal*
"Intellectual Property Trailblazers," 2017
- *Variety*
Legal Impact Report, 2015-2017

Community

- Volunteer Lawyers for the Arts, Member, Board of Directors

Publications

- Co-Author, Copyright 2017, *Getting the Deal Through*, August 2017
- Co-Author, Copyright 2016, *Getting the Deal Through*, August 2016
- Co-Author, U.S. Analysis and Global Overview, *Copyright (Getting the Deal Through)*, August 4, 2015
- Co-Author, U.S. Analysis and Global Overview, *Copyright (Getting the Deal Through)*, July 25, 2014
- Co-Author, U.S. Analysis and Global Overview, *Copyright (Getting the Deal Through)*, September 9, 2013
- "Unpacking the *Louis Vuitton v. Warner Brothers* Decision," *ABA Section of Litigation Intellectual Property Newsletter*, March 8, 2013
- "Assessing Copyright Damages," *Entertainment Law & Finance*, March 1997
- "Assessing Copyright Damages," *Entertainment Law & Finance*, March 1997

Speaking Engagements

- Speaker, "Hot Blooded: The Debate Over Sound Recordings as Works Made for Hire," The Copyright Society of the USA's 35th Annual Meeting, Bolton Landing, NY, June 05, 2011 to June 07, 2011
- Speaker, "Digital Rights Issues - What are the Current Hot Buttons?" The Copyright Society of the USA's 2007 Midwinter Meeting, New Orleans, LA, January 25, 2007 to January 27, 2007
- Panelist, "Statutory Damages," The Copyright Society of the USA's 30th Annual Meeting, Bolton Landing, NY, June 11, 2006 to June 13, 2006