

Media & Entertainment Group Of The Year: Jenner & Block

By Kelly Knaub

Law360, New York (January 24, 2017, 1:36 PM EST) -- Jenner & Block LLP notched a major victory in 2016 with the reinstatement of a \$48 million jury verdict it secured for Capitol Records and other music companies and obtained the dismissal of a copyright infringement suit against Jay Z, placing among Law360's Media & Entertainment Practice Groups of the Year.

The firm's content, media and entertainment practice group scored a huge win when the Second Circuit reversed a district judge's post-trial decision that jurors should have afforded MP3Tunes site founder Michael Robertson the protections of the safe harbor, reviving a \$48 million verdict from 2014 that had been slashed to roughly \$13 million.

Its precedential ruling also weighed in for the first time on the Digital Millennium Copyright Act's requirement that sites must ban "repeat infringers" or lose safe harbor protection. Contrary to the district judge's decision, the appeals court found the jurors had sufficient evidence to conclude that Robertson had either the "red flag knowledge" or "willful blindness" that would deny him the safe harbor's protections.

"Our trial followed on the heels of the Second Circuit decision in the *Viacom v. YouTube* case, which presented challenges because it provided a broader definition of the safe harbor than most members of the content industry had expected before that ruling," Andrew Bart, who co-chairs the group with Richard Stone, told Law360.

"What we tried to do was to navigate around the limitations of that decision and to show why, particularly in a case like this one, the knowledge that the defendants had about the specific infringements on their site still rendered them ineligible for safe harbor protection," he said.

The group also scored a major win on behalf of superstar Jay Z in February when a California federal judge dismissed with prejudice a suit by an Egyptian songwriter accusing the rapper of copyright infringement with his hit song "Big Pimpin'."

Specifically, the judge found that the suit, which had already been tossed for lack of standing, also failed on the merits. An appeal is pending in the Ninth Circuit.



The group, which has always ranked as one of the top four practices within the firm, now has about roughly 22 partners and 10 to 15 associates, according to Bart.

It brought on three new partners in 2016 and promoted one of the firm's "stellar young associates" to partner, Bart said, noting that one of the things the group has always prided itself on is being an industry practice and providing all services for the members of the content and entertainment industry.

"We're looking to grow our transactional capacity and to generally increase what we can do for our clients," Bart said. "We do have specific growth plans."

The group is representing Getty Images in a suit brought by well-known photographer Carol Highsmith accusing the agency of illicitly claiming rights to 18,755 of her photographs and seeking more than \$1 billion in damages. A New York federal judge tossed out claims of copyright infringement in October, and the group is handling the remaining state law claims in the case.

In August, the Sixth Circuit tossed a suit by a proposed class of former NCAA athletes claiming they should be paid for broadcasts of the games they played in, slamming their legal theory as so deficient that to state it "is nearly to refute it."

The group represented IMG Worldwide, IMG College and William Morris Endeavor Entertainment in the athletes' highly publicized class action against collegiate conferences, television broadcasters and other sports media licensing firms.

It also won a huge victory in December 2015 on behalf of major record companies when a New York federal judge ordered defendants allegedly masquerading as shuttered online music service Grooveshark to pay \$13.5 million to Atlantic Recording Corp., Sony Music Entertainment, Warner Music Group Corp. and others for willfully infringing 89 music recordings and \$4.4 million to UMG Recordings Inc. for trademark counterfeiting and willful cybersquatting.

And the firm represented a multitude of companies — including ESPN, Paramount Pictures Corp., Lions Gate Films and Fox Cable Networks Groups — in connection with various agreements, marketing initiatives and other deals.

Bart said the group's depth and breadth is what makes it stand out from other firms.

"There are firms that have two, three, or even four lawyers who are recognized players in the industry, and I think we have at least a dozen," Bart said, noting that the group has strong media and entertainment attorneys in New York, Washington, and Los Angeles.

"Our attorneys are recognized and first-chair lawyers across the board, so it's not just a function of whether I'm here or Rick Stone is here or Susan Kohlmann's here or Ken Doroshov is here," Bart said. "There is simply a roster of recognized talent and working collaboratively as a group increases both our reach, our expertise and what we can offer to our clients."

--Additional reporting by Kevin Penton, Braden Campbell and Bill Donahue. Editing by Brian Baresch.