

MVP: Jenner & Block's Andrew Bart

Law360, New York (December 13, 2017, 2:54 PM EST) -- Jenner & Block LLP's Andrew H. Bart earned a big Second Circuit win for Capitol Records on cutting-edge Digital Millennium Copyright Act issues over the past year, earning the veteran music industry attorney a place on Law360's list of Media & Entertainment MVPs.

HIS BIGGEST ACCOMPLISHMENT OF THE YEAR:

Bart won a major Second Circuit ruling for Capitol Records in October 2016 in a case against defunct music site MP3Tunes, reviving a \$48 million verdict and setting pro-content precedent on the Digital Millennium Copyright Act's safe harbor.

Reversing a trial judge, the appeals court ruled that jurors had enough evidence to find that site founder Michael Robertson had "red flag knowledge" or "willful blindness" that would deny him safe harbor — which shields websites from liability based on the actions of their users.

The court also weighed in for first time on the DMCA's requirement that sites must ban "repeat infringers" or lose the protection of the law's liability safe harbor, ruling that sites must do more than simply ban "blatant infringers."

The ruling was a big win for content companies — a tougher "repeat infringer" standard will require sites to more aggressively police piracy — at a time when Bart, a longtime content-side copyright attorney, said those have been "few and far between."

"It was very significant in offering some hope that the freedom that's given to [sites] through the DMCA is not unlimited and there is still a requirement to work in partnership with content companies to stamp out piracy," Bart said. "That was really the goal underlying the DMCA in the first place."

ON THE PERSONAL SIGNIFICANCE OF THE CASE:



Capitol's case against MP3Tunes was first filed back in 2007, and Bart's been working on it the entire time. One financial crisis, two presidents and 755 district court ECF filings later, he's still working it.

"I've been living with that case for over a decade," Bart said. "To have the ultimate statement coming down from the Second Circuit, it justifies all the sacrifice and all the time you put into it and gives you a very happy filter to look back at the entire experience."

HOW THE INDUSTRY HAS CHANGED:

Bart's been working in the music industry for a long time, first during his 23-year stint at Pryor Cashman LLP and then in the years since he made the jump to Jenner & Block in 2006. Over all those years, he's seen the battle lines shift.

"One of the really interesting things that's happened in the past decade or so is that there's more of unity of interest between the content community and the artistic community," said Bart, who's represented Jay-Z in a number of cases over the past few years.

"When I started, you repped the artists or you repped the labels, but now there's more of a blurring of that," he said. "Now, the artists and the labels are on one side, and the people who are using the content without permission are on the other side."

HIS ADVICE TO YOUNG ATTORNEYS:

Focus early — earlier than he did.

Bart said he fell into entertainment law. He joined Pryor Cashman in the early 1980s as a general commercial litigator who "just wanted to try cases," taking on the work as it came. He liked the work, it was a great opportunity to get into court, and the rest fell into place.

He thinks that approach probably wouldn't fly now.

"In today's world, the platforms on which content is being provided are changing so rapidly, and the legal issues that come with that are preceding just as rapidly," he said "I think it's important to be much more a student of the industry than I was at a junior age.

"It requires much more awareness and interaction with the business marketplace than it did when I was a kid," Bart said.

— *As told to Bill Donahue*

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