

## Media & Entertainment Group Of The Year: Jenner & Block

By **Megan Leonhardt**

*Law360, New York (January 10, 2012, 8:17 PM ET)* -- Attorneys at Jenner & Block LLP were involved in some of the biggest cases that promised to revolutionize the media and entertainment industry this past year — including the U.S. Supreme Court case that held violence in video games was protected by the First Amendment — securing the firm a spot on Law360's Media & Entertainment Groups of 2011.

The more than 25 attorneys working in the firm's Content, Media & Entertainment practice have been kept busy over the past year, with a landmark Supreme Court win and the firm's representation of major media corporations in game-changing cases in several federal appeals and district courts.

In what co-chair of the practice Steven Fabrizio called one of the biggest First Amendment victories in many years, Jenner & Block's leading achievement last year was undoubtedly its June victory in *Brown v. Entertainment Merchants Association*.

On behalf of the Entertainment Merchants Association, the firm's attorneys helped to convince the Supreme Court to strike down the 2005 state ban that restricted the sale or rental of violent video games to minors, which they argued ran afoul of the First Amendment's freedom of speech and expression provision.

While the high court acknowledged the law's legitimate goals of tackling a serious social problem and assisting parents with controlling children, it said the legislation reached too far by limiting the rights of parents who believe video games are harmless.

Jenner & Block had argued California was attempting to break new ground by carving out an exemption to the First Amendment, shoehorning speech about violence into the category of obscenity.

In striking down the law, the Supreme Court affirmed the Ninth Circuit's 2009 decision, which in turn had upheld a California judge's ruling invalidating the law in August 2007.

The decision — which followed a series of victories the firm had orchestrated in similar state law challenges — was lauded by not just the video game industry, but also other content creators and constitutional scholars concerned about the ban's potential impact on freedom of expression for all artists.

Lead attorney Paul Smith said he felt as though he was on the "front lines of the digital war," noting that the case and others like it would help to write the basic foundation of laws in the future.

While Jenner & Block faced intense scrutiny on the Brown case, industry leaders have been anxiously awaiting appeals decisions in two of the firm's other cases involving how provisions under the Digital Millennium Copyright Act are applied.

In *Viacom International Inc. v. YouTube Inc. et al.*, the firm is representing Viacom in its Second Circuit appeal of a district judge's decision to throw out a \$1 billion copyright infringement suit in June 2010 that the media giant, Europe's top soccer leagues and other big content owners had brought over YouTube LLC's alleged infringement.

After hearing oral arguments in October, the Second Circuit is expected to rule early this year on whether the culture of infringement on Google Inc.'s YouTube was so obvious and pervasive that it destroyed any protection for the video-sharing site under the safe-harbor provision of the DMCA.

Jenner & Block argued the district court's decision went too far, saying the alleged widespread knowledge of infringement among YouTube's staff destroyed the DMCA's safe-harbor protection, which only released a service provider from liability when it lacked actual knowledge of infringement.

In oral arguments, Jenner & Block compared YouTube's behavior to that of Grokster, a popular file-sharing site that was ultimately taken down after the U.S. Supreme Court found in 2005 that it had enabled massive infringement and was not protected by the DMCA.

Smith, who was also lead attorney on the case, said the suit was a massive discovery matter that required a collaborative effort to review many, many documents.

But he also noted that new issues of law came up in the case, saying "the law is constantly evolving in this area."

Besides its work for Viacom, Jenner & Block is also defending several movie studios in a Ninth Circuit case in which a website operator argued for the reversal of a district court's grant of summary judgment for the studios.

The appeal stems from a copyright infringement suit brought by members of the Motion Picture Association of America against isoHunt owner Gary Fung and his company, whose websites direct users to BitTorrent peer-to-peer file-sharing links that allow them to unlawfully share copyrighted material online.

On behalf of Columbia Pictures Industries Inc., Disney Enterprises Inc. and other movie studios, Jenner & Block attorneys argued in May that a California district court had made the right call in December 2009 when it granted summary judgment on their claim that Fung and his websites intentionally induced copyright infringement.

The case was heard immediately after arguments in *UMG Recordings Inc. et al. v. Veoh Networks et al.* — making it the panel's second closely watched matter of the day involving the application of copyright law to Internet-era technologies.

But the Ninth Circuit's December decision to affirm a California court's ruling that Veoh Networks Inc. had federal protection from the copyright infringement claims brought by Universal did not, Fabrizio said, create the broad precedent industry leaders were hoping it would.

Fabrizio said he hoped the Ninth Circuit's decision in Columbia Pictures' suit against isoHunt would go further to establish guidelines governing when the DMCA's safe harbors apply to induced infringement liability.

“There are several issues in this case that can set precedents,” Fabrizio said, adding that the “rules of the road” were still being developed.

But the case that Fabrizio says has him up at night is *Disney Enterprises Inc. et al. v. Hotfile Corp. et al.*, in which Jenner & Block is representing Disney and other major film studios against a download hub operator.

The movie studios, led by Jenner & Block, filed the suit in February, alleging file-sharing website Hotfile Corp. and its director Anton Titov infringed thousands of their copyrighted movies and TV shows.

Hotfile charges users a monthly fee to download content from its site, but pays users small sums when they upload popular content — usually allegedly copyright-protected movies — to the site, which is then downloaded by thousands of other users.

The download hub operator not only allowed users to upload and download copyrighted material, but its business model also actively encouraged users to upload new and popular copyrighted content by paying dividends based on how many other users downloaded the files, the firm argued.

Fabrizio said content owners in every industry were following the case because there had not yet been too many cases involving download hubs.

Download hubs, which Fabrizio called a “particularly insidious form of copyright infringement,” are fast rivaling peer-to-peer networks as the largest vehicle for online copyright infringement.

Fabrizio said the firm planned to file summary judgment motions in the case soon, with the hope that a decision would be reached by the end of the year.

With attorneys in offices in New York, Washington and Los Angeles, practice co-chair Andrew Bart credits the skilled attorneys and the practice’s collaborative philosophy toward helping clients for the firm’s victories last year.

Bart said the firm tries to build clients’ relationships with the firm as a whole, rather than with just individual star attorneys.

“We work collectively to maximize our business opportunities,” he said.

Fabrizio agreed, saying that from the very beginning of the practice almost eight years ago, the firm had sought to create a collaborative structure.

And while the practice has grown tremendously from its start in Washington to include lawyers in New York and Los Angeles, Fabrizio said there were plans in place to continue its expansion.

“You don’t see anyone that covers coast-to-coast with the depth and breadth that we do,” Fabrizio said, adding that the firm planned to keep it that way.

*In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.*

--Editing by Elizabeth Bowen.

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