



Michael Elkin

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A widely recognized trial lawyer, Michael is known for his precedent-setting wins in “bet-the-industry” intellectual property disputes involving the streaming of motion picture, television, and music properties. His matters are frequently at the core of disputes arising from a digital media evolution that intersects at the crossroads of Silicon Valley and Hollywood. This winning experience has made him “the go-to litigator in new media law in the country” (*The American Lawyer*) and the “go-to attorney in digital copyright cases” (*Chambers USA*).

Michael serves as the firm-wide vice chairman. Michael and his core team have collectively tried more than 100 cases to verdict, including high-profile and precedent-setting disputes involving major entertainment and digital media companies, representing the defense of billions of dollars in liability and the recovery of massive awards for Winston clients. Clients are impressed by his “uncanny ability to develop and execute winning trial strategies in tough, complex commercial disputes,” as well as his “terrific litigation skills” and “incredibly hard-working” approach (*Chambers USA*). Michael was named to “Hall of Fame – Copyright” by *The Legal 500 US* (2021–2023), and he was recognized by Law360 as a “Media & Entertainment MVP” (2021), which noted that his “outcomes frequently test the boundaries of the nascent new media environment.”

Michael leads a Winston team in trial and appellate courts in three separate proceedings in different parts of the United States, defending some of the largest internet service providers against secondary copyright infringement claims (involving multibillion-dollar exposure) brought by nearly the entirety of the music industry arising alleged residential and business subscriber file sharing. The same Winston team has been responsible for some of the biggest and high-profile trial and appellate wins which have shaped the boundaries of numerous aspects of the Digital Millennium Copyright Act.

Michael is truly a pioneer in complex and precedent-setting digital copyright matters. Notably, he has earned three “Litigator of the Week” honors from Am Law as a result of his success in three separate “bet-the-industry” digital media copyright disputes involving the streaming of motion picture, television, and music properties. In February 2018, Michael convinced the U.S. Court of Appeals for the Fourth Circuit to reverse a copyright infringement jury verdict (in a case tried by another firm) and remand the case for a new trial. This win in a crucial copyright fight demonstrates the reason clients say that Michael “thinks on his feet and knows strategy” (*Chambers USA*).

In another case for which he received “Litigator of the Week” honors—one of the most closely watched digital media copyright cases of the last several years—Michael secured the denial of a motion for preliminary injunction that had been filed against Aereo, Inc., a digital media venture. The plaintiffs, comprised of 17 television broadcast networks, sued Aereo for copyright infringement based upon Aereo’s transformative mobile streaming television technology. The decision was affirmed on appeal and was featured by Am Law Litigation Daily as one of its “IP Wins Worth Bragging About,” as well as by *The Hollywood Reporter* as “Deal of the Year.”

Michael first earned “Litigator of the Week” for his lower court wins and successful defense on appeal of a series of cases for Veoh Networks that first applied and tested the applicability of the Digital Millennium Copyright Act section 512(c) safe harbor protection to website owners and operators that offer user-generated content. This appellate victory was recognized by *Corporate Counsel* as one of its “10 Biggest IP Litigation Wins” of the year.

These headline-grabbing wins have made him the go-to litigator in digital media law in the country. *World Trademark Review* recently noted: “Michael Elkin is a leading light in the digital media and entertainment space.” In previous editions, *WTR* recognized that Michael “is on home turf when high-stakes trademark and copyright issues collide in the courtroom. Those in the entertainment and digital media domains can rest easy in his eminently capable hands.”

His exceptional work has led to many other accolades over the years. Under his leadership, the firm’s copyright practice was referenced prominently in the [2014 IP Litigation Department of the Year](#) review by *The American Lawyer*, and Michael was specifically recognized for his handling of leading digital media cases in the entertainment space. Michael’s digital media work also earned him an “[Intellectual Property MVP](#)” (2012) recognition by Law360.

The Legal 500 US named Michael to its copyright “Hall of Fame” in 2021–2023, calling him “an authority in litigation involving motion picture, television, and music properties.” One client notes that Michael and his team are “the best litigators I have ever worked with over my nearly 45 years in business. [The team is] very aggressive in representing our interests.” Another client states, “We have worked with the team led by Michael Elkin on complex copyright litigation, the details of which break new ground in the social media space.”

Law360 also selected Winston as a “Media and Entertainment Group of the Year,” citing Winston’s record in cases that helped determine the legal standard for user-generated content and copyright infringement. Further, *U.S. News & World Report* once again ranked Winston as national Tier 1 for IP Litigation in its “Best Law Firms” issue, with one client stating: “In the four companies I have been CEO of, I have dealt with many IP/Litigation firms. Michael Elkin at Winston & Strawn is the very best in this area.”

Complementing his extraordinary copyright litigation skills, Michael also has significant experience representing digital media service providers in royalty rate-setting proceedings, including (for clients such as Amazon) before the Copyright Royalty Board, to determine the appropriate licensing rates for the creation and distribution of content. His deep knowledge of U.S. copyright laws, as well as the IP challenges inherent in the digital media and entertainment sector, make him uniquely well qualified to handle these types of matters.

In addition to being one of the most sought-after media and entertainment attorneys in the country, Michael is also an experienced patent, trademark, and trade secret litigator. His experience includes representing a manufacturer of

flash memory cards in an International Chamber of Commerce (ICC) arbitration involving claims of misappropriation of confidential information and trade secrets; winning a significant victory for a consumer electronics company in a patent litigation case involving failure to pay royalties for use of patents in selling DVD players; and representing a leading broker-dealer firm in one of the largest and most high-profile of Financial Industry Regulatory Authority (FINRA) arbitrations.

Michael also advises and counsels entertainment clients on capital markets transactions and licensing of intellectual property. His international experience includes private litigation and arbitration that required the application of treaties, conventions, and foreign and domestic law on subjects such as the extraterritorial gathering of evidence, foreign sovereign immunity, recognition of foreign country judgments and foreign arbitral awards, and international conflicts of law.

Prior to joining Winston & Strawn, Michael served as vice chairman of another major law firm and managing partner of its litigation practice.

Key Matters

Michael's practice has helped define the boundaries and landscape of IP law regarding the development, distribution, and use of emerging technologies. He advises cable and tech companies on new, over-the-top technologies for internet distribution, and has successfully defended new media in game-changing disputes, including cases involving the streaming of motion pictures, television, and music properties.

Notable examples of his work in this area include:

- Secured dismissal of a vicarious copyright infringement claim brought by the music industry against one of the largest internet service providers ("ISP") in the United States that sought a billion dollar plus damages award for the alleged infringing activities of the ISP's subscribers.
- In a two-week jury trial where 25 music publishers sought to recover US\$30M in statutory damages for established copyright infringement against an interactive music streaming site and its owners, Michael led a Winston team to limit the verdict to just US\$189,000 (nearly the absolute floor of a permitted recovery).
- Served as special counsel to the trustee in the bankruptcy of VidAngel, an online video filter and streaming service, providing counsel to the trustee concerning business streaming models of the company against which a US\$62.5M judgment had been entered.
- For one of the largest cable companies in the United States, secured a reversal on appeal to the Fourth Circuit (and remand for a new trial) of a jury verdict awarding US\$25M on secondary copyright infringement (in a case tried by another firm).
- Obtained important wins for a website providing access to what *The Wall Street Journal* described as "the most important collection of rock memorabilia and recordings ever assembled in one business," including in a copyright matter involving the late impresario's estate and numerous copyright infringement cases brought by music publishing companies and the surviving members/representatives of Led Zeppelin, the Grateful Dead, The Doors, Santana, and Nirvana.
- Won, and successfully defended on appeal, a series of cases for Veoh Networks that first applied and tested the applicability of the Digital Millennium Copyright Act section 512(c) safe harbor protection to website owners and operators that offer user-generated content. Illustrating the significance of this win, a ruling awarding summary judgment to YouTube in a similar highly anticipated copyright infringement case in the Southern District of New York adopted much of the Winston team's key legal arguments that prevailed in the *Veoh* case.
- Secured the denial of a motion for preliminary injunction that had been filed against Aereo, Inc., a digital media venture. The plaintiffs, comprised of 17 television broadcast networks, sued Aereo for copyright infringement based upon Aereo's transformative mobile streaming television technology. The decision was affirmed on appeal.

- Won a landmark victory for Yahoo! in a decision issued by the U.S. Court of Appeals for the Second Circuit that addressed a series of lower court decisions on music downloading and reasonable royalties. Yahoo! replaced its trial counsel and retained Winston to handle a motion for reconsideration (which initially reduced the judgment by millions of dollars) and this appeal before the Second Circuit. The decision will have far-reaching implications for how performing rights societies like ASCAP will be compensated for the incidental use of their constituent publishers' music that passes through Internet portals, like Yahoo! – and countless others.
- Won a decision of unique importance for Yahoo! subsidiary Launch Media Inc. in a copyright infringement battle in which up to US\$2 billion in potential damages was claimed. In the first ruling of its kind, the Second Circuit affirmed the jury verdict in our client's favor and held that personalized webcasting sites do not give listeners enough control over what songs are played to qualify as interactive sites, as the music label plaintiffs had argued.
- Secured a dismissal for Yahoo! at the district court level in a lawsuit brought by prize insurer SCA Promotions over Yahoo's decision not to continue with a "Tourney Pick 'Em" promotion for the 2014 NCAA Men's Division I Basketball Tournament that would have paid the winner US\$1 billion for correctly predicting each of the tournament's 63 games.
- Won a summary judgment motion for Myxer, the leader in ad-supported mobile entertainment, in a bet-the-industry copyright infringement lawsuit brought by several of the world's largest record companies alleging that Myxer is violating copyrights by allowing its users to create ring tones based on the plaintiffs' copyrighted works.

Recognitions

- Listed in the 2023–2024 editions of *The Best Lawyers in America*® for Entertainment Law– Music
- Listed in the 2024 edition of *The Best Lawyers in America*® for Litigation - Intellectual Property
- Recognized as a *Managing Intellectual Property's* 2022 Trademark and Copyright Star
- Listed in *Chambers USA* among the best lawyers for Intellectual Property: Trademark & Copyright (2016–2023) and Media and Entertainment: Litigation (2018–2023)
- Named a “Media & Entertainment MVP” by Law360 in 2021
- Recognized in *The Legal 500 US* 2021–2023 “Hall of Fame” for Copyright
- Recognized in *The Legal 500 US* 2012–2020 as “a first-rate litigation and business adviser” and a “Leading Lawyer” for Copyright
- Recipient of the 2021 *Pro Bono Publico* Award for outstanding service to The Legal Aid Society
- Recognized by *Benchmark Litigation US* as a “New York Litigation Star” and “National Practice Area Star” (2020, 2023, and 2024) for Intellectual Property
- Recognized by Am Law Litigation Daily as a “Litigator of the Week” in: February 2018 for obtaining a reversal on appeal of a US\$25M jury verdict (and remand for a new trial) in a copyright infringement case involving music streaming (which was tried by another firm); in July 2012 for his significant victory for Aereo in a copyright dispute relating to remote television antenna and DVR streaming; and in December 2011 for a favorable ruling on behalf of Veoh Networks, which is expected to affect pending cases involving copyrighted content hosted online
- Shortlisted for *Managing Intellectual Property's* 2018 U.S. Outstanding IP Litigator – New York and named an “IP Star” every year since 2013
- Recognized by *The American Lawyer* in connection with the firm’s selection as a finalist for *The American Lawyer's* “IP Litigation Department of the Year” in 2014 and 2010
- Named an “Intellectual Property MVP” by Law360 in 2012
- Recognized by *The National Law Journal* in its 2012 and 2013 “Intellectual Property Hot List,” which highlighted Michael’s win for Veoh Networks
- Selected as one of *Hollywood Reporter, Esq.'s* Top 100 Power Lawyers for litigation from 2006–2010 and 2012–2014, including recognition for “Case of the Year” in 2013
- Recognized by Law360 as part of the firm’s Advertising, Marketing, and Entertainment Law Practice being selected as a 2011 “Media and Entertainment Group of the Year”
- Listed in *Variety's* “Legal Impact Report 2012: 50 Game-Changing Attorneys”
- Named to the *World Trademark Review's* “WTR 1000” rankings from 2012–2019, 2021, 2022, 2023, 2024
- Named a 2020 *Lawdragon 500* Legend, named to *Lawdragon's* “500 Leading Lawyers in America” guide to the nation’s top lawyers from 2021 to 2024, named to *Lawdragon's* “The Influencers: The 500 Leading Lawyers in America” guide from 2011–2019, recognized in *Lawdragon's* “500 Leading Litigators in America” in 2022 and 2023, and profiled in *Lawdragon's* “Lawyer Limelight” in July 2010
- Recognized in *The National Law Journal's* 2010 “Appellate Hot List” as lead counsel in the successful defense of a landmark copyright case (*Arista Records LLC v. Launch Media Inc.*, 578 F.3d 148 (2d Cir. 2009), cert. denied (2010))
- Listed in the 2014 *Super Lawyers Business Edition* for Intellectual Property Litigation in New York, listed in the July/August 2009 *Corporate Counsel* edition of *Super Lawyers* for Intellectual Property Litigation in New York,

and as a New York Super Lawyer in *New York Super Lawyers Magazine* in 2011

- Listed in *Who's Who in American Law* in 2009–2016
 - Named to *The American Lawyer's* list of “Star Laterals of the Year” in 2008
 - Recognized as a *Super Lawyer* each year from 2006 through 2017
 - Recognized by *IAM Patent 1000* as a leading patent practitioner since 2013–2016
 - Named to *WIPR Leaders 2021* for Music and Trademark
 - Legal Aid Society New York: Pro Bono Publico Award
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Activities

Michael serves as the firm’s vice chairman, is a member of the firm’s Executive Committee, and was the former managing partner of Winston’s New York office. In addition, he serves as a trustee for the Copyright Society of the USA and is a former member of Law360’s Intellectual Property Editorial Advisory Board.

Professional Affiliations

- The Association of the Bar of the City of New York
- Copyright Society of the United States of America, trustee and advisory board member

Charitable/Civic Associations

- Member of the Lawyer’s Committee at the New York Public Library
 - French-American Chamber of Commerce, Vice President and Secretary, Executive Committee for National and New York Chapter
 - Paris American Club
 - Confrérie des Chevaliers du Tastevin (NY Chapter)
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Credentials

EDUCATION

Michael received a J.D. from Brooklyn Law School in 1984. He received a B.A. in 1979 and an M.S.W. in 1981 from Rutgers University.

ADMISSIONS

- New Jersey
- New York

LANGUAGES

- French

Related Insights & News

Speeches:

- “Online Copyright Infringement Liability,” Columbia Law Society for Law, Science, and Technology; Columbia Law Entertainment, Arts, and Sports Law Society, Columbia Law School, New York (November 2020)
- “Notice and Takedown of Alleged Infringing Works on the Internet,” Kernochan Center IP Speaker Series, Columbia Law School, New York (April 2018)
- “Using Trade Secrets, Copyright, and Trademarks to Protect Software Products,” IAM’s IP Software Summit, San Francisco, California (May 2017)
- “Challenging Copyright Issues: Fashion Design Protection and Appropriation Art in the US and the EU,” 2016 Seasonal Meeting of the International Section, New York State Bar Association, Paris, France (October 2016)
- “Aereo and Its Aftermath,” Kernochan Center for Law, Media and the Arts, Columbia Law School, New York (February 2015)
- “Contributory Liability and the Duty to Police Internet Content,” USC Gould School of Law 2013 Intellectual Property Institute, Beverly Hills, California (March 2013)
- “Current Issues in Copyright,” Kernochan Center for Law, Media and the Arts, Columbia Law School, New York (February 2013)
- “Digital Television Innovation, Competition and Copyright,” National Association of Recording Merchandisers Entertainment Law Conference Series, Los Angeles (October 2012)
- “Current Issues in Copyright,” Kernochan Center for Law, Media and the Arts, Columbia Law School, New York (February 2012)
- “Cloud Media Law: *MP3 Tunes, Amazon Cloud Music and Cartoon Network v. Cablevision*,” National Association of Recording Merchandisers Entertainment Law Conference Series, New York (November 2011)
- “Music and Copyright: A Panel Discussion Featuring George Clinton,” Brooklyn Law School, New York (October 2011)
- “Cloud Computing vs. File Sharing,” CMJ 2011 Music Marathon & Film Festival 6th Annual Entertainment Business Law Seminar, New York (October 2011)
- “Copyright Law and the Internet’s Evolution Continues to Break New Ground – Three Cases and a New Law that Shook the World,” ALM 23rd Annual Corporate Counsel Conference, New York (June 2011)
- “The DMCA Safe Harbor: Anchored or Adrift?” New York State Bar Association, New York (March 2011)
- “The Law Firm Partners’ Perspective on IT and Expectations of the CIO,” The American Lawyer 7th Annual Law Firm Chief Information & Technology Officers Forum, New York (February 2011)
- “After YouTube and Veoh: Have Courts (or Congress) Failed Creators or Struck the Right Balance?” National Association of Recording Merchandisers Entertainment Law Conference Series, Los Angeles (October 2010)
- Speech to the Los Angeles Copyright Society regarding the decision in *lo Group, Inc. v. Veoh Networks, Inc.*, the first case to consider whether the operator of a user-generated content Web site can obtain safe harbor under the Digital Millennium Copyright Act (December 2008)
- “Navigating the Latest Precedent-Setting Cases that Affect Emerging Technologies Used to Disseminate Creative Content Online,” presented at an entertainment and media meeting of the New York County Lawyers’ Association, New York (April 2008)
- “Navigating the Latest Precedent-Setting Cases that Affect Emerging Technologies Used to Disseminate Creative Content Online,” presented at the Bloomberg Intellectual Property Law Seminar, San Francisco (November 2007)
- “Declining Record Sales: Causes and Solutions,” Entertainment and Sports Conference, sponsored by the Entertainment and Sports Committee of the NYSSCPA, Crowne Plaza, New York, Panelist (May 2005)

- “A Change is Gonna Come: New Opportunities and Evolving Strategies in Music and Digital Entertainment,” 4th Annual Billboard Music & Money Symposium, St. Regis Hotel, New York, Panelist (March 2005)
- “Protecting Intellectual Property Assets for Entertainment Companies,” Forbes Radio Interview (November 2003)
- “The Business of Hip Hop: From The BlingBling to The Ka Ching,” M.R. Beal 15th Anniversary Forum, Ritz Carlton Battery Park, New York, Panelist (June 2003)
- “Examining the Structure of Music, Entertainment & Copyright Securitizations,” Advancing IP Structured Finance sponsored by the World Research Group, Crown Plaza, New York, Speaker (May 2003)
- “Finding the Funding that Fits,” 2nd Annual Billboard Music & Money Symposium, St. Regis Hotel, New York, Panelist (March 2003)
- “A Time To Heal, A Time To Rebuild,” Hip Hop to Wall Street – Investment and Management Plenary, RainbowPUSH 5th Annual Wall Street Project Conference and Gala: Hilton New York Hotel, Moderator (January 2002)

Publications:

- Co-author: “Jailbroken: Future of Interoperability Exemptions Under the DMCA,” *New York Law Journal*, June 12, 2013
- Co-author: “California, New York’s Different Approaches, Viewed Through Pending NCAA Student Athlete Licensing Litigation: The Right of Publicity Goes Digital,” *New York Law Journal*, Aug. 16, 2010
- Co-author: “*Arista Records v. Launch Media, Inc.*: Second Circuit Grapples with Interactivity,” *NYSBA Bright Ideas*, Winter 2009
- Co-author: “Free With Registration: Digital Millennium Copyright Act – California Ruling May Influence Viacom’s Suit Against YouTube,” *New York Law Journal*, Dec. 30, 2008
- Co-author: “Termination of Copyright Transfers, Record Labels’ Rights,” *New York Law Journal*, Oct. 29, 2004
- Co-author: “Speed Bumps on Woodley Road,” *Lodging Law*, Vol. 7, Issue 10, October 2004
- Author: “Napster Near and Far: Will the Ninth Circuit’s Ruling Affect Secondary Infringement in the Outer Reaches of Cyberspace?” *27 Brooklyn J. Int’l L.* 381, 2002

RECOGNITIONS

Precedent Setting 4th Circuit Copyright Decision Earns Michael Elkin and Jennifer Golinveaux Mention in Litigator of the Week Column

FEBRUARY 23, 2024

RECOGNITIONS

Winston & Strawn Trademark Team Recognized in the *WTR 1000* 2024 Rankings

FEBRUARY 6, 2024

RECOGNITIONS

Winston Attorneys Featured on the 2024 *Lawdragon* 500 Leading Lawyers in America List

JANUARY 12, 2024

RECOGNITIONS

Winston & Strawn Recognized in 2024 *Benchmark Litigation*

OCTOBER 6, 2023

RECOGNITIONS

Winston & Strawn Partners Recognized in 2024 *Lawdragon* 500 Leading Litigators in America

SEPTEMBER 8, 2023

RECOGNITIONS

Winston Attorneys Recognized in *The Best Lawyers in America*® 2024

AUGUST 17, 2023

SPONSORSHIP

Winston & Strawn Sponsors 2023 Copyright Society Annual Meeting

JUNE 11-13, 2023

RECOGNITIONS

Winston & Strawn Recognized in *The Legal 500 U.S.* 2023

JUNE 7, 2023

RECOGNITIONS

Winston & Strawn Recognized in *Chambers USA* 2023

JUNE 6, 2023

BLOG

Winston's Fourth Class of Protégés Graduates from D&I Associate Sponsorship Program

MAY 25, 2023

IN THE MEDIA

Michael Elkin Discusses Ed Sheeran Copyright Infringement Case with Law360

MAY 9, 2023

NEWS

2022 Pro Bono Impact Report

MAY 1, 2023

Capabilities

