



Michael Elkin

Partner

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A widely recognized trial and appellate 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 the digital media evolution at the crossroads of Silicon Valley and Hollywood.

Michael and his core team have been responsible for some of the biggest and high-profile trial and appellate wins that have shaped the boundaries of copyright law and the Digital Millennium Copyright Act. Notably, Michael has served as defense counsel in 7 of the 10 Internet Service Provider (ISP) cases involving secondary copyright infringement claims—with multi-billion-dollar exposure—brought by nearly the entirety of the music industry alleging residential and business subscriber file sharing. Most recently, he and co-counsel convinced the U.S. Court of Appeals for the Fourth Circuit to vacate a US\$1B damages award against his ISP client, finding that the music publishers did not meet the vicarious liability standard for their copyright infringement claims. Michael is leading the defense an ISP case that is set to go to trial in late 2025.

Michael also defended an international toy company in a copyright and trademark suit brought by an online game platform and game creation system and its licensee. After full discovery and summary judgment proceedings, the case settled favorably.

In the music arena, Michael has obtained several 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.” These victories—including the reversal of a punitive summary judgment ruling before the Second Circuit and the reversal of a rare copyright class certification before the Ninth Circuit—involved copyright matters concerning the late impresario’s estate and numerous infringement cases brought by music publishing companies and the surviving members/representatives of Led Zeppelin, the Grateful Dead, The Doors, Santana, and Nirvana.

Complementing his acclaimed courtroom skills, Michael’s clients benefit greatly from the leadership skills he gained while serving as Winston’s vice-chairman and other senior positions over the past 15 years. Michael utilizes this unique business perspective to fully understand his client’s legal implications and identify leverage that improves his clients’ positions.

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 winning experience has earned him numerous accolades over the years. *The Legal 500 US* named Michael to its copyright “Hall of Fame” in 2021–2024, 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 told *Chambers USA* that “Michael brings a depth of industry knowledge and professionalism that is incredible.”

Law360 also selected Winston as a “Media and Entertainment Group of the Year,” citing Michael’s record in cases that helped determine the legal standard for user-generated content and copyright infringement. Further, Best Lawyers® 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.”

World Trademark Review recently noted: “Michael Elkin is a leading light in the digital media and entertainment space” and “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.”

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 digital 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 ISPs 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*
- 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\$2B 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\$1B 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 *Chambers USA* among the best lawyers for New York Intellectual Property: Trademark & Copyright (2016–2025); New York Media and Entertainment: Litigation (2015–2025); and USA – Nationwide Intellectual Property: Trademark, Copyright & Trade Secrets (2024–2025)
- Listed in *Chambers Global* for Intellectual Property: Trademark, Copyright & Trade Secrets (2025)
- Recognized by *The Best Lawyers in America*® for Entertainment Law – Music (2013–2025) and for Litigation – Intellectual Property (2024–2025)
- Recognized as a *Managing Intellectual Property* “Trademark and Copyright Star” (2022–2025), shortlisted for *Managing Intellectual Property*’s “U.S. Outstanding IP Litigator” – New York (2018)
- Named to the *World Trademark Review*’s “WTR 1000” rankings (2012–2019, 2021–2025)
- Recognized in *The Legal 500 US* “Hall of Fame” for Copyright (2021–2025) and as “a first-rate litigation and business adviser” and a “Leading Lawyer” for Copyright (2012–2020)
- Recognized by *Benchmark Litigation US* as a “New York Litigation Star” and “National Practice Area Star” for Intellectual Property (2018–2025)
- Named to *Lawdragon*’s, “500 Leading Global IP Lawyer’s” (2025), “500 Leading Global Entertainment, Sports & Media Lawyers” (2025), “500 Leading Litigators in America” (2022–2025), “500 Leading Lawyers in America” (2021–2025), “500 Legends” (2020), “The Influencers: The 500 Leading Lawyers in America” (2011–2019), and “Lawyer Limelight” (2010).
- Named in *WIPR Leaders* for Trademark and Copyright (2021, 2024, and 2025)
- Recipient of the “Pro Bono Publico Award” for outstanding service to The Legal Aid Society (2021)
- Named a Law360 “Intellectual Property MVP” (2012) and “Media & Entertainment MVP” (2021)
- 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
- 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
- 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”
- 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” from 2013–2016
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Activities

Michael previously served as the firm's vice chairman, was a member of the firm's Executive Committee, and was the former managing partner of Winston's New York office. Currently, he is 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 *Io 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
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RECOGNITIONS

Winston & Strawn Recognized in *The Legal 500 U.S.* 2025

JUNE 12, 2025

RECOGNITIONS

Winston Lawyers Named as 2025 IP Stars

JUNE 10, 2025

RECOGNITIONS

Winston & Strawn Recognized in *Chambers USA* 2025

JUNE 5, 2025

RECOGNITIONS

Winston Lawyers Featured on the Inaugural *Lawdragon* 500 Leading Global IP Lawyers List

MAY 29, 2025

IN THE MEDIA

Winston Partners Recognized in *World Intellectual Property Review’s* Leaders Directory 2025

MAY 28, 2025

RECOGNITIONS
Winston Attorneys Featured on the 2025 *Lawdragon* Leading Global Entertainment, Sports & Media Lawyers List
MARCH 7, 2025

RECOGNITIONS
Winston Recognized in *Chambers Global* 2025
FEBRUARY 25, 2025

SPONSORSHIP
Winston & Strawn Sponsors 2025 Copyright Society Midwinter Meeting
FEBRUARY 1, 2025

RECOGNITIONS
Winston Trademark Team Recognized in the *WTR 1000* 2025 Rankings
JANUARY 29, 2025

RECOGNITIONS
Winston Attorneys Featured on the 2025 *Lawdragon* 500 Leading Lawyers in America List
JANUARY 14, 2025

PRO BONO IN ACTION
Winston and Optimum Team Up to Give Fellow New Yorkers a Financial Fresh Start in 2025
JANUARY 7, 2025

RECOGNITIONS
Winston & Strawn Recognized in 2025 *Benchmark Litigation*
OCTOBER 3, 2024

Capabilities

Intellectual Property	Litigation/Trials	Patent Litigation
Commercial Litigation & Disputes	Trademark Litigation, Prosecution & Brand Protection	
Copyright-Infringement Litigation	Trade Secrets, Non Competes & Restrictive Covenants	
Advertising Litigation	Financial Services Litigation	Media & Entertainment
Financial Services	Technology, Media & Telecommunications	