

Michael Elkin Named “Litigator of the Week”

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Winston & Strawn’s Michael Elkin, managing partner of the New York office, was named *Am Law*’s “Litigator of the Week” for his representation of Veoh.

On December 20, 2011, Elkin persuaded a panel of the U.S. Court of Appeals for the Ninth Circuit to rule for his client, Veoh Networks, in a copyright infringement suit brought by UMG Recordings. The Ninth Circuit upheld an earlier ruling for Veoh, concluding that the company was protected by a safe harbor provision of the Digital Millennium Copyright Act that shields Internet service providers from liability for storing infringing material uploaded by users, rejecting UMG’s argument that Veoh did not do enough to police its site despite knowledge that infringing material.

The ruling will play a critical role in Viacom’s copyright suit against Google and YouTube and impact how far Internet companies must go to block user-generated pirated content online.

As reported by *Am Law*, the decisions in both the UMG and IO cases against Veoh, have figured prominently in Google’s defense in the Viacom suit. A Manhattan federal district court judge cited the Veoh decision when he ruled for Google and YouTube on summary judgment in June 2010, and YouTube’s brief in response to Viacom’s Second Circuit appeal draws from both the UMG and IO cases.

Elkin, who spent big part of his career representing studios and artists, told *Am Law* that history has given him a special appreciation for the tensions—and the stakes—in the current litigation over the scope of DMCA safe harbor protection.

“I’m very sensitive to protecting artists and to protecting artistic creations, but there has to be a healthy balance between protecting those rights and permitting access to those creations in the marketplace,” Elkin said. “Now there’s been precedent at the circuit level, and I think the result is exactly what Congress had intended.”

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