

## IP MVP: Winston & Strawn's Michael Elkin

By Django Gold



Michael Elkin

*Law360, New York (December 05, 2012, 8:08 PM ET)* -- Over the past year, intellectual property litigator Michael S. Elkin of Winston & Strawn LLP has secured courtroom wins that have not only benefited his media industry clients, but have had a profound effect on the wider new media landscape, earning him a spot on Law360's list of IP MVPs.

Elkin took home substantial wins for a pair of new media companies fending off attacks from the old guard, assisting streaming television provider Aereo Inc. in staving off a copyright challenge raised by CBS Broadcasting Inc. and other major networks, months after having successfully defended Internet television company Veoh Networks Inc. from copyright infringement allegations raised by music giant Universal Music Group Inc.

Elkin, who serves as managing partner at Winston's New York office, has made his living successfully litigating such disputes, whose outcomes frequently test the boundaries of the nascent new media environment, telling Law360 that the constantly shifting nature of this landscape has of late offered numerous opportunities for an attorney in his line of work.

"About halfway through my career, my practice was affected by something called the Internet, which made the digital distribution of entertainment properties possible and popular," Elkin said, noting that the ongoing changes in how content is distributed have allowed him to make use of his extensive experience representing content owners in the media industry.

Elkin, whose clientele has in the past included record labels, publishing companies, motion picture studios and musicians such as Prince, Bob Dylan and Billy Joel, said he recognized early on "a great divide between Hollywood and Silicon Valley," wherein content producers are focused on protecting their rights while "the Microsofts and the Googles of the world" are looking to expand through the distribution of entertainment properties.

"I felt that this could be an opportunity for someone like myself who spent years in the courtroom representing entertainment companies to help bridge the gap," he said.

In so doing, Elkin says his line of work often involves him in so-called "bet-the-industry" litigation, in which the outcome of a case has powerful reverberations on a media landscape that is as yet not fully formed.

One such case Elkin recounts is his successful defense of Yahoo Inc. subsidiary Launch Media Inc., whose Internet radio station business the Winston litigator says was under fire from a bevy of big-name record companies. In taking the win both at trial and on appeal before the Second Circuit, Elkin says the results had far-reaching effects throughout the industry, pointing to companies like Pandora Media Inc., which "wouldn't have gone public but for the precedent we set."

Though Elkin says that, during the dawn of the file-sharing revolution in the late 1990s, his career was once dominated by cases over music copyrights, he says the latest front in the ongoing battle between copyright holders and technological innovators appears to be the television industry, where he took home his wins for Veoh and Aereo in the last year.

In the Veoh case, the Internet television platform faced allegations that its sharing of copyrighted material was harmful to plaintiff UMG, which alleged damages of \$500 million. After the trial court held that Veoh was protected under the safe harbor provisions of the Digital Millennium Copyright Act, Elkin preserved the ruling on appeal to the Ninth Circuit in December of last year, a result the attorney says carries broad implications for the Internet space going forward.

"That was a groundbreaking decision," Elkin said, adding that it has had a significant effect for social media companies, which are largely dependent on user-generated content. "Based on the safe harbor provision upheld in the Ninth Circuit, many companies have the ability and freedom to invest in innovative technologies."

In the Aereo case, Elkin in July helped his client escape a bid by a plethora of television networks to shut down Aereo's contested "Watch Now" television streaming feature — in a decision that currently awaits further consideration by the Second Circuit. Should the trial court's ruling for Aereo stand, it would have a significant effect on how television content is distributed in the coming years.

"This is another case that's in the vanguard of the digital media revolution," Elkin said.

Though Elkin acknowledges that the copyright issues attached to the media and technological worlds are ever-shifting, he attributes much of his success to his peers at Winston, who he says allow him to stay on top of the challenges raised in such a dynamic legal field.

"I constantly surround myself with wonderful lawyers, including a lot of younger lawyers who are smarter than me and more tech-savvy," Elkin said. "I rely on them to gain knowledge and then try to bear down myself and try to learn as much as I can. It's really about surrounding myself with team members who are talented and who both love and enjoy learning and teaching innovative technologies."

--Editing by Katherine Rautenberg.