

Winston & Strawn Obtains Significant Ruling in Favor of Veoh

MARCH 14, 2013

Winston & Strawn obtained a significant ruling in favor of our client Veoh Networks in regard to the online video company's dispute with UMG Recordings (*UMG Recordings et al. v. Veoh Networks, Inc. et al.*).

On March 14, 2013, the Ninth Circuit issued a superseding opinion, re-affirming the District Court's judgment in favor of Veoh, but harmonizing the recent Second Circuit opinion in *Viacom v. YouTube*, and thereby avoiding a potential circuit split that would favor Supreme Court review. The Ninth Circuit expressly adopted the Second Circuit's "objective/subjective" distinction (*Viacom v. YouTube*) in deciding whether Veoh had either actual knowledge or an awareness of facts as to the claimed infringing activity on the site, and rejected UMG's arguments on both fronts. The Ninth Circuit also agreed with Veoh and held that even under the Second Circuit's test as to an online service provider's ability to control, Veoh did not exert substantial influence over the activities of its users or engage in the kind of purposeful conduct that would result in liability, and that reading the standard as equivalent to the common law, as advocated by UMG, would create an inherent contradiction in the statute—requiring an online service provider to retain control over access to comply, but taking that protection away because the service provider retained the same ability to remove or block access.

In 2007, a division of Universal Music Group, Inc. sued Veoh, claiming the company had an affirmative duty to remove infringing content uploaded by users of Veoh.com. In December 2011, the [Ninth Circuit ruled in favor of Veoh](#), claiming that the video-sharing site cannot be sued for copyright infringement under the Digital Millennium Copyright Act (DMCA) and in March 2013, the Ninth Circuit reaffirmed this decision.

The Ninth Circuit's affirmation of the original ruling further prove that the DMCA's safe harbor conditions protect Veoh's activities, which are vital to the growth of the Internet.

Intellectual property partner [Michael Elkin](#), who serves as managing partner of Winston & Strawn's New York office, was lead counsel for Veoh and argued the case before the Ninth Circuit. Partner [Jennifer Golinveaux](#) assisted in representing Veoh in the matter.

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