

Copyright Litigation

Quinn Emanuel is highly experienced in litigating copyright disputes. We have been called on to protect some of the world's most well-known and valuable copyrighted works, including those of the Oscars© telecast, Barbie, X Corp., Google, Spotify, the NFL, the Andy Warhol Foundation, Bloomberg, Vimeo, and many others. We have also successfully defended against claims of copyright infringement, securing the dismissal of claims, preventing injunctions from being entered, convincing juries to award zero damages even after a finding of copyright infringement (in an earlier trial while represented by another firm), and winning attorneys' fees on behalf of a defendant found liable for copyright infringement. Our work is often precedent setting. One of our partners won his first copyright case—resulting in published opinions since cited by the Supreme Court and most Courts of Appeals—while still in law school. Another of our partners won a precedential case establishing the protectability of a software program's user interface. Our copyright expertise extends to every industry, protecting the works of movies, sports, music, art, book publishing, electronic games, and every aspect of the internet and computer worlds.

REPRESENTATIVE COPYRIGHT CLIENTS

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| Academy of Television Arts and Sciences | LifeScan |
| Academy of Motion Picture Arts & Sciences | Lionsgate Entertainment |
| The Andy Warhol Foundation | Mattel |
| Avery Dennison | Metro-Goldwyn-Mayer |
| Big Run Studios | Motorola |
| Bloomberg | Netflix |
| Brøderbund Software | NFL |
| Bullet Proof Software | Northrop Grumman |
| CBS | OpenAI |
| Charter Communications | Paramount Pictures |
| Cisco Systems, Inc. | PeopleSoft |
| Compuware | The Richard Avedon Foundation |
| DreamWorks | Skillz Platform |
| easyJet Airlines | Shell Oil |
| GameTech International | Spotify |
| Gearbox Software | Studio Wildcard |
| General Motors | Symyx Technologies |
| Good Technology | Tumblr |
| Google | Vimeo |
| Hughes | Walt Disney Company |
| IBM | X Corp. |
| Johnson Controls | YouTube |
| Koch Industries | Zynga |
| Kosa France | |

RECENT REPRESENTATIONS

FILM, TELEVISION, AND LITERARY WORKS

- We successfully represented **Disney** in a suit by a screenwriter and poet who claimed that Disney's blockbuster *Finding Nemo* film was an unauthorized derivative work from the plaintiff's poem and treatment. We convinced the trial court to dismiss the plaintiff's complaint on grounds of lack of substantial similarity, which was affirmed in all respects by the Ninth Circuit on appeal.
- We successfully defended **the studio that distributes the iconic 1984 motion picture *This Is Spinal Tap*** against claims by the four writers, actors, and director (Rob Reiner, Harry Shearer, Michael McKeon, and Christopher Guest) to terminate the studio's copyright interest in the picture and for failing to account for all of the movie's profits, a declaration of abandonment of the picture-related trademarks, and for hundreds of millions of dollars in alleged accounting improprieties.
- We represented **Matt and Ross Duffer**, creators of Netflix's hit TV show *Stranger Things*, after they were accused of basing the show on ideas allegedly described to them at a party by Charlie Kessler. The Duffer brothers hired us three weeks before trial to act as lead counsel. The plaintiff dismissed his case before the trial commenced.
- We successfully defended the **producers, writers and director of the motion picture *The Last Samurai*** in a lawsuit alleging that they had used material written by the plaintiffs to write and produce the film. The plaintiffs asserted claims for copyright infringement and breach of implied-in-fact contract. After a two-week trial in the District Court of California, the jury unanimously rejected the plaintiffs' claims and rendered a verdict in favor of our clients.
- We represented **Vimeo** in a copyright infringement lawsuit brought by the music industry, which sought to compel Vimeo to proactively monitor and remove users' videos that feature allegedly infringing music. In a unanimous ruling, the Second Circuit rejected these claims and affirmed Vimeo's summary judgment win below, upholding the important safe harbor protections afforded by the Digital Millennium Copyright Act for platforms such as Vimeo that host user-generated content.
- We obtained a significant victory for Japanese entertainment company **Tsuburaya Productions Co., Ltd.** in a jury trial in the Central District of California. The case concerned a dispute regarding ownership of rights in Tsuburaya's iconic "Ultraman" superhero character in all countries outside of Japan. The "Ultraman" universe comprises dozens of movies and television shows dating back to the 1960s, as well as countless products based on "Ultraman" characters. In 1996, a Thai man claimed that he owned all rights in "Ultraman" outside of Japan based on a one-page contract that, he asserted, had been executed 20 years earlier by Tsuburaya's former president, who had died shortly before the Thai man made his claim, leaving no other witnesses to the alleged formation of the purported contract. Since then, the parties have litigated over the validity of the alleged contract in multiple foreign countries, with Tsuburaya contending that the document was forged by the Thai individual. The dispute reached

the U.S. courts in 2015. After we obtained partial summary judgment on the interpretation of the contract (assuming it is an authentic contract), the question of the contract's authenticity was tried to a jury. At the close of a two-week trial, the jury unanimously found that the document was a forgery, thus paving the way for Tsuburaya to greatly increase its exploitation of "Ultraman" in the U.S. and elsewhere.

- We represented **Bloomberg** in an action brought by a financial news publication called The Capitol Forum in D.C. district court. The Capitol Forum alleged that Bloomberg's reporting on the release of The Capitol Forum newsletters constituted "hot news" misappropriation, and both direct and contributory copyright infringement. Bloomberg moved to dismiss the complaint on the grounds that "hot news" misappropriation is not recognized under D.C. law, and even if it were, the claim in this case would be pre-empted by the Copyright Act. In November 2019, the Court granted Bloomberg's motion and dismissed the case in its entirety.
- We represented **iTalk Global, Inc.** in the Western District of Texas for the allegedly unauthorized display of several Chinese television programs on the "iTalkBB Chinese TV" platform, a popular Internet-based television platform for Chinese speakers in the U.S. and elsewhere. The case raises complex issues regarding the enforcement of foreign copyrights in the U.S., international licensing arrangements, and the display of copyrighted works through internet-based platforms with both streaming and recording capabilities. The case raised complex issues regarding proof of chain of title for foreign copyrights, international licensing arrangements, and the display of copyrighted works through internet-based platforms with both streaming and recording capabilities. After some discovery and motion practice on the pleadings, the parties reached a settlement in August 2020.
- We obtained a dismissal with prejudice of an unusual complaint against our client, **the Academy of Motion Picture Arts and Sciences**, in the Eastern District of Virginia. *Pro se* plaintiff Jeremy Southgate brought claims of racketeering, trademark and copyright infringement, and more. He claimed that certain stage arrangements, spoken words, and a musical performance in the Oscars infringed his company's logo as part of a conspiracy involving Barack Obama, Google, and other high-profile figures. In April 2018, the Court granted our motion to dismiss with prejudice.
- We won summary judgment on behalf of **YouTube** and its parent **Google** in a precedent-setting, billion-dollar copyright case brought by Viacom in U.S. District Court in New York. Viacom argued that YouTube should be held liable for the presence of allegedly unauthorized, infringing material on the site. In a decision that helps to establish the rules of the road for Internet services that host user-generated content, the district court agreed with us that YouTube and Google are fully protected by the safe-harbor provisions of the Digital Millennium Copyright Act.
- We represented **The Walt Disney Company, Executive Producer Dana Owens (p/k/a "Queen Latifah"), screenwriter Jason Filardi and various independent producers of the hit comedy film *Bringing Down the House*** in a long-running copyright infringement lawsuit filed by an aspiring screenwriter. Along the way, we

obtained published summary judgment rulings dismissing all claims against our clients, including copyright, Lanham Act and fraud claims relating to the final motion picture as well as similar claims relating to draft screenplays created during the development of the film. In addition, we also defeated countless motions filed by the plaintiff, including one seeking to enjoin the network and cable premieres of the movie and another challenging the propriety of a single firm jointly representing multiple defendants in such cases to promote efficiency and reduce legal costs.

- On behalf of **Time Warner Entertainment** and **HBO**, we obtained a summary judgment dismissal of copyright and trademark infringement claims valued in excess of \$50 million challenging the originality of the popular hit series ***Six Feet Under***. Our win was later affirmed by the Ninth Circuit in an oft-cited ruling articulating the application of copyright law to television and film properties.

MUSIC

- Quinn Emanuel represents **X Corp.** (formerly known as **Twitter**) in a music copyright lawsuit in which 17 music publishers, who represent some of the world’s most well-known songwriters, are seeking over \$250 million in damages for alleged “pervasive infringing activity” occurring on X. We moved to dismiss the complaint, asserting (among other things) that X is entitled to Safe Harbor under the Digital Millennium Copyright Act.
- We represented **Charter Communications, Inc.** and **Bright House Networks, LLC** (collectively “Charter”) in three copyright actions in which the plaintiffs—leading record companies and music publishers, including Sony Music, Warner Music and Universal Music—sought to hold Charter secondarily liable for contributory and vicarious copyright infringement based on its provision of Internet service to customers who allegedly downloaded music files through peer-to-peer networks without authorization. All three actions were resolved by agreement between the parties on the day before the first jury trial was scheduled to commence.
- We represent **Spotify** in a copyright infringement case brought by the owners of popular recording artist Eminem’s catalog of musical compositions. The plaintiffs challenge the constitutionality of the recently enacted Music Modernization Act, which amends the Copyright Act to provide digital service providers like Spotify with a limitation of liability for copyright infringement.
- We represent Shawn Carter, professionally known as **Jay-Z**, in a right-of-publicity lawsuit against photographer Jonathan Mannion and his company Jonathan Mannion Photography LLC. Jay-Z alleges that Mr. Mannion violated his right-of-publicity by selling products, including photo prints and t-shirts, bearing Jay-Z’s name, image, and likeness. The firm has successfully defeated a motion to dismiss, an anti-SLAPP motion, and a motion for summary judgment, which all raised issues of copyright preemption.

- We represented **iBus Media Limited**, the global entertainment company behind PokerNews and CasinoSmash, against claims of copyright infringement brought by Universal Music Group and its affiliates, related to short snippets of songs that can be heard in podcasts produced for iBus between 2009 and 2018. Even though the podcasts contained the asserted music, we successfully avoided summary judgment by argument that iBus had a fair use defense because the podcasts are educational in nature, distributed for free, and do not impact the market for digital song downloads. Once summary judgment was no longer possible, we secured a favorable settlement for iBus, completely resolving the dispute.
- We successfully defended **Napster** in an alleged mass copyright infringement suit brought by a copyright administrator and some 26 music publishers. The suit alleged that thousands of digital music tracks offered for download and/or streaming on Napster's service were infringing. The plaintiffs claimed more than \$220 million in damages. After our depositions of the plaintiffs' representatives cast doubt on their ownership rights and claims of unauthorized use, the plaintiffs voluntarily dismissed their suit.

COMPUTER SOFTWARE

- We represented **Studio Wildcard** and **Snail Games US**—the creators and publishers of a billion-dollar survival video game franchise called **Ark**—in a pair of lawsuits against the China-based developer, publisher, and on-line host of a video game titled Myth Of Empires. Through quick application of the Digital Millennium Copyright Act's take-down procedures, we succeeded in getting the infringing game pulled down from on-line vendors. We then sued in the U.S. federal court in Los Angeles for copyright infringement and trade secret misappropriation. We separately sued Chinese company Tencent Cloud Services for hosting the game on its servers. The defendants sought an injunction from the federal judge to compel us to withdraw the DMCA notices so that they could resume sales of the game. We convinced her to deny the motion. Defendants appealed to the Ninth Circuit Court of Appeals, which also ruled in our favor. Meanwhile, we convinced the judge to appoint its own neutral source code expert to compare the defendants' game code to our client's, who found that the defendants had engaged in massive copying and had made significant (but unsuccessful) efforts to try to hide it. The case settled favorably for our client.
- We represented **Proofpoint, Inc.** and its subsidiary, **Cloudmark LLC**, in a case involving misappropriation of trade secrets and infringement of copyrights by Vade Secure and its CTO, Olivier Lemarie. After a three-week jury trial and one week of deliberations, the jury returned a verdict in Proofpoint's favor, finding that Vade Secure willfully misappropriated Proofpoint's trade secrets and infringed Proofpoint's copyrights. The jury awarded approximately \$14M in compensatory damages.
- We represent **VIZIO, Inc.** in an action brought by the Software Freedom Conservancy attempting to enforce the GNU General Public License, a copyright license commonly used in the open source community, as a purported third-party beneficiary under

contract law. If the plaintiff's theory is adopted by the court in California, it could potentially expose major technology companies to numerous lawsuits. We have argued that the plaintiff's contract law claim is preempted by the federal Copyright Act.

- We represented plaintiffs **Skills Platform Inc.** and **Big Run Studios Inc.** in a copyright infringement action filed in the Northern District of California against AviaGames, Inc. Skillz and Big Run—the creators of an eSports gaming platform and one of its most popular games, *Blackout Bingo*, respectively—alleged that AviaGames created a copycat eSports gaming platform and copycat game that infringed their copyrights.
- One of the partners in our Hamburg office successfully defended a **German software company** against an individual who had claimed to have acquired rights in a standard Enterprise Resource Planning software product. The dispute centered around a number of licensing/copyright and insolvency law related questions that were still uncharted at the time of the proceedings. Adopting the position advanced on behalf of the defendant software company, the Frankfurt District Court fully dismissed the case in a final and binding judgment.

OTHER COPYRIGHTED WORKS

- We defended a big data observability pipeline software start-up, **Cribl, Inc.**, and its chief executive officer in a bet-the-company litigation filed by a much larger big data platform company, Splunk Inc., alleging patent and copyright infringement. In addition to obtaining a complete dismissal or entry of judgment in our clients' favor of the patent claims, claims brought under the Digital Millennium Copyright Act, claims for tortious interference and unfair competition claims, and all claims asserted against the officer defendant individually, we obtained a district court decision holding, based on a jury's factual findings after a two-week trial, that Cribl's uses of plaintiff's software for reverse engineering, testing, and troubleshooting were protected "fair use" under the copyright law and that any infringing activities or license-breaching activities by Cribl warranted only nominal damages of \$1 instead of the nearly \$155 million plaintiff sought.
- We represent **Zuru, Inc.** in a copyright and trademark infringement lawsuit in the District of Connecticut brought by Lego in connection with Zuru's line of construction toy products under the brand names "Max" and "Mayka." As part of its defense, Zuru has challenged the validity of a wide swath of Lego's alleged intellectual property rights, including its standard "mini-figurines," its alternative "Friends" figurines, its "stud" trademarks, and several design patents for "brick" designs. Discovery in the case is now complete and the parties have filed cross-motions for summary judgment.
- We represent **Morgan Art Foundation**, a longtime patron of the late artist Robert Indiana, and the holder of intellectual property rights for some of Indiana's most famous works, including the LOVE image. Morgan brought claims against Michael McKenzie, American Image Art, and Jamie Thomas in connection with their unauthorized forgery of several Indiana works. Indiana's Estate was also a defendant in this lawsuit. Indiana's Estate asserted counterclaims against Morgan for, among other

things, purportedly failing to provide Indiana with accountings and royalties required by certain agreements between the two parties. McKenzie and American Image Art likewise brought counterclaims against Morgan for purportedly interfering with agreements McKenzie and American Image Art allegedly had with Indiana. Morgan moved to dismiss the Indiana's Estate's counterclaims and certain of the counterclaims brought by McKenzie and American Image Art for failure to state a claim. The Court granted much of the relief Morgan requested, dismissing counterclaims brought by the Estate for breach of contract and unjust enrichment, and allowing the Estate's remaining claims to go forward only on certain narrow grounds. The Court likewise dismissed McKenzie and American Image Art's counterclaims for tortious interference and unfair competition. Using a highly creative strategy that Reuters called a "pièce de résistance" and "surprise move" that "completely blindsided" our opponents, we successfully resolved the case against the Estate.

- We represented videographer **Rick Allen** in the U.S. Supreme Court in a copyright suit he brought against North Carolina for its infringement of videos and photographs documenting the salvaging of Blackbeard's flagship, Queen Anne's Revenge. The firm successfully persuaded the Supreme Court to grant a petition for a writ of certiorari, to address whether Congress's passage of the Copyright Remedy Clarification Act of 1990 (the CRCA), which allowed copyright holders to sue States for infringement, violates the Eleventh Amendment—either pursuant to "Plan of the Convention" waiver under Article I, or under its powers under Section 5 of the Fourteenth Amendment.
- Quinn Emanuel represented **TIBCO** in a breach of contract and copyright infringement lawsuit against OptumRx. TIBCO alleged that OptumRx violated its agreement with TIBCO and infringed TIBCO's registered copyrights when it deployed TIBCO software to three companies it acquired without paying the required licensing fees. TIBCO further alleged that OptumRx employees downloaded and deployed TIBCO software products that OptumRx had never licensed at all. During fact discovery, we learned new facts supporting an additional set of claims alleging that OptumRx continued to deploy TIBCO software inconsistent with the parties' agreement. The case settled favorably for our client after the close of discovery.
- We represent **teamLab Inc.** in a copyright infringement lawsuit against Museum of Dream Space LLC ("MODS"). During discovery, Quinn Emanuel secured for teamLab an inference that MODS has willfully infringed teamLab's copyrights based on MODS spoliation of certain evidence. We then moved for summary judgment, which the Court granted in part, finding that MODS infringed on teamLab's copyrighted works by displaying them on MODS' social media. Trial on the remaining issues is set for 2024.
- We represented **Multi Media, LLC** and **Sonesta Technologies, Inc.** in a Central District of California copyright infringement and RICO lawsuit brought by three Patreon and OnlyFans creators. The suit, which sought approximately \$1 billion - \$1.5 billion in damages, centered on allegations that participants in the defendants' affiliate marketing programs placed advertisements on an unrelated third-party website, which (unbeknownst to the defendants) purportedly infringed the plaintiffs' alleged copyrights by publishing the plaintiffs' images. The plaintiffs thus sought to change longstanding

Ninth Circuit precedent by holding the defendants liable for the third-party website's alleged infringement, without any allegation that the defendants had actual knowledge of the specific alleged infringements. If successful, the plaintiffs' claims would have drastically expanded the scope of copyright liability for companies engaging in online affiliate advertising (approximately 80% of online U.S. brands). Only 14 months after the plaintiffs filed their complaint, and after Quinn Emanuel prevailed on key legal issues in motion practice and exposed the plaintiffs' deficient claims in discovery, the plaintiffs dismissed their case in its entirety, walking away with \$0.

- We represented **Megaupload** in the largest copyright case in U.S. history in connection with criminal charges brought by the DOJ, and successfully set aside a restrain order that had frozen the client's assets located in Hong Kong. We filed a petition for certiorari with the U.S. Supreme Court seeking review of a novel issue of constitutional and statutory law relating to contesting civil forfeiture over foreign property.
- We successfully represented the **National Football League** and the **Baltimore Ravens** professional football franchise in a series of copyright actions stemming from the adoption by the Ravens of an inaugural "Flying B" logo for its 1996-1998 seasons that plaintiff Frederick Bouchat alleged was substantially similar to a drawing he had submitted to the team for consideration. After the jury had found for the plaintiff on liability (litigated by another firm), we were brought in to try the damages case. We obtained a jury verdict of \$0 in damages, persuading the jury that the artistic nature of the Flying B logo did not drive any revenue-generating activity, but rather that revenues were the result of the inherent power of the NFL brand and the sport itself. The verdict was affirmed by the Fourth Circuit and the Supreme Court denied the plaintiff's petition for review. The plaintiff later brought a series of additional copyright cases against the NFL and the Baltimore Ravens involving incidental uses of the Flying B logo in historical contexts recapturing the 1996-1998 seasons, such as in documentary films, video games, and historical photographs. We convinced the district court on summary judgment that such uses were protected fair uses, which the Fourth Circuit affirmed.
- We represented Russian technology company **Yandex**, which operates the world's fourth largest search engine, in a massive copyright infringement lawsuit brought by adult entertainment publisher Perfect 10, seeking over \$100 million in damages. The suit alleged that Yandex had willfully infringed Perfect 10's copyrights in tens of thousands of its images of nude women by crawling, indexing and linking to third party websites hosting infringing Perfect 10 images, and by hosting unauthorized Perfect 10 images uploaded by users of Yandex's user-generated content sites. Early in the case, Yandex defeated Perfect 10's motion for a preliminary injunction on its copyright claims directed to Yandex's search and hosting services, obtaining a court ruling that Perfect 10 was unlikely to succeed on the merits of its claims and that Perfect 10 had not demonstrated irreparable harm. Subsequently, Yandex obtained summary judgment on the vast majority of Perfect 10's claims, on extraterritoriality and fair use grounds. Specifically, Yandex showed that most of Perfect 10's claims concerned "extraterritorial" acts of alleged copyright infringement not cognizable under the U.S. Copyright Act, and that the thumbnail-sized images in Yandex's image search results are a non-actionable fair uses. After that victory, Perfect 10 quickly settled.

- For our client **Google**, we successfully obtained the complete dismissal with prejudice of the long-running *Perfect 10 v. Google* litigation. At issue were Perfect 10's claims of copyright infringement seeking to shut down Google's popular Web Search, Image Search and Blogger services. Prior to the dismissal, we successfully obtained summary judgment of safe harbor under the Digital Millennium Copyright Act on Perfect 10's copyright infringement claims against Google's Web Search, Image Search and Blogger services. The decision precluded Perfect 10 from seeking any monetary damages for almost all of the more than two million alleged copyright infringements Perfect 10 claimed were hosted by Google's Blogger service or linked to by Google's Web and Image Search services. We also defeated Perfect 10's motion for a preliminary injunction on its copyright and publicity claims, obtaining a court ruling that Google was likely to succeed on the merits, and that Perfect 10 had not demonstrated irreparable harm. We successfully defended that victory on appeal before the Ninth Circuit in 2011. And finally, on the eve of the close of discovery, after obtaining damaging admissions during several key depositions (including of Perfect 10's CEO Norman Zada) and winning several critical discovery motions, Perfect 10 offered to dismiss the entire lawsuit with prejudice in exchange for Google's agreement not to seek attorneys' fees and costs. The dismissal, coming after more than seven years of protracted litigation, completely vindicated Google's legal position, as Google had maintained all along that Perfect 10's case lacked any merit. The case ended without Google paying Perfect 10 anything.
- We successfully represented video game maker **Zynga** in copyright and trade secret misappropriation cases involving its famous games and obtained favorable settlements.