

Building an Entertainment Beast in D.C.

Forget Tinseltown or the Big Apple. Jenner & Block chases music and movie work from a Washington base.

BY HILARY LEWIS

Three years ago, the closest most lawyers at Jenner & Block came to the entertainment industry were the compact discs its partners bought or the movies its associates rented.

But now, Jenner & Block has been tapped to solidify the industry's role on the Web, edging out law firms with longer histories representing publishing and production companies. Add that to its recent victory as lead Supreme Court counsel in *MGM Studios v. Grokster* and the firm is quickly shaping up as a prominent player in the expanding industry.

This summer, SoundExchange, a nonprofit digital performance rights organization, hired Jenner & Block to serve as counsel in a proceeding to determine the royalty rates and terms of statutory licenses for Internet Webcasting stations for the next five years—business that had previously been handled by Arnold & Porter.

The key to Jenner & Block's entertainment and new media practice was the recruitment of Steven Fabrizio, the former senior vice president of business and legal affairs at the Recording Industry Association of America. Jenner hired Fabrizio in 2003. The plan was to grow a new practice area by using both Fabrizio's industry contacts and the firm's reputation as premier Supreme Court advocates.

So far, the plan appears to be working.

FOOT IN THE DOOR

Before Fabrizio's arrival, Jenner & Block had done occasional First Amendment work for entertainment-industry clients such as ABC and Turner Broadcasting. But the bottom line was that the firm was well known among its clients and peers as a Supreme Court firm—not the place to take entertainment-industry issues that weren't at the appellate stage.

In 2002, Jenner partner Thomas Perrelli used that reputation to get a meeting with officials at the RIAA, at a time when Internet file-sharing entities like Napster were threatening the music business. After hearing about the firm's Supreme Court work, the RIAA hired Jenner to write an amicus brief in the landmark copyright case *Eldred v. Ashcroft*.

"It was clear that they understood how to approach briefs before the Supreme Court and take complex legal arguments and put them into simple language, and that was important to us for that brief," explains Stanley Pierre-Louis, senior vice president for legal affairs at the RIAA. After the Court sided with the RIAA, the association called on Jenner again, in a subpoena dispute with Verizon.

Realizing the potential pool of legal work generated by the entertainment industry (primarily copyright issues), in 2003, Jenner leaders decided to make a play for more business. Some of their contacts at the RIAA suggested hiring Fabrizio, who at the time was working in the three-lawyer D.C. office of Mitchell Silberberg & Knupp and was considering relocating to a larger firm.

Fabrizio left the RIAA in 2001, then traveled with his wife for 14 months before joining Mitchell Silberberg. After an informal meeting with Jenner's Donald Verrilli Jr. and Perrelli, Fabrizio was sold.

With Fabrizio's firsthand experience, the RIAA began to feel comfortable using Jenner & Block for more routine matters, such as copyright infringement lawsuits.

"I spent four or five years purchasing legal services as the head of litigation," Fabrizio says. "You learn an enormous amount of what a client needs or wants when you are that client."

Jenner later hired Fabrizio's successor at the RIAA, Matthew Oppenheim. As Pierre-Louis notes, "Any time you have more people in a firm who are gifted in an area, it increases your ability to bring more [business]."

Charles Ortner, co-chair of the entertainment litigation practice at Proskauer Rose in New York, is one of the many outside attorneys who believe that Fabrizio and Oppenheim's connections have contributed to Jenner's work for the RIAA. "Steve Fabrizio, naturally, because of his long relationship having worked at the RIAA . . . it is natural that he would have an inside track," Ortner says.

Jenner's entertainment practice features six to seven full-time partners and just as many associates. Fabrizio and Perrelli say that the somewhat loose practice structure allows them to draw on lawyers with other specialties, specifically people from the firm's burgeoning Supreme Court group.

Since Fabrizio joined the firm, Jenner has represented the RIAA's member companies in copyright infringement lawsuits against illegal downloading Web sites such as Puredunes and iMesh.com.

The firm became one of three the RIAA principally uses as outside counsel; the others are Mitchell Silberberg, for copyright infringement matters, and Arnold & Porter, which has represented the RIAA for years on copyright, trademark, antitrust, Federal Communications Commission, litigation, legislative, and licensing matters. In June, Jenner beat out several firms, including Arnold & Porter, for five years' worth of business from RIAA affiliate SoundExchange.

Robert Garrett, a partner at Arnold & Porter, says the firm is not upset at losing some business to Jenner. "Obviously, we'd like to play as big a role in this as possible, but the arrangement is perfectly fine with us," says Garrett, adding that Arnold & Porter continues to handle licensing and trademark work for SoundExchange.

Jenner's RIAA connections and expertise have also helped the firm acquire work from the Motion Picture Association of America. Fabrizio had begun doing work for movie studios through the MPAA while at Mitchell Silberberg. In addition, Dean Garfield, a lawyer for the MPAA who used to work with Jenner at the RIAA, introduced the firm to various studios, which led to additional work. Fabrizio and Perrelli declined to say how much money the entertainment practice has generated.

Although the firm does not have a strong film-industry background, Perrelli suggests that its copyright litigation experience has made it well qualified to represent the MPAA. "If you think about the way clients in these industries have faced copyright issues, 10 years ago the software companies were the ones who were really facing difficult copyright problems on the Internet," he says. "With Napster, the record companies were facing the greatest difficulties, and it was only a little bit later that the motion picture industries were facing the same kind of challenges, as people have more bandwidth and can download stuff faster."

The MPAA also uses other firms, such as Williams & Connolly. "The key lawyers that we use [at Williams & Connolly] have worked with motion picture studios and the MPAA for years and know how we generally handle issues and know how we navigate building consensus, in addition to being really smart lawyers," Garfield says. Williams & Connolly has also represented the RIAA for decades, and it has done anti-piracy work for both trade associations.

Recently, the two firms worked together on Jenner's most high-profile litigation to date—representing the recording company and motion picture studio plaintiffs in *MGM Studios v. Grokster*.

Fabrizio had started working on *Grokster* at Mitchell Silberberg, when that firm was lead outside counsel. He continued to represent the record companies at Jenner, but Mitchell

Silberberg remained in the leadership position.

The movie studios, meanwhile, had chosen their own counsel, which included Williams & Connolly and O'Melveny & Myers.

After the U.S. Court of Appeals for the 9th Circuit sided with Grokster, however, the entertainment companies hired Jenner as lead counsel for the Supreme Court appeal.

"We thought this [choice] would provide us with the best opportunity to get cert and win the case," says the RIAA's Pierre-Louis, adding that the decision was motivated by Jenner's Supreme Court practice.

"We relied very heavily on their guidance, not only from a straight brief before the Court but from a political and lobbying perspective before the Court," the MPAA's Garfield says.

Once the June 27 decision was handed down in favor of the entertainment industry, the RIAA asked Fabrizio to take charge of the case in the U.S. District Court for the Central District of California.

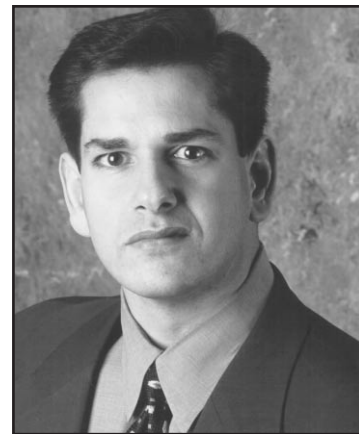
EAST COAST VS. WEST COAST

Despite Jenner's success over such a short time, the firm is not yet viewed as a major player within the traditional entertainment-lawyer scene.

"If you asked me who was the top entertainment firm in the country, Jenner & Block wouldn't come to mind," says Kraig Baker, chair of Davis Wright Tremaine's entertainment, sports and media transactions practice.

Nonetheless, the fact that Jenner and fellow D.C. counsel Williams & Connolly represented New York- and Los Angeles-based industries in *Grokster* shows that firms do not need to be geographically based in those entertainment-industry cities. "It is interesting that this is a very important area of litigation for these companies, and these two D.C. firms have gotten so much of the business," says Paul Gaffney of Williams & Connolly.

Perrelli anticipates that copyright infringement litigation will continue, saying, "Right now, much of the action is with the record companies and the movie studios, but as that changes and evolves, as I think it will, we certainly hope we will be well positioned to represent other folks who face those issues."



INSIDER: Jenner & Block hired former record industry lawyer Steven Fabrizio to jump-start its practice.

Hilary Lewis is a former Legal Times intern.