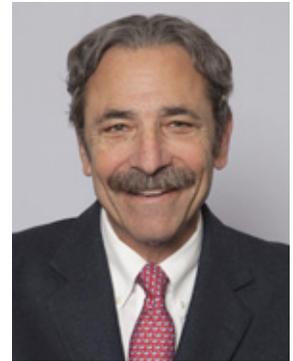

Kenneth Steinthal

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Kenneth Steinthal is a partner in the Intellectual Property Practice in the firm’s San Francisco office. He has more than 30 years of experience litigating matters in the IP/media sector and several other industries, both in jury and bench trial settings, in the U.S. federal and state court settings (including appellate proceedings), before copyright tribunals in the United States and internationally (where he has earned “rights of audience” to represent his clients), and before other arbitral bodies around the world.

Mr. Steinthal’s litigation and trial experience spans a number of industries and disciplines, including: media, entertainment and sports; consumer class actions involving false advertising and unfair business practices; antitrust litigation; real estate/hospitality industry matters; and patent/trade secret/fraud/unfair competition cases. He has particular experience in litigating copyright infringement and antitrust/rate-setting matters in cases involving the distribution of audio and audiovisual content via both traditional and new media (e.g., mobile and internet) distribution means; these engagements often have involved, *inter alia*: the construction and application of provisions of the Digital Millennium Copyright Act (including statutory license and safe harbors thereunder); and federal court/copyright tribunal proceedings in the United States and abroad establishing structures and rates for the exploitation of musical works in both traditional (e.g., cable, satellite, broadcast) and new media distribution environments.

Beyond his litigation experience, Mr. Steinthal also counsels clients on music and other IP rights and licensing matters associated with clients engaged in wide-scale distribution of audio and audiovisual media content of all forms, involving the development of innovative licensing strategies in the traditional and new media space (both in the United States and internationally). These engagements have included dozens of pre-litigation matters where content owners have threatened to bring lawsuits against content distributor clients, where Mr. Steinthal’s clients have been able to avoid litigation via the negotiation of favorable settlements and/or licenses.

Mr. Steinthal consistently has been selected for many years by Chambers USA and Chambers Global as a leading lawyer in his practice areas. In November 2015, he was named one of only five “MVPs” in the US Media & Entertainment practice area by Law360; in 2014, he was selected as one of three finalists by the American Antitrust Institute for the AAI 2014 Outstanding Antitrust Litigation Achievement in Private Law Practice; and he also has been named or recognized in numerous publications including: Super Lawyers; Northern California Super Lawyers; the Legal 500 USA; the Hollywood Reporter (“Power Lawyers: Top 100 Outside Counsel”); The Daily Journal (“Top 10 Copyright Lawyers”); and Law Dragon. He is a frequent speaker at bar association and similar copyright programs/seminars on the subject of music rights and copyright litigation issues, and is a former adjunct professor of law at Fordham Law School.

Before joining King & Spalding, Mr. Steintal spent 32 years at Weil, Gotshal & Manges (in New York and then Silicon Valley), where he was co-chair of the Firm's IP/Media Group, and 3 years at Greenberg Traurig where he was the Managing Shareholder of its San Francisco office.

Representative Copyright Litigations

Mr. Steintal has led the defense of numerous copyright infringement and declaratory judgment lawsuits brought by music copyright owners (including record labels, music publishers and class actions brought by publisher members of ASCAP, BMI and HFA) against content distributors spanning traditional and new media distribution. Examples include:

- *Pandora Media, Inc. v. ASCAP*: Managed federal court trial and appeal on Pandora's behalf culminating in Second Circuit's 2015 affirmance of rulings (i) upholding Pandora's challenge to the efforts of major ASCAP publisher members to "partially" withdraw from ASCAP in an effort to avoid rate oversight by the court overseeing the ASCAP antitrust consent decree, and (ii) establishing rates consistent with Pandora's position.
- *BMI v. Pandora Media, Inc.*: Managed federal court trial and ongoing appeal on Pandora's behalf determining that efforts of BMI major publisher affiliates to "partially" withdraw from BMI were invalid under governing provisions of BMI's antitrust consent decree.
- *U.S. v. ASCAP, Application of MobiTV, Inc.*: Managed federal court trial before the judge supervising the ASCAP antitrust consent decree and ensuing successful Second Circuit appeal resulting in adoption of client MobiTV's proposal, establishing favorable rates and terms for mobile distribution of TV/radio content (and rejecting ASCAP's position that mobile/online content distribution entities should be subject to a far more onerous royalty structure than exists for entities distributing content via traditional media vehicles).
- *U.S. v. ASCAP, Application of RealNetworks Inc. and Yahoo!, Inc.*: Managed trial and argued appeal leading to landmark decision of Second Circuit in September 2010 (and denial of certiorari by the US Supreme Court in 2012) holding that transmissions of music downloads do not trigger public performance rights liabilities for entities engaged in content distribution (and rejecting position of ASCAP and other copyright organizations to the contrary).
- *Arista Records, et al. v. Launch Media*: Co-defended Yahoo! Music (f/k/a Launch Media) in a billion-dollar copyright infringement action brought by various record labels in the SDNY challenging the eligibility of Yahoo!'s internet radio service for the statutory license under section 114 of the Copyright Act; Yahoo! secured a jury verdict in its favor (later affirmed by the Second Circuit).
- "Napster II" (*UMG Recordings, et al. v. Bertelsmann AG, et al.*): Defended Bertelsmann against a series of music label and publisher copyright infringement claims brought in the SDNY and NDCA (asserting liability in excess of \$20 billion) based on alleged direct, contributory and vicarious liability of Bertelsmann arising from its investments in and relationship with the original Napster file-sharing service; rulings on motions led to favorable settlements shortly before trial.
- *EMI Music v. Multiply Inc.*: Represented social network service in lawsuit claiming copyright infringement of works in EM's label and publisher catalogues asserting Multiply did not qualify for the DMCA safe harbor; representation enabled settlement shortly after lawsuit was filed.

- *Sony/ATV Songs LLC, et al. v. MusicNet, Inc.*: Defended provider of on-demand streaming/conditional music download service against copyright infringement claims based on alleged failure of service to secure musical work reproduction rights licenses; representation enabled settlement not long after suit was filed.
- *Coleman, et al. v. ESPN.*: Defended ESPN against claims of ASCAP members asserting copyright infringement based on ESPN's alleged unlicensed public performance of musical works audible in the background of ESPN's broadcasts of sports programming and challenging ESPN's assertion of the "fair use" defense to such uses; successfully defeated the publishers' summary judgment motion and secured a favorable settlement thereafter.
- *Angel Music, Inc. et al v. ABC Sports, et al.*: Represented the local television industry in this putative dual plaintiff/defendant class action copyright infringement lawsuit claiming that the ABC Television Network had infringed the publishers' rights by failing to secure synchronization licenses for so-called "one time uses" of compositions that were used as background for Olympics sports "bio-pic" segments; successfully achieved dismissal of action.
- *Other "Rate Court" Proceedings against ASCAP and BMI*: Mr. Steinthal is and/or has been lead trial counsel for numerous other ASCAP/BMI licensees engaged both in traditional and new media forms of content distribution; over the years, he has managed or co-managed the negotiations and, where necessary, trial teams in consent decree proceedings against ASCAP/BMI (and SESAC) on behalf of more than two dozen cable/satellite/broadcast television services (e.g., Showtime, ESPN, MTV Networks, Discovery, USA Networks, Lifetime Entertainment Services, Disney Channel, DirecTV, Lodgenet Entertainment, Univision, Fox, etc.), the local television industry and numerous new media licensees other than those referenced above (e.g., YouTube, AOL, Rhapsody, etc.).
- *Antitrust litigation against ASCAP and BMI*: Mr. Steinthal was deeply involved in the seminal antitrust cases brought by the local television industry in the early 1980s (*Buffalo Broadcasting Co., et al. v. ASCAP, et al.*) and the cable TV industry in the early 1990s (*NCTA, et al. v. BMI, et al.*), against both ASCAP and BMI, which set the framework for the consent decree litigations that have followed.
- *U.S. Statutory License Copyright Arbitration/Copyright Royalty Board Proceedings*: Mr. Steinthal has represented a number of online content distributors (e.g., Amazon, Apple, Google, Microsoft and Rhapsody), "webcasters" and National Public Radio in connection with the negotiation and/or litigation of rates and terms associated with the operation of services eligible for statutory licenses under 17 USC sections 112, 114 and 115 (in Copyright Arbitration Royalty Panel and then Copyright Royalty Board proceedings spanning the statutory license periods from the early 2000s through 2017).
- *International Copyright Tribunal Matters*: Mr. Steinthal has been granted "rights of audience" in the Copyright Tribunals of the UK and Hong Kong to litigate matters pertaining to the proper structure and rates for musical work public performances (and, in some cases, reproductions), on behalf of both new media/online distributors of content and traditional cable/satellite television distributors. For example, he was lead trial counsel in the precedent-setting UK Copyright Tribunal litigation on behalf of a consortium of music service providers (including AOL, Yahoo!, Apple, Napster LLC, RealNetworks, and MusicNet) against the UK collective MCPS/PRS. Prior to that, he represented a consortium of cable and satellite providers (including STAR TV, Television Broadcasts Ltd (TVB), Hong Kong Cable and PCCW (previously Hong Kong Telecom) in proceedings before the Hong Kong Copyright Tribunal

against the Composers and Authors Society of Hong Kong (CASH), which resulted in a favorable industry-wide settlement on the eve of trial.

Representative Other Media/Entertainment/Sports Litigation

Examples include:

- *iJaal.com, Inc., et al. v. baazee.com, Inc., et al.*: Lead trial counsel in this SDNY jury trial defending baazee.com (the “eBay of India,” in which News Corp’s Star TV was the primary outside investor before acquisition by eBay after trial) and its principals against claims of breach of oral contract, misappropriation of partnership opportunity, misappropriation of trade secrets and related claims; won complete defense verdict.
- *Persky-Bright Organization, et al. v. Columbia Pictures Entertainment, Inc., et al.*: Lead trial counsel in defense of two \$300 million actions brought in SDNY and CDCA, in which the plaintiff motion picture investment groups alleged a series of violations by Columbia Pictures of motion picture distribution agreements, together with RICO, fraud, antitrust/block booking and tax indemnity claims. The case spanned several years and included a mini-trial of non-jury issues that resulted in the substantial curtailment of issues to proceed before a jury, leading to a favorable settlement thereafter.
- *Robehr Films, Inc. v. American Airlines, Inc.*: Lead trial counsel in SDNY jury action brought by in-flight film supplier alleging fraud and breach of contract by American Airlines. Plaintiff claimed American’s conduct had forced it out of business. A three-week jury trial resulted in a no-liability defendant’s verdict, which was affirmed on appeal to the Second Circuit.
- *European American Bank v. Film Finances, Inc., et al.*: Lead counsel in defending action brought by EAB under film loan agreements and completion bond against clients Film Finances and production/distribution entities. After preliminary pre-trial proceedings and motion practice, the case was settled on a zero-liability basis.
- *North American Soccer League (NASL) v. National Football League*: Assisted in representing the NASL in this antitrust trial in the SDNY in which the NASL successfully challenged the NFL’s “cross ownership” ban which would have prevented “cross-owners” such as Lamar Hunt and Joe Robbie from maintaining their investments in the NASL.
- *New York Islanders Hockey Club LP v. SMG, et al.*: Lead trial counsel for N.Y. Islanders hockey team in federal and state court litigations against SMG and Nassau County seeking to terminate lease arrangements at the Nassau Coliseum on novel constructive eviction theory. After preliminary injunction trial proceedings and a series of appeals, the case settled on a favorable basis.

Representative Other Engagements

Examples include:

- *David Wilson et al. v. Airborne, Inc.*: Lead counsel in representation of Airborne defendants in consumer class action (removed to Central District of CA under CAFA) alleging, inter alia, false advertising and violations of California consumer protection laws; led to a favorable class settlement.
- *Emblaze Ltd. v. Apple Inc.*: Managed patent litigation in Northern District of California (after successfully removing the case from Florida) accusing Apple of infringing and of inducing third parties

(including ESPN and Major League Baseball) to infringe plaintiff's video live-streaming technology; case ultimately resulted (after Mr. Steinthal changed firms) in a 2014 jury verdict dismissing complaint.

- *In re CA Title Insurance Litigation*: Lead trial counsel for national title insurance company in putative class action alleging violations of CA UCL §17200; oversaw successful motion practice leading to dismissal and 2012 order compelling individual claim arbitration.
- *NNN Britannia Business Center, et al v. Grubb & Ellis Co., et al.*: Lead trial counsel for defendants in CA state court actions alleging violations of CA UCL §17200, fraud, etc., associated with the syndication of certain commercial real estate investments; successful motion practice resulted in substantial curtailment of claims at issue.
- *Risko v. First Aviation Services, Inc., et al.*: Lead trial counsel in jury trial in Oakland, CA Superior Court alleging fraud and breach of contract against First Aviation and its principals. The case was brought by a former First Aviation principal alleging, among other things, entitlements under an oral agreement, and threatened the continued viability of client group. A two-week jury trial resulted in a no-liability defendants' verdict.
- *PIA v. UBS Securities, Inc.*: Lead trial counsel in defending lender liability, fraud and breach of contract claims brought in New York State Supreme Court by the owners of the Roosevelt Hotel in New York City against UBS, stemming from UBS' termination of an agreement to finance the renovation of the hotel. A three-week bench trial resulted in a no-liability defendant's verdict. Appellate proceedings in the New York Appellate Division and Court of Appeals affirmed the lower court rulings in defendant's favor.
- *Overnight Partners, et al. v. Ritz Carlton Hotel Co.*: Lead counsel in defense of \$300 million "kitchen sink" action brought in the SDNY by the owners of the Ritz Carlton hotel properties located in New York, Washington DC, Houston and Aspen CO, against client Ritz Carlton. The case involved fraud, breach of contract, RICO, trademark and other claims brought by the Saudi group owners of those properties. After protracted pre-trial proceedings, the case settled on a favorable basis whereby plaintiffs were stripped of their right to operate Ritz Carlton hotels.
- *In re Hylsa, S.A. v. M.W. Kellogg Co.*: Lead trial counsel for Grupo Industrial Alfa's steel company, Hylsa, SA, in ICC arbitration involving hundreds of millions of dollars in claims and technology issues relating to construction of "HYL Process" steel plants for SIDOR in Venezuela. After a series of ICC hearings, case was settled on a zero-liability basis to Hylsa.

Practice Areas

- Intellectual Property
- Sports, Media and Entertainment
- Copyright
- Antitrust
- False Advertising
- Consumer Class Actions
- Trade Secrets & Non-Compete

- Commercial Disputes
- International Arbitration
- Appellate

Court Admissions

- California
- New York
- U.S. Supreme Court
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Northern District of California
- U.S. Tax Court

Education

- J.D., *cum laude*, Fordham University School of Law
- B.A., *cum laude*, Williams College