

# Daily Journal

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## TOP INTELLECTUAL PROPERTY LAWYERS 2020



### Kenneth L. Steinthal

Steinthal specializes in copyright, the Digital Millennium Copyright Act and antitrust and rate-setting cases involving the distribution of audio and audiovisual content.

He's considered a pioneer in an area of law that straddles IP, technology and traditional media. Clients include Peloton Interactive Inc., Pandora Media, Google Inc., the Radio Music License Committee and ESPN. He continues to represent multiple clients in connection with the U.S. Department of Justice's ongoing investigation of potential modifications to the antitrust consent decrees governing music licensing organizations ASCAP and BMI.

"These cases are defining the economics of the music industry," Steinthal said. "Royalty structures can be very hard to navigate."

Two current cases for Google illustrate the issues. In March, a King & Spalding team will appear for his client at oral argument before the U.S. Court of Appeals for the D.C. Circuit to challenge decisions by the U.S. Copyright Royalty Board in Phonorecords III proceedings. The case pits the music publishing industry against streaming services over the establishment of statutory license rates and terms for the reproduction and distribution of compositions embodied in phonorecords in digital downloads, on-demand streams and cloud locker services under the Copyright Act. *In the Matter of: Determination of Rates and Terms for Making and Distributing Phonorecords*, 16-CRB-0003 (CRB, filed Feb. 4, 2016).

"The publishers want a rate based on per-play figures, but that is anathema to streaming services, which encourage people to pay a monthly fee to play as much as they want," Steinthal said. "Their proposed model could bankrupt services like Spotify. The services have taken a hard position that that is the wrong way to go."

Steinthal also leads his firm's representation of Google in the Web V Copyright Royalty Board proceedings against SoundExchange, an arm of the sound recording industry. The case involves the establishment of statutory license rates and terms for the reproduction and public performance of sound recordings associated with non-interactive digital music streaming services such as internet radio that do not provide on-demand functionality.

*In the Matter of: Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to*



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*Facilitate Those Performances* (Web V), 19-CRB-0005 (CRB, filed Jan. 24, 2019).

Trial in that case is set to begin in March. As for his own musical tastes, Steinthal said, "I'm eclectic. I listen to a lot from the '60s and '70s, but now my kids are shaping my musical tastes. The technology changes so much faster than the law does — you have to keep up. I feel very fortunate to be here."

—John Roemer