

## Internet Strategy and Litigation

### HIGHLIGHTS

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#### ■ A Track Record of Success in Seminal Internet Cases

Wilson Sonsini has fought and won landmark cases involving social media, online IP, privacy, the First Amendment, online advertising, and government regulation.

#### ■ Setting Precedent in Online Privacy

Wilson Sonsini's litigation team has achieved precedent-setting victories in the online privacy arena and routinely handles novel and complex cases, including cases arising under the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, the Video Privacy Protection Act, and the Children's Online Privacy Protection Act.

#### ■ High-Profile Technology and Consumer Clients

Wilson Sonsini's clients include industry-leading technology and consumer companies, like DropBox, Flipboard, Go Daddy, Google, Mozilla, Netflix, OfferUp, Pinterest, Roblox, Roku, Snap, Square, Tumblr, Twitter, and YouTube.

#### ■ Wilson Sonsini Earns Honorable Mention in AmLaw's Litigation Department of the Year Awards

In December 2021, Wilson Sonsini was [profiled](#) among the select firms that earned honorable mentions as part of *The American Lawyer's* national "Litigation Department of the Year" awards. (The profile mentions the firm's recent wins on behalf of YouTube and Twitter in First Amendment-related disputes.) Earlier in the year, *The American Lawyer* also selected the firm as a 2021 regional Litigation Department of the Year finalist for California.

### OVERVIEW

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The firm's internet strategy and litigation practice has won seminal cases involving social media, online IP, privacy, the First Amendment, online advertising, and government regulation. The group brings that background to bear every day, advising clients on product development and risk mitigation in a rapidly changing legal environment, crafting practical strategies for industry leaders, early-stage start-ups, and a host of others in between. In court, the group continues to establish critical legal precedents in case after case, for clients like Google, Dropbox, Twitter, and Pinterest. Increasingly, the group is called upon to lead or assist in sweeping regulatory investigations that implicate antitrust, privacy, and free speech.

### ONLINE INTELLECTUAL PROPERTY CASES

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*Viacom v. YouTube/Google and English Premier League v. YouTube/Google* (S.D.N.Y.). In this landmark copyright litigation, we successfully defended consolidated infringement actions challenging the operations of YouTube under the Digital Millennium Copyright Act. In *Viacom*, we secured [summary judgment](#) in YouTube's favor, holding that the service enjoys DMCA safe harbor protection and rejecting Viacom's claims in their entirety. In *Premier League*, we [defeated](#) a motion for class certification and established that copyright cases are generally ill-suited for class action treatment. During the course of the cases, the firm's attorneys further secured orders [barring](#) the recovery of punitive damages in copyright infringement actions, [requiring](#) that owners of foreign works register their copyrights in the United States in order to seek statutory damages under the Copyright Act, and [protecting](#) Google's source code and users' private videos from disclosure during discovery.

**Thru v. Dropbox** (N.D. Cal, 9th Cir): We successfully defended Dropbox in this high-stakes trademark infringement lawsuit alleging that Thru, Inc. owned the exclusive rights to use the name "Dropbox." The district court [granted](#) summary judgment in favor of Dropbox, holding that Dropbox had senior rights in the name by virtue of an assignment, and that even if Thru had rights in the name, Thru was guilty of laches, having deliberately delayed filing suit for years in the hope of increasing the value of its claim. The district court also found the case "exceptional" under the Lanham Act and [awarded](#) Dropbox almost \$2.3 million in attorney's fees and costs. On appeal, the Ninth Circuit [affirmed](#) each of the district court's rulings on the merits, as well as the award for fees and costs.

**Flipboard v. Treemo**: We represented Flipboard, creator of the popular online magazine service, in a trademark infringement lawsuit against the makers of the Flowboard software application. After a bench trial, we secured a permanent [injunction](#) barring the defendant's use of the Flowboard name.

**Digital Envoy v. Google** (N.D. Cal.). We successfully defended Google against trade secret and related claims brought by a supplier of geotargeting technology, prevailing first on an innovative preemption theory, and later on a [summary judgment motion](#) directed to the plaintiff's damages claims.

**Parker v. Google Inc.** (E.D. Pa., 3d Cir.). In an order [affirmed](#) by the Third Circuit, we obtained [dismissal](#) of a copyright action brought against the Google Groups service. The court held that Google's non-volitional conduct in archiving Usenet postings did not constitute direct copyright infringement and ruled that the plaintiff's allegations could not give rise to secondary copyright infringement liability under the Copyright Act. The court also held that Google was immune under Section 230(c) of the Communications Decency Act from the plaintiff's state common-law claims.

**Field v. Google Inc.** (D. Nev.). In a case that raised several issues of first impression for online copyright claims, we obtained summary judgment for Google in a copyright infringement action challenging the propriety of the company's cache functionality. The court's [opinion](#) held that by allowing end-users to access archival copies of web pages through "Cached" links in its search results, Google did not directly infringe the copyrights on those web pages. The court also held that Google's use of the copyrighted works was a protected fair use, that Google was immune from monetary damages under the Digital Millennium Copyright Act, and that Google had an implied license to cache the plaintiff's works.

**Righthaven v. DiBiase** (D. Nevada, 9th Cir). We secured the [dismissal](#) of an action brought by infamous copyright troll Righthaven against an online blogger. We successfully argued that Righthaven lacked standing to sue for copyright infringement, since Righthaven had improperly acquired only the bare right to sue for infringement and lacked any interest in the underlying copyright. The trial court's decision was [affirmed](#) by the Ninth Circuit.

**RealNetworks v. Streambox** (W.D. Wash.). In the first-ever case brought under the anti-circumvention provisions of the Digital Millennium Copyright Act, we served as counsel to plaintiff RealNetworks. We secured a [preliminary injunction](#) prohibiting the abuse of RealNetworks' ubiquitous technology.

**UMG v. DIVX** (C.D. Cal.). In this action, Universal Music Group alleged copyright infringement by DivX for hosting an online video service called Stage6 that allowed users to post and share videos using DivX's well-known digital media format. We successfully invoked the protections of the Digital Millennium Copyright Act to win an extremely favorable settlement for DivX.

## INTERNET PRIVACY

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Our litigation team has an unmatched series of precedent-setting victories in the online privacy arena, and routinely handles novel and complex cases, including cases arising under the Electronic Communications Privacy Act (ECPA), the Computer Fraud and Abuse Act (CFAA), the Video Privacy Protection Act (VPPA), and the Children's Online Privacy Protection Act (COPPA).

**In re: Google Inc. Street View Electronic Communications Litigation.** We represent Google in this multidistrict litigation, comprised of more than a dozen putative class action suits challenging the acquisition of publicly broadcast Wi-Fi data by Google's Street View vehicles from open and unencrypted wireless networks. The lawsuit alleges that Google violated the ECPA.

**In re: Google Inc. Cookie Placement Consumer Privacy Litigation.** We represented Google in this complex, multi-defendant multidistrict litigation comprised of more than 20 putative class actions arising from allegations that Google improperly placed cookies on Safari web browsers. Plaintiffs asserted claims arising under the ECPA and the CFAA, as well as various California state laws. The district court [granted](#) Google's motion to dismiss and the Third Circuit largely affirmed.

**Mollett v. Netflix** (N.D. Cal.): A consumer filed a class action complaint against our client, Netflix, alleging that the company's streaming service violates state and federal privacy laws, including the Video Privacy Protection Act (VPPA), by displaying a member's "queue" on their entertainment devices (e.g., televisions, home computers). The court [dismissed](#) the complaint with prejudice, and the Ninth Circuit affirmed.

**Bell v. Acxiom** (D. Ark.): In a nationwide class action against Acxiom arising from a hacking incident, we secured a [dismissal](#) with prejudice of the plaintiffs' invasion-of-privacy and negligence claims on the then-novel theory that the plaintiff lacked standing because she could not show actual harm.

***In re: Nickelodeon Consumer Privacy Litigation.*** We represented Google in this multidistrict litigation comprised of six putative class action lawsuits alleging that internet users under age 13 who visited three Viacom-owned and operated websites received cookies which enabled Viacom and Google to track certain web-based activities. The court **granted** Google's motion to dismiss plaintiffs' claims under the ECPA, the VPPA, and various state laws.

***Devine v. Epsilon*** (S.D. Tex.) (obtained early dismissal of a putative class action arising from a data breach that was limited to the disclosure of email addresses and names)

***Boring v. Google Inc.*** (W.D. Pa.): We obtained a dismissal with prejudice of all privacy-related claims asserted against Google. The plaintiffs (a couple living in the Pittsburgh area) had alleged that while taking photographs for Google's Street View feature, a Google driver had entered on to their private road and driveway. On this basis, the plaintiffs asserted claims for invasion of privacy, and other common law torts. The district court **held** on a motion to dismiss that the conduct at issue did not constitute invasion of privacy and the Third Circuit **affirmed**.

***In Re JetBlue Airways*** (E.D.N.Y.): We successfully defended Acxiom Corporation against a nationwide class action alleging violations of the ECPA and related state law claims arising from the disclosure of information to the federal government in the wake of September 11. We obtained an early **dismissal** of the case with prejudice.

***In re: Google Inc. Android Consumer Privacy Litigation.*** We represented Google in this multidistrict litigation, comprised of eight putative class action lawsuits involving claims that Google's Android operating system or apps downloaded to Android devices had mishandled user information, including information about users' locations.

## FIRST AMENDMENT

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The firm is regularly asked to vindicate its clients' First Amendment rights.

***e-Ventures Worldwide v. Google*** (M.D. Fla.): We successfully represented Google in this case challenging Google's right to enforce its terms of use and protect its service and users from spam. The court held that Google's search results were protected speech under the First Amendment, and **granted** summary judgment in our client's favor.

***Prager University v. Google*** (N.D. Cal.): In this high-profile case, we obtained **dismissal** of claims brought by creator of political online videos who claimed that YouTube violated its First Amendment rights by making some of its videos unavailable in YouTube's Restricted Mode. The lawsuit alleged that YouTube's content filtering guidelines amount to state action because YouTube qualifies as a state actor under the "public function test." In dismissing Plaintiff's claims, the court held that YouTube is not a state actor and had not violated the Lanham Act. Plaintiff has appealed the dismissal to the Ninth Circuit.

***Freedom Watch v. Twitter*** (D.D.C.): We are currently defending Twitter in this highly-publicized action brought by political activists Larry Klayman and Laura Loomer against Twitter, Google, Facebook, and Apple. Plaintiffs claim that defendants have violated their First Amendment Rights, unlawfully colluded to suppress speech, and violated the D.C. Human Rights Act. This matter is pending in U.S. District Court for the District of Columbia.

***Langdon v. Google*** (D. Del.) and ***Kinderstart v. Google*** (N.D. Cal.): In two cases challenging Google's right to control its search results and determine which advertisements to carry, we obtained dismissals of each with prejudice. The Langdon court **found** that Google was immune from the claims under the Communications Decency Act, 47 U.S.C. § 230(c)(2), and that the First Amendment safeguarded Google's ability to determine which advertisements to carry and how best to order its search results. In Kinderstart, we obtained **dismissal** of plaintiff's constitutional claims against Google, as well as plaintiff's antitrust, Lanham Act, unfair competition, and defamation claims related to Google's operation of its search engine and advertising platform.

## FOUNDATIONAL INTERNET CASES

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Our litigators have shielded countless online services and their innovative business models from novel legal claims.

***Communications Decency Act:*** The CDA, 47 U.S.C. § 230(c), is a fundamental legal protection that shields online services from claims over content supplied to those services by third parties. We have successfully invoked the CDA hundreds of times for our clients, securing victories **safeguarding search results, online reviews, discussion forums, and countless others.**

***Terms of Service Enforcement:*** Across the country, we have enforced our clients' Terms of Service and other contracts to defeat potentially onerous litigation. We have, for example, **vindicated** our clients interests by **invoking** limitation of liability clauses in their agreements. We have **defeated** claims seeking to hold our clients liable for taking actions **authorized** by their agreements, and we have consistently obtained transfers of cases filed in violation of forum selection or arbitration clauses.

***Online Advertising:*** Advertising is the lifeblood of many of our clients, and a principal area of attention for many of their litigation adversaries. We have **prevailed** on behalf of our **clients** in cases alleging that they were obligated to carry particular advertising; cases alleging that our clients failed to do enough to fight **click fraud**; and **cases** challenging their decisions to remove advertisements, among others. And in seminal litigation, we represented CompuServe and Concentric Network in their efforts to protect their services and

subscribers from unsolicited email advertising, or "spam." Advancing a novel electronic trespass theory, we obtained a preliminary, and then [permanent injunction](#) barring the defendant from sending such email to or through CompuServe.

**Filtering:** Online companies are facing increased scrutiny over the manner in which they restrict access to certain online content, as well as restrictions on content of their own. We have extensive experience in both contexts. We are currently defending YouTube in litigation brought by Prager University which complains that YouTube should not have enabled users to block access to certain of Prager's videos. We also represented Blue Mountain Arts, an online greeting-card company, alleging that Microsoft had engaged in anticompetitive practices by widely deploying a version of its Outlook Express program with filters that blocked Blue Mountain's email messages, while permitting Microsoft's competing messages to reach their intended recipients. We obtained a temporary restraining order—and later, a preliminary injunction—barring Microsoft from continuing to distribute the software.

## GOVERNMENT INVESTIGATIONS AND LITIGATIONS

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We are routinely asked to handle formal and informal government investigations and to defend high stakes litigations brought by federal and state officials. By way of example:

**Federal Trade Commission:** We were counsel for Google during a months-long FTC investigation regarding Google's placement of cookies on Safari web browsers. The FTC's complaint, alleging that Google violated a prior consent decree, was settled under an agreement in which Google denied liability. The settlement was then challenged and, over objection, approved as serving the public interest. *U.S. v. Google Inc.*, 3:12-cv-04177.

**California District Attorneys:** We have represented multiple online services in connection with government investigations into alleged violations of California's Auto-Renewal Law, Cal. Bus. & Prof. Code § 17600 et seq.. The investigations question whether the services have complied with California's rules regarding automatic subscription renewals and refunds.

**New Mexico Attorney General:** We are defending Google in a lawsuit filed by the New Mexico Attorney General's Office against numerous parties alleging COPPA violations.

**New York Attorney General:** We have represented multiple online services in connection with New York AG investigations, including an online advertising company concerning collection and use of mobile location information.

**State of Washington:** We defended Google in the first case to be brought against online service providers under Washington's political advertising disclosure laws.

## AMICUS CURIAE WORK

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- on behalf of technology experts in the Supreme Court in a 4th Amendment privacy case explaining that cell tower location information is an increasingly precise method of determining location;
- on behalf of privacy and digital rights groups in the Supreme Court concerning the extraterritoriality of the Stored Communications Act and federal warrants;
- in the Wisconsin Supreme Court supporting reversal of a narrow and idiosyncratic interpretation of the CDA
- In the Ninth Circuit elaborating upon the volitional conduct rule in the context of direct copyright infringement.

## REPRESENTATIVE CLIENTS

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- DropBox
- Flipboard
- Go Daddy
- Google
- Mozilla
- Netflix
- OfferUp
- Pinterest
- Roblox
- Roku
- Snap
- Square
- Tumblr
- Twitter
- YouTube