

LAWDRAGON

The Evolution of Entertainment and IP Law, with Moses Singer's Toby Butterfield

By Emily Jackoway

When Toby Butterfield moved from the UK to New York City to start his legal career in the early '90s, a "crazy thing called the internet was starting to take off," he remembers jokingly.



As changes in technology have skyrocketed since, continuing to redefine the media landscape and the scope of intellectual property, his IP and entertainment practice has done the same. In the last 25 years, Butterfield has built a prominent, cutting-edge practice – one which thrives on its ever-changing nature.

Butterfield is a partner at historic New York firm Moses Singer, where he serves in the firm's Intellectual Property, Entertainment/Media & Technology and Litigation practice groups. On the entertainment side, he advises high-profile clients, including major entertainment companies, film and theater producers, technology companies and more, through thorny copyright, trademark, contract and commercial litigation matters. As for IP, he guides IP owners through the nascent stages of production for content including books, newspapers, magazines and films. A

passionate litigator, when needed, he is always prepared to fight for his clients at trial.

A regular speaker on the ways new technology is shaping the industry, Butterfield is always looking ahead to the next shape entertainment and IP law might take. Take social media, for instance. In the last 15 years, social media platforms have completely changed the way in which media, including TV and film, is created and disseminated. Butterfield has been vocal

about the ways in which social media's shift to "influencer" culture impacts content production, distribution and advertisement. In response, for more than a decade he has co-designed and taught the seminar "Social Media and the Law" at Columbia University.

Butterfield has also spoken about artificial intelligence issues as far back as 2019 and continues to counsel clients seeking to protect their content from infringement by AI models. Yet, while many fear the implications for IP holders in this new AI age, Butterfield also encourages a responsible embrace of the technology's potential benefits for his clients – ensuring they are on the front foot in content protection and creation.

Butterfield is a member of the [Lawdragon 500 Leading Litigators in America](#).

Lawdragon: What first drew you to IP and entertainment law early in your career?

Toby Butterfield: I always enjoyed practicing IP law, so when I left my first firm, a white-shoe Wall Street practice, I moved to an entertainment law firm. That was in 1994, just as that crazy thing called the internet was starting to take off, and it's been a neat ride ever since then.

As a litigator, I get a kick out of using court proceedings to transform a negotiation that was not working for my client. I love it when the parties to a dispute do not see eye to eye because one party or the other has a misperception of the strength or weakness of their position, and we can use litigation to completely reset the terms of the discussion. I also love when my transactional partners come to me to consult on a possible future or a looming dispute, allowing us to equip our client for both the best- and worst-case scenarios.

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LD: Out of all the work you've done in your career, what would you say is the most interesting matter you've handled?

TB: One of my favorite matters is a jury trial I handled for Blue Man Group in a music rights dispute a few years ago. The claimant wanted \$125M for rights he claimed he owned in music used in the live performances of that show over many years. We handled the defense of the case for everyone involved, from the moment the first claim letter came in until the last remaining claim was disposed of. It was very satisfying.

LD: Do you have any recent matters you can tell us about?

TB: In a recent matter, we obtained a fair use dismissal of a copyright claim over a series of music documentaries for a Los Angeles-based motion picture distributor. The motion for summary judgment resulted in a favorable settlement of the remaining claims.

One specific lesson learned from that case is to claim on your insurance policy when you can, and don't take that coverage for granted. It's there for use in an emergency and should be used wisely.

LD: Are there any trends you are seeing in terms of the types of matters keeping you busy?

TB: Royalty disputes in technology transactions continue to keep me very busy. I started with litigations over CD royalties, moved on to "TV everywhere" issues, and now the focus is primarily downloaded apps.

LD: Looking back, did you have any mentors who influenced you early on?

TB: My most loyal and influential mentor was Marcia Paul, a phenomenal litigator and copyright lawyer who taught me how to be aggressive in litigation without being obnoxious. I learned from her that litigators who yell and scream or hurl abuse are nearly always weak litigators with weak positions. I also had some great law school professors, including the famous Ronald Dworkin at Oxford, and Andreas Lowenfeld, who taught a magnificent moot court seminar in international litigation at NYU Law. They were both inspiring and a thrill to learn from.

LD: You came to Moses Singer nearly seven years ago now. What do you enjoy most about working at the firm?

TB: One of the things I find unique about Moses Singer is that we are a mid-size firm where junior lawyers can be exposed to a wide variety of practice areas and work more closely with partners – something not typically possible at Big Law firms. Having worked at large law firms, I know firsthand that associates often only collaborate with colleagues just a few years ahead or behind them. At Moses Singer, teams are often staffed with just one partner and one associate. This setup is a win-win-win: clients benefit from both the partner's expertise and the associate's lower billing rate and ability to put in the hours; partners get the support they need; and associates gain valuable hands-on experience from day one.

LD: What do you do for fun outside the office?

TB: I've played rugby for years. It's absurd I still do it, and I would not say I do it well, but it's spectacularly fun and a good way to channel aggression. Rugby is also an amazing way to relax – you're definitely not thinking about a judge's ruling or opposing counsel.

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