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Litigators of the Week: Shortly After Name Partner Kathleen Sullivan's Retirement, Quinn Emanuel Scores Appellate Win for Vimeo

By Ross Todd
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There were no press releases announcing **Kathleen Sullivan**'s retirement from **Quinn Emanuel Urquhart & Sullivan**. But it's hard to walk away without anyone noticing when you're the only woman-name partner in the Am Law 100—especially under these circumstances.

The Second Circuit this week handed Sullivan and her partners **Todd Anten** and **Owen Roberts** a win in a long-running case they've been handling for video-sharing client Vimeo. The case has been running for a decade and a half of Sullivan's 20 years at the firm. The appellate court, taking up an appeal in the case for a second time, found that Vimeo was entitled to safe harbor under the Digital Millennium Copyright Act from claims from music rights-holders over songs included in videos uploaded to the site. The appellate court found that plaintiffs hadn't shown Vimeo had "red flag" knowledge of infringement since the songs' inclusion use could be a fair use or licensed.

Lit Daily: Who was your client and what was at stake here?

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L-R: Kathleen M. Sullivan, Todd Anten, and Owen F. Roberts of Quinn Emanuel Urquhart & Sullivan.

Owen Roberts: Our client was Vimeo, the iconic website known for hosting high-definition and high-quality user-created original videos long before anyone had heard of TikTok. This legal battle dates back to 2009, when record labels and music publishing companies brought copyright claims in an attempt to compel Vimeo to proactively monitor and remove user-uploaded videos featuring allegedly infringing music. The case implicated well over $200 million in statutory damages. More fundamentally, this case

was an attack on the continued viability of the Digital Millennium Copyright Act (DMCA) safe harbor that ensures online service providers like Vimeo are not liable when a user uploads an infringing work without the company's actual or red-flag knowledge. Without that safe harbor protection, platforms that host user-generated content probably could not exist. This significant victory thus reinforces the critical importance of safeguarding creativity and expression in the digital landscape.

How did this matter come to you and the firm?

Todd Anten: Vimeo reached out to our former partner, **Bob Raskopf**, who is one of the titans of copyright law. At the time, Vimeo was a small company, with fewer than 20 full-time employees. The plaintiffs asserted that hundreds of videos posted by Vimeo users, including home movies, original animated films and lip dubs, infringed their copyrights in various sound recordings and musical compositions. Vimeo's primary defense was that it was protected by the DMCA, which provides safe harbors to platforms that host user-generated content if they comply with certain conditions, including the removal of videos upon either: (1) receiving a takedown notice or (2) acquiring "red flag" knowledge that a particular video is obviously infringing. Here, the music labels did not send takedown notices; instead, they argued that the mere presence of their songs in users' videos were "red flags" that obligated Vimeo to take the videos down on its own upon sight. We proposed a plan to phase the case to solely address the DMCA issues first, and we were fortunate that Vimeo trusted us with this vision of the case.

Who has worked on this matter during the life of the case and who was your core team on this latest appeal?

Anten: It is amazing how long this case has been alive—I joined the case at the beginning when I was a rising fourth-year associate coming off a SDNY clerkship. The core team for this most recent appeal was Kathleen, Owen and myself, and the core team for the prior interlocutory appeal, which resulted in a victory and remand in 2016, was Kathleen, of counsel **Jessica Rose** and myself. But the groundwork for this victory was laid by the patient and meticulous work over 15 years by the core trial team—myself, Bob, Jess and partner **Rachel Kassabian**. The trial team was instrumental (no pun intended) in compiling the meticulous record on summary judgment that showed how Vimeo, while a small and scrappy company at the time, nonetheless complied with every aspect of the DMCA.

Kathleen Sullivan: Much like bands, who often have a rotating roster of musicians, this team also had a fantastic crew of attorneys and moot court judges over the years, including **Ben Gildin**, **Cory Struble**, **Sandy Weisburst** and **Andy Schapiro**. We also were privileged to work with a stellar team of in-house lawyers—**Ed Ferguson** at IAC, former Vimeo General Counsel **Michael Cheah** and Vimeo's current litigation head **Lindsey Evans**.

The plaintiffs in this case initially filed suit in 2009. Why did it take us this long to get where we ended up?

Anten: Part of the reason is the nature of the case. For example, when a plaintiff claims that a particular video should have been removed because it constitutes "red flag" knowledge of

obvious infringement, it requires assessing the specific video and digging into every detail about it: Who made the video? Who at Vimeo watched it? Might the use of music be a fair use, and if so, why? And here, the number of videos at issue was anywhere from 199 to over 1,500, depending on where we were in the case. Judge Ronnie Abrams of the SDNY conducted video-by-video assessments to assess whether each particular video qualified for DMCA safe harbor. And after the Second Circuit in 2016 reversed the standard that Judge Abrams initially used on summary judgment, she went through that exercise again on remand, applying the Second Circuit's standard. Between two trips to the Second Circuit, and the sheer amount of videos at issue, that understandably takes quite a bit of time.

Sullivan: Both the district court and the Second Circuit were extremely careful in these assessments. For example, the Second Circuit issued the most recent decision more than 15 months after oral argument. And we had the privilege of having Judge Pierre Leval as the author of both the 2016 and the 2025 Second Circuit opinions. Judge Leval is one of the foremost experts in copyright law in the nation, and devoted close and scholarly attention to the implications of the decisions for the tech industry and how they interact with the goals of copyright law.

What's important here in the Second Circuit's decision for companies like Vimeo?

Roberts: This decision addressed and rejected two ways that plaintiffs may try to strip companies like Vimeo of safe harbor protections. First, the court held that a platform like Vimeo cannot lose safe harbor from copyright claims under the DMCA merely because its staff may have encountered videos containing music, reasoning that the mere use of music in accused works is not a "red flag" of obvious copyright infringement because the use might have been authorized or fair use. As the court recognized, if copyright law experts and Supreme Court justices are still disagreeing about what is and is not fair use, how could Vimeo's staff be expected to know? Second, the Court recognized that a company does not have the "right and ability to control" infringing activity just because it removes hate speech, gore and other content that falls outside the online community it has tried to create. The court reinforced that Vimeo was allowed to curate content to foster an online environment that its users find engaging—a crucial finding that will protect other platforms of user-generated content. This means that companies don't need to choose between DMCA safe harbor protection and designing appealing platforms for their users. Oh, and the court held that plaintiffs have the burden on each of these questions, which will be a key factor in favor of the safe harbor in future cases.

More than a decade and a half. A couple of trips to the Second Circuit. Is this how Congress intended safe harbor to work in the DMCA?

Sullivan: No. The plaintiffs sued here for alleged copyright infringement in original user-made videos that they never even asked Vimeo to take down, circumventing the expeditious procedures the DMCA established to strike a balance between copyright and creative expression. While the case got to the only outcome that's consistent with the DMCA's text and purpose, even the burden of litigating these claims could have made a client less committed than Vimeo fold. The Second Circuit decision should greatly

benefit all internet service providers by cutting a lot of moves out of the playbook the plaintiffs used here, and hopefully set similar cases up for a faster resolution in the future.

Kathleen, I didn't see anything announcing your retirement until I checked your firm bio after the Litigator of the Week nomination for this win landed in my inbox. You're still, to my knowledge, the only woman-name partner in the Am Law 100. Were you trying to step away quietly?

Sullivan: Absolutely. Being named to the marquee of the great firm that **John Quinn** and **Bill Urquhart** built was the honor of a lifetime. But the firm has never been stronger. The firm I joined with less than 100 lawyers in three California offices now has 1,200 lawyers in 35 offices around the globe. Our appellate practice is now flush with appellate geniuses I love like family and who I know will carry the extraordinary success of our practice into the future. It seemed like a good time for an Irish exit.

What are your plans for retirement?

Sullivan: To do all the things I postponed while I was in academia and practice: travel, adventure, sport, reading classic literature, soaking up art and music, learning languages old and new and picking up old hobbies. I expect to be so busy in retirement that I will wonder how I ever had time to work.

What will you remember most about this matter?

Roberts: This probably isn't quite what you mean, but if this is my last appeal with my partner and mentor Kathleen Sullivan—I mean, how could you forget that?

Anten: This has to be a trick question. Working with Kathleen would be the highlight of any trial lawyer's career. But working with the country's leading First Amendment scholar on a case that sits at the intersection of free speech and technology, and getting to do so twice in the same case, cannot be topped.

Sullivan: I will remember Todd and Jess so expertly teaching me the DMCA and also how to download the videos as part of my argument prep, leading concerned associates to gather outside my office whispering, "Why is Sullivan listening to Radiohead?" I will remember Owen going from dazzling summer associate to appellate partner over the life of this case. And I will remember coming full circle to argue my final case in the same Second Circuit courtroom where I clerked for the great Judge James L. Oakes some 44 years ago. And to do so for my wonderful client and law school classmate Ed Ferguson and against my brilliant opposing counsel **Cate Stetson**—with now two women at the podium, a sight I never saw when I was clerking.