

# MCMILLAN'S COPYRIGHT WIN FOR MUSIC STREAMING CLIENT SELECTED AS A TOP 10 JUDGMENT BY LEXPERT

Posted on November 23, 2022

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We are delighted to have a case of significance featured in [Lexpert's Top 10 Business Decisions of 2021-2022](#). This recognition of our litigation work speaks to McMillan's commitment to understanding our client's business and working to deliver the best outcome for our clients. We pride ourselves in client service excellence, leveraging our cross-country expertise and collaboration to help clients navigate complex disputes and regulatory regimes. We are pleased to share this honour with our valued client.

**[Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association, 2022 SCC 30](#)**

The McMillan team of David Kent, Jonathan O'Hara and Lisa Page acted in a series of legal proceedings culminating in the Supreme Court of Canada's 2022 decision in *SOCAN v ESA*. McMillan represented Pandora Media, one of the largest US music streaming services. The SCC decision arose from a 2012 amendment to the *Copyright Act* that extended copyright protection to the "making available" of copyright works on demand. On demand streaming was clearly included, but some parties debated whether downloads were also affected. Pandora focused on whether the new provision implied extra royalties for streaming services. In the initial decision, the Copyright Board held that this expansion of the *Copyright Act* should require users to pay more royalties. However, Pandora and other music users challenged the Board's decision to the Federal Court of Appeal, which overturned the Board's decision on this and other points. Pandora and its allied parties then successfully defended the Federal Court of Appeal's decision at the Supreme Court of Canada. McMillan contributed to this novel and complex legal issue being resolved in favour of music streaming services, and confirmed that users do not have to pay double royalties both for making music available, and then again when the music is transmitted. This is a practical outcome that will help businesses incorporate music in their online service offerings without excessive royalty payments.

McMillan's [Intellectual Property \(IP\) Group](#) has established itself as one of the leading IP practices in Canada, building on a successful record in crafting sound IP protection and enforcement strategies that help our clients maximize the value of their critical intangible assets. Our IP Litigators advise on copyright, trademarks, designs, and trade secrets disputes whether it is acting for the IP rights holder or the alleged infringer. Our

litigators are counsel of record in Federal Court proceedings and regularly appear in trademark, patent and copyright matters at all levels of Canadian courts, Trademark Opposition Board, and the Copyright Board of Canada. We know that there's no silver medal when you're second to file™.

Lexpert's Top 10 Business Decisions article is a long-standing annual staple of the magazine. This article is based on a canvas of cases from two years, 2021 and 2022, which involve an aspect of the law that affects the business community. The article reflects the viewpoints of Lexpert's research team on cases that are considered to be the most important of the year.