

# Daily Journal

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## TOP INTELLECTUAL PROPERTY LAWYERS



### Boies Schiller Flexner LLP SAN FRANCISCO

## Joshua I. Schiller

Joshua Schiller first became interested in intellectual property law and technology when, as a Yale undergrad, he convinced his father, who is a founding partner of Boies Schiller, to defend the music-sharing service Napster. “I actually worked on that case ... as a consultant because I helped them understand how Napster was used and what consumer habits were amongst college students,” he said. The service eventually was forced into bankruptcy.

Because of that experience, Schiller became fascinated by the concept of fair use. That proved important later when he was a young associate at Boies Schiller and a former client asked him to talk to controversial “appropriation artist” Richard Prince, who had just lost a copyright case in New York.

Schiller read the court’s ruling and promised Prince he would get the 2nd Circuit to reverse it. “It was the first oral argument I think I ever had of any substance, and I won.” *Cariou v. Prince*, 714 F.3d 694 (2d Cir., dec’d April 25, 2013).

“We protected the right of an artist to demonstrate that [if] a reasonable observer can see new expression in a work... it’s protected. It’s fair use.”

And fair use, he pointed out, “is at the core now of what is going on with AI and with intellectual property.”

Just earlier this year, Schiller succeeded in a high-profile case with artificial intelligence at its core. He represented the estate of George Carlin against the creators of a comedy special starring an AI-generated version of the late comedian, apparently based on unauthorized copies of Carlin’s standup specials and albums. *Main Sequence Ltd. v. Dudesy LLC*, 2:24-cv-00711 (C.D. Cal., filed Jan. 25, 2024).

The lawsuit alleged violation of Carlin’s right of publicity and copyright infringement. Carlin’s daughter “thought it was important to make ... sure that people didn’t think that this was acceptable.” The defendants settled within two-and-a-half months. “They were very cooperative,” Schiller said.

Schiller won a very different case at the 2nd Circuit in November. He represented a consultant who developed a proprietary model to value the Bank of New York Mellon’s wind energy investments. But, without his knowledge, the bank shared the model with Deloitte.

The trial court rejected the consultant’s lawsuit seeking damages for trade secrets misappropriation and unjust enrichment. The circuit reversed a 50-year precedent to hold that the two types of damages are not the same. *Pauwels v. Deloitte*, 22-21 (2d Cir., dec’d Oct. 6, 2023).

On remand, “we’re going to clarify that the value of somebody’s work is different than the value of their time,” Schiller said. “It’s an important principle to protect.”

— DON DEBENEDICTIS