

Lex Machina

Copyright and Trademark

Litigation Report 2021



Lex Machina<sup>®</sup>

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## Introduction

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Lex Machina is excited to release its Copyright and Trademark Litigation Report 2021. This report compares data across the three-year time period from the beginning of 2018 to the end of 2020 and examines the latest trends and insights from copyright and trademark litigation.

As this report includes two practice areas, it includes two defined data sets. Copyright cases include claims for copyright infringement brought under 17 USC § 101. Trademark cases include one or more claims under § 43 of the Lanham Act (15 U.S.C. § 1125), including trademark infringement, false designation of origin, false advertising, trademark dilution, cybersquatting, or unfair competition.

This report includes data-driven insights into the behavior of courts, judges, parties, and law firms. Legal Analytics is used for planning, forecasting, and litigation strategy. From precise timing metrics that inform legal budgeting to trends among top law firms and leading judges, Legal Analytics provides customized insights that supplement traditional research and accumulated experience. The metrics in this report may help readers decide who to pursue as clients, whether to file a particular motion, or when to settle. Leveraging this data gives firms and companies a competitive edge in litigation.

For more information, please see the Data and Methodology section at the end of this report.

## Key Trends and Highlights

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### Copyright Highlights

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- Copyright filings peaked in 2015 and 2018 due to large numbers of file sharing cases. There was a drop-off in filings between 2019 and 2020, likely due to the pandemic, as well as a drop-off in case filings by the Liebowitz Law Firm.
- The Southern District of New York tops the copyright list over the last three years with 2,438 cases due to the enormous number of filings by the Liebowitz Law Firm.
- The top two copyright plaintiffs, Strike 3 Holdings, LLC and Malibu Media, LLC, are adult film companies accusing defendants of pirating their content.
- The most active plaintiffs' law firm in copyright cases was Fox Rothschild with 1,993 cases, due to a large number of file sharing cases filed on behalf of Strike 3 Holdings, LLC in 2018. The most active defendants' law firm in copyright cases was Davis Wright Tremaine, which defended 208 copyright lawsuits in the last three years.
- In cases terminated in the last three years, copyright cases resolved with a settlement 82% of the time, one of the largest proportions of settlements in any Lex Machina practice area.

### Trademark Highlights

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- While trademark case filings generally held steady between 2016 and 2019, they had the lowest number of filings of the last decade in 2020 with 3,778 cases (a 14% decrease from the year before).
- As policies and strategies have changed, federal dilution claims have dropped 54% in the last decade and cybersquatting claims have dropped 50%.
- The Northern District of Illinois, with 1,475 cases, was the most active district for trademark cases due to the large number of mass counterfeiting cases filed there.
- The top two trademark plaintiffs were Scream, Inc. and Roor International BV, which are often co-plaintiffs in lawsuits alleging infringement of their ROOR brand glass water pipes.
- The most active plaintiffs' law firm in trademark cases was Greer, Burns & Crain with 578 cases, which filed a large number of mass counterfeiting cases in the Northern District of Illinois. The most active defendants' law firm in trademark cases was Covington & Burling with 129 cases, because it was the defense counsel in the opioid cases in the Northern District of Ohio.
- Trademark cases only resolved with a settlement 56% of the time due to the high number of default judgments (15% of cases resolved with a default judgment).
- Findings and damages on default are extremely common in these practice areas. In the last three years, nearly \$2.3 billion in statutory damages under the Copyright Act and \$4.9 billion in statutory damages under the Lanham act were awarded on default.

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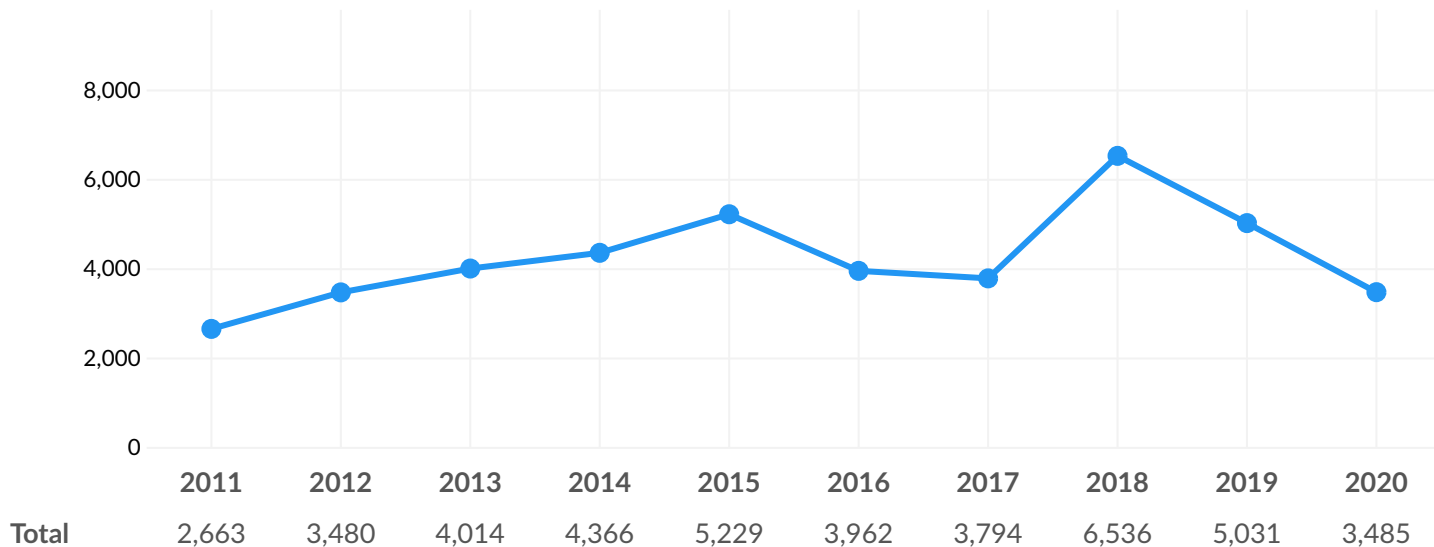
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## Case Filings

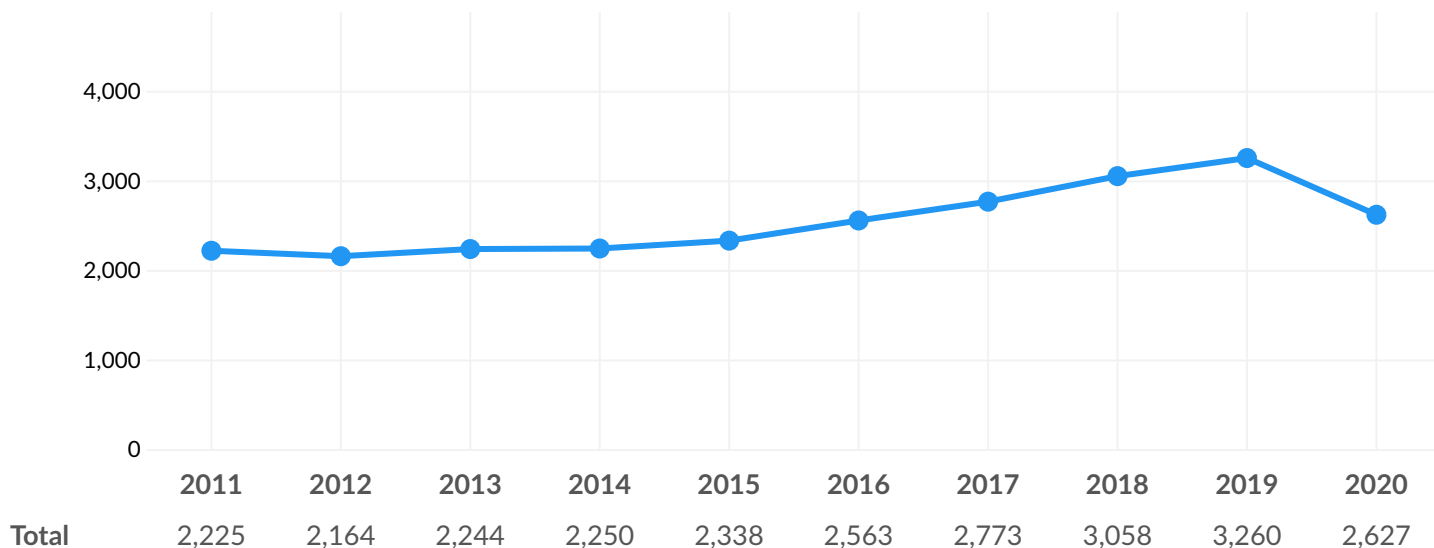
Copyright case filings saw peaks in 2015 and 2018 driven by large numbers of file sharing cases filed in those years. In cases filed 2018 to 2020, 41% of copyright cases were file sharing cases. File sharing cases involve claims of infringement for BitTorrent/P2P file sharing brought against anonymous John Doe defendants or anonymous defendants' IP addresses. Companies tend to file large numbers of these cases at a time.

Figure 1: Copyright Cases Filed 2011 to 2020



Looking at copyright case filings excluding file sharing cases, filings increased each year since 2013 except for a drop-off in 2020 likely due to the pandemic and a drop-off in case filings by the Liebowitz Law Firm. Copyright cases excluding file sharing cases increased 45% between 2013 and 2019, then dropped 19% between 2019 and 2020.

Figure 2: Copyright Cases Filed 2011 to 2020 Excluding File Sharing Cases



Trademark case filings saw a peak in 2015 with 5,322 cases. While cases generally held steady between 2016 and 2019, trademark cases had the lowest number of case filings of the last decade in 2020 with 3,778 cases (a 14% decrease from the year before). At the same time, mass counterfeiting cases have drastically increased in the last decade. Mass counterfeiting cases allege counterfeiting against a large number of defendants usually listed on an attached schedule. These cases occupied an increasingly larger percentage of the overall trademark filings each year. In 2015, mass counterfeiting cases were only 3% of the overall trademark filings, but that number increased to 16% in 2020.

Figure 3: Trademark Cases Filed 2011 to 2020

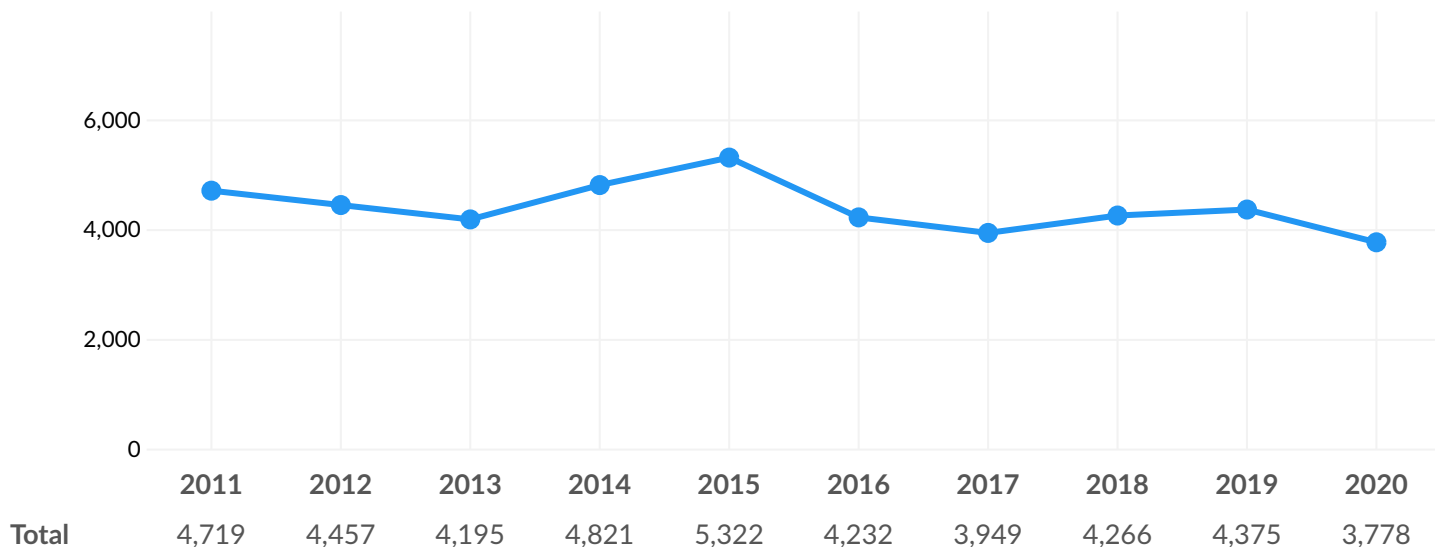
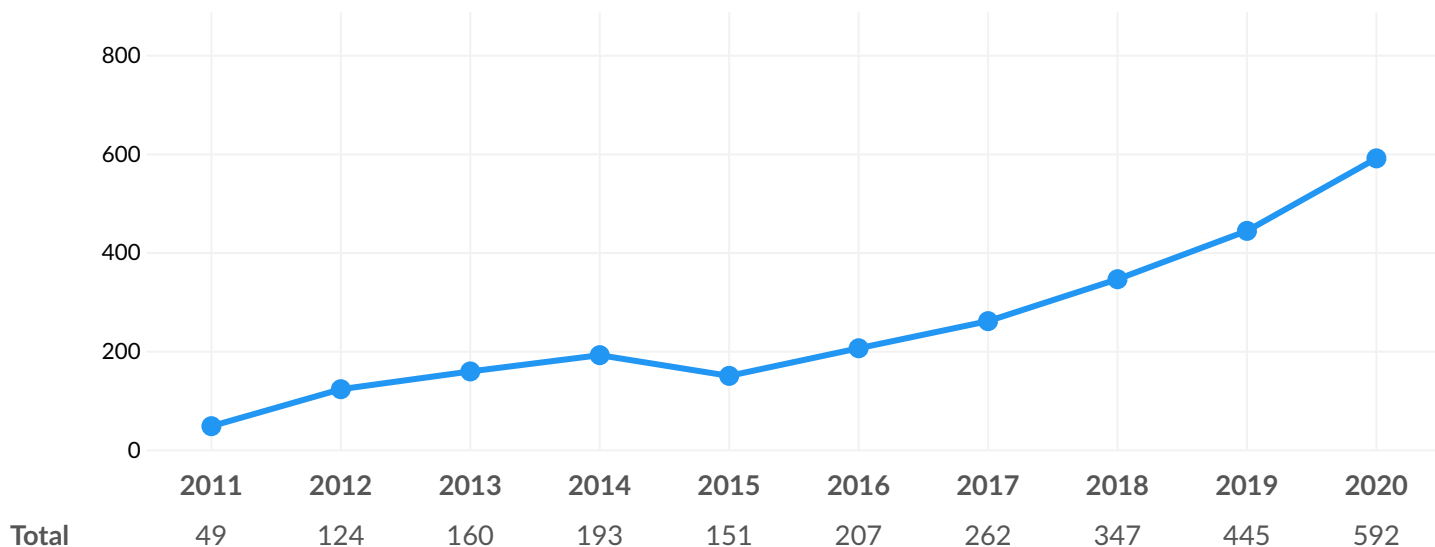
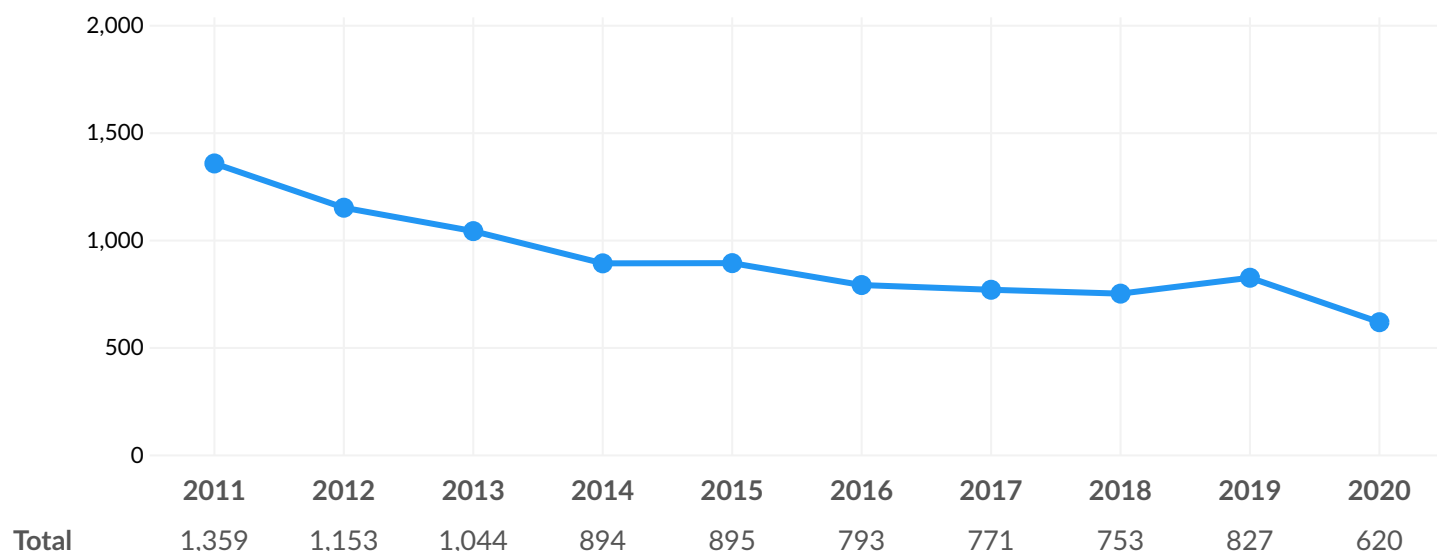


Figure 4: Mass Counterfeiting Cases Filed 2011 to 2020



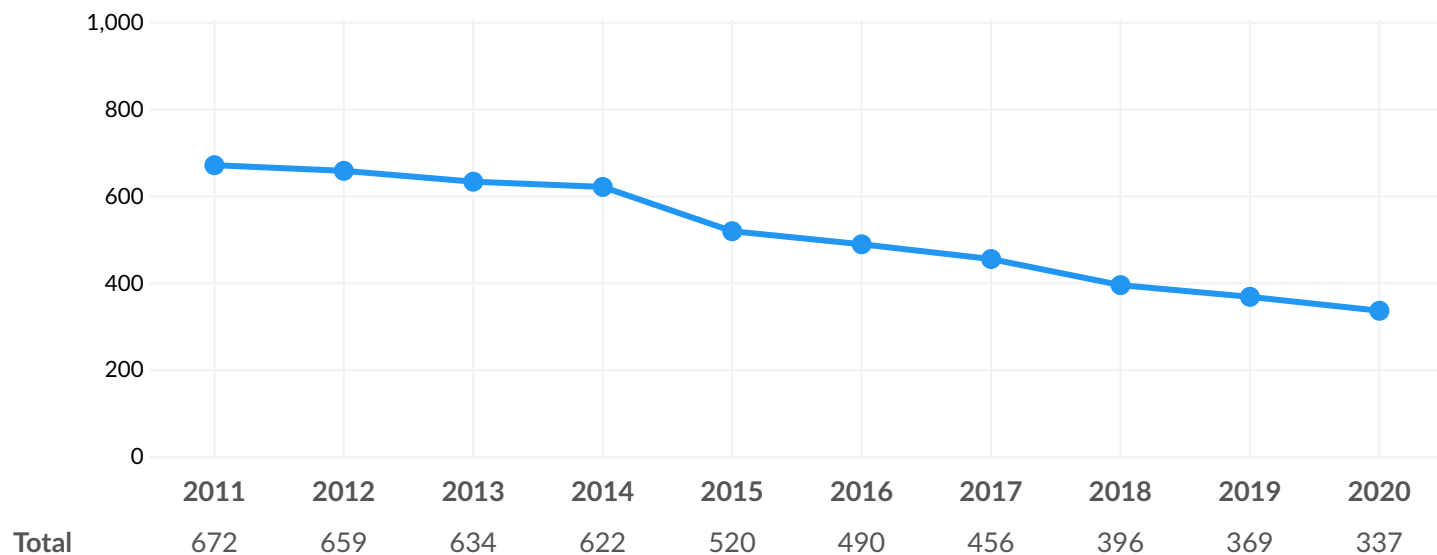
Cases alleging a federal dilution cause of action decreased 54% over the last decade. They decreased steadily until a steep decline between 2019 and 2020 punctuated the end of the decade. While major changes to the dilution framework occurred with The Trademark Dilution Revision Act of 2006, courts took years to consistently apply many of the new principles and resolve related issues that were not spelled out in the Act itself. Much of the decline is likely attributed to plaintiffs no longer being able to meet recognized standards for fame or not wanting to spend the resources needed to prove fame. Courts likewise often threw out dilution claims during the judgment on the pleadings stage while infringement claims remained part of the case.

Figure 5: Dilution Cases Filed 2011 to 2020



Cybersquatting cases declined 50% in the last decade as the internet evolved. It’s likely that the evolution of search tools and domain registrars has reduced the need for this type of litigation. Additionally, some domain-only disputes may be resolved by Uniform Domain Name Dispute Resolution Policy (UDRP) proceedings instead of federal court.

Figure 6: Cybersquatting Cases Filed 2011 to 2020





## Most Active Districts

This section shows the districts with the most copyright and trademark cases filed from 2018 to 2020. The left-hand columns show the breakdown each year. The right-hand column shows the proportion of overall copyright or trademark cases that district heard in the three-year time period.

The Southern District of New York topped the copyright list over the last three years with 2,438 cases due to the enormous number of filings by the Liebowitz Law Firm. As its filings decreased in 2020, the Central District of California did hear more cases than the Southern District of New York last year (562 versus 530). These venues heard a large number of entertainment-related copyright cases, while other top districts included major metropolitan areas in the U.S. The District of Maryland made the list due to the large number of file sharing cases filed there.

*Figure 7: Most Active Districts for Copyright Cases Filed 2018 to 2020*

District	2018	2019	2020	Total	Percent
S.D.N.Y.	971	937	530	2,438	16.2%
C.D.Cal.	815	533	562	1,910	12.7%
E.D.N.Y.	413	287	301	1,001	6.7%
N.D.Ill.	432	279	207	918	6.1%
D.N.J.	435	215	136	786	5.2%
N.D.Cal.	296	237	187	720	4.8%
E.D.Pa.	251	125	91	467	3.1%
D.Md.	220	104	97	421	2.8%
S.D.Fla.	153	172	93	418	2.8%
S.D.Tex.	219	149	46	414	2.8%

The Northern District of Illinois, with 1,475 cases, was the most active district for trademark cases in the last three years due to the large number of mass counterfeiting cases filed there. The Central District of California was close behind with 1,319 cases and the Southern District of New York was third with 909 cases. The Northern District of Ohio is on this list due to the opioid litigation occurring there; many of these cases included false advertising claims under the Lanham Act.

*Figure 8: Most Active Districts for Trademark Cases Filed 2018 to 2020*

District	2018	2019	2020	Total	Percent
N.D.Ill.	336	469	670	1,475	11.9%
C.D.Cal.	494	417	408	1,319	10.6%
S.D.N.Y.	320	299	290	909	7.3%
S.D.Fla.	366	274	214	854	6.9%
N.D.Ohio	239	325	69	633	5.1%
M.D.Fla.	150	226	129	505	4.1%
N.D.Cal.	177	157	135	469	3.8%
D.N.J.	164	118	101	383	3.1%
E.D.N.Y.	110	135	96	341	2.7%
N.D.Tex.	84	85	68	237	1.9%

## Most Active Judges

Copyright and trademark litigation tends to be spread out between various judges. All but two of the most active copyright judges were located in the Central District of California. Judge Hatter heard the most copyright cases in the last three years with 269 cases, nearly 2% of the copyright cases overall. The third most active judge, Judge Woldford, is located in the Western District of New York, which was not listed in the top districts above.

*Figure 9: Most Active Judges for Copyright Cases Filed 2018 to 2020*

Judge	District	2018	2019	2020	Total	Percent
Terry J. Hatter Jr.	C.D.Cal.	80	72	117	269	1.8%
Christina A. Snyder	C.D.Cal.	68	71	11	150	1.0%
Elizabeth Ann Woldford	W.D.N.Y.	60	59	19	138	.9%
Dean D. Pregerson	C.D.Cal.	63	25	30	118	.8%
Otis D. Wright II	C.D.Cal.	50	32	33	115	.8%
Stephen Victor Wilson	C.D.Cal.	46	31	38	115	.8%
Dolly Maizie Gee	C.D.Cal.	44	32	36	112	.7%
Consuelo Bland Marshall	C.D.Cal.	50	25	35	110	.7%
Sidney Allen Fitzwater	N.D.Tex.	87	20	1	108	.7%
Percy Anderson	C.D.Cal.	54	29	24	107	.7%
Robert Gary Klausner	C.D.Cal.	40	32	35	107	.7%

Judge Polster was the most active judge in trademark cases due to the false advertising claims in a set of opioid-related multidistrict litigation cases. Judge Snyder of the Central District of California was second in both lists with 150 copyright cases and 117 trademark cases. Judge Dimitrouleas of the Southern District of Florida was third with 88 cases. The Southern District of Florida heard a large number of mass counterfeiting cases.

*Figure 10: Most Active Judges for Trademark Case Filed 2018 to 2020*

Judge	District	2018	2019	2020	Total	Percent
Dan A. Polster	N.D. Ohio	127	138	16	281	2.3%
Christina A. Snyder	C.D. Cal.	40	63	14	117	.9%
William P. Dimitrouleas	S.D. Fla.	43	25	20	88	.7%
Dean D. Pregerson	C.D. Cal.	35	19	26	80	.6%
Andrea Robin Wood	N.D. Ill.	28	22	27	77	.6%
John Zihun Lee	N.D. Ill.	17	29	31	77	.6%
Thomas Michael Durkin	N.D. Ill.	19	18	40	77	.6%
James V. Selna	C.D. Cal.	21	16	39	76	.6%
Beth Francine Bloom	S.D. Fla.	44	17	14	75	.6%
Edmond E-Min Chang	N.D. Ill.	20	30	25	75	.6%
Matthew F. Kennelly	N.D. Ill.	22	27	26	75	.6%
Robert Lee Pitman	W.D. Tex.	37	21	17	75	.6%

## Most Active Parties

The most active plaintiffs in copyright cases often file large numbers of file sharing cases. The top two plaintiffs, Strike 3 Holdings, LLC and Malibu Media, LLC, are adult film companies accusing defendants of pirating their content. These companies generally sue large numbers of IP addresses, which leads many defendants to settle before their identity has been publicly revealed. While Malibu Media stopped filing cases in 2020, Strike 3 reduced its filings in Q1 and Q2 of 2020. However, it has already filed over 700 cases in 2021.

Following a significant drop-off after the top two parties, Joe Hand Promotions, Inc. was third with 329 cases filed in the last three years. These cases involved copyright and broadcast claims surrounding commercial performances of sporting events including boxing matches and UFC events. The music companies on the list similarly tended to sue for unauthorized public performances of songs in their catalog by retail and dining establishments.

The most active defendants in copyright cases often have fewer cases filed against them overall as copyright defendants tend to be individuals or retail and dining establishments. Amazon.com, Inc. was the most active defendant with 60 cases, as many plaintiffs sued the company for infringing products, packaging design, or marketing materials. Similarly, many of the other defendants were sued for distributing infringing works either in retail stores or through their platforms.

Figure 11: Most Active Plaintiffs for Copyright Cases Filed 2018 to 2020

Party	2018	2019	2020	Total	Districts
Strike 3 Holdings, LLC	2,164	1,187	834	4,185	26
Malibu Media, LLC	1,240	497	0	1,737	16
Joe Hand Promotions, Inc.	141	110	78	329	57
Broadcast Music, Inc.	66	128	30	224	67
Sony/ATV Songs LLC	37	70	20	127	57
Yesh Music, LLC	13	35	53	101	2
Songs of Universal, Inc.	23	57	14	94	44
Bodyguard Productions, Inc.	71	17	2	90	9
Warner-Tamerlane Publishing Corp.	27	52	10	89	43
Star Fabrics Inc	52	22	14	88	2

Figure 12: Most Active Defendants for Copyright Cases Filed 2018 to 2020

Party	2018	2019	2020	Total	Districts
Amazon.com, Inc.	19	21	20	60	19
Ross Stores, Inc.	21	8	7	36	2
Zulily, LLC	24	7	3	34	4
Apple Inc.	9	9	14	32	12
Google LLC	6	6	19	31	11
Cox Media Group, LLC	5	22	2	29	5
Universal Music Group, Inc.	8	12	8	28	7
Oath Inc.	10	5	12	27	4
UMG Recordings, Inc.	5	13	8	26	11
Nordstrom, Inc.	10	4	11	25	3
Walmart Inc.	8	10	7	25	9

The most active trademark plaintiffs were Sream, Inc. and Roor International BV, which are often co-plaintiffs in lawsuits alleging infringement of their ROOR brand glass water pipes. Noco Company sells NOCO brand automotive batteries and parts. The individuals on the list are models who sued restaurants for unauthorized use of their name or image. These cases often included a false designation of origin or false association claim under the Lanham Act. Trademark defendants do not tend to be named in a large number of lawsuits, so the report does not include most active trademark defendants.

*Figure 13: Most Active Plaintiffs for Trademark Cases Filed 2018 to 2020*

Party	2018	2019	2020	Total	Districts
Sream, Inc.	280	217	85	582	15
Roor International BV	237	190	1	428	13
Noco Company	84	180	33	297	4
Republic Technologies (NA), LLC	0	45	101	146	9
Lucy Pinder	40	37	20	97	26
Oakley, Inc.	37	40	18	95	19
Luxottica Group S.p.A.	41	34	16	91	21
Chanel, Inc.	33	21	16	70	7
Tiffany Toth Gray	28	24	15	67	21
Jessica Hinton	20	25	16	61	24
Lina Posada	20	25	16	61	23

## Most Active Firms

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The most active plaintiffs' law firm in copyright cases was Fox Rothschild with 1,993 cases, due to a large number of file sharing cases filed on behalf of Strike 3 Holdings, LLC in 2018. Attorney Lincoln D. Bandlow was a partner at Fox Rothschild at the time, but then left to start his own firm where he continued to represent Strike 3. Other firms listed that represented Strike 3 include The James Law Firm; Boroja, Bernier & Associates; The Atkin Firm; and Clark Hill.

The Liebowitz Law Firm filed 1,834 copyright cases in the last three years. The firm often files against media companies for unauthorized use of photographs and has been called a "copyright troll" by a New York federal judge (*McDermott v. Monday Monday, LLC* Case no. 1:17-cv-09230-DLC) The firm reduced the number of cases it filed between 2019 and 2020, coinciding with attorney Richard Liebowitz's suspension from practicing in the Southern District of New York. However, the firm's other attorneys have continued to file there.

The most active defendants' law firm in copyright cases was Davis Wright Tremaine, which defended 208 copyright lawsuits in the last three years. The firm's clients include Amazon, CNN, and ABC. The Law Offices of Steven C. Vondran was second with 180 cases. This firm defends a large number of file sharing cases. Ballard Spahr and The Russell Firm were third and fourth respectively, each defending over 100 lawsuits.



**Figure 14: Most Active Law Firms Representing Plaintiffs in Copyright Cases Filed 2018 to 2020**

<b>Firm</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>	<b>Districts</b>
Fox Rothschild	1,666	323	4	1,993	23
Liebowitz Law Firm	555	795	484	1,834	55
The James Law Firm	402	298	158	858	6
Doniger Burroughs	312	154	209	675	15
Schneider Rothman Intellectual Property Law Group	167	152	202	521	38
Law Offices of Lincoln Bandlow	11	168	251	430	5
Boroja, Bernier & Associates	279	129	19	427	3
The Atkin Firm	27	146	191	364	3
Beik Law Firm	170	186	0	356	3
Kevin T. Conway, Esq.	231	91	0	322	4
Clark Hill	16	133	127	276	8
Law Offices of Jon A. Hoppe, Esquire	193	57	0	250	3
Media Litigation Firm	169	45	0	214	1
Patrick J. Cerillo, Esq.	160	47	0	207	1
Higbee & Associates	75	81	48	204	28

Figure 15: Most Active Law Firms Representing Defendants in Copyright Cases Filed 2018 to 2020

Firm	2018	2019	2020	Total	Districts
Davis Wright Tremaine	84	75	49	208	21
The Law Offices of Steven C. Vondran	70	39	71	180	7
Ballard Spahr	56	45	36	137	27
The Russell Firm	74	38	9	121	10
Wilson Elser Moskowitz Edelman & Dicker	24	38	29	91	21
Gordon Rees Scully Mansukhani	21	25	26	72	24
Greenberg Traurig	21	24	23	68	21
Lewis Brisbois Bisgaard & Smith	23	26	17	66	25
Mitchell Silberberg & Knupp	20	17	26	63	14
Pryor Cashman	18	14	14	46	10
Antonelli Law	35	9	1	45	9
Call & Jensen	26	12	6	44	2
Cowan, DeBaets, Abrahams & Sheppard	26	11	4	41	5
Fox Rothschild	17	12	12	41	19
Shapiro Arato Bach	8	21	11	40	4

The most active plaintiffs' law firm in trademark cases was Greer, Burns & Crain with 578 cases, which filed a large number of mass counterfeiting cases in the Northern District of Illinois. Kohrman Jackson & Krantz was second with 277 cases, many of which were filed in 2019 on behalf of Noco Company. Stephen M. Gaffigan was third with 258 cases, who filed a large number of mass counterfeiting cases in the Southern District of Florida. The Ticktin Law Group was fourth with 226 cases and represents Sream, Inc. and Roor International BV.

*Figure 16: Most Active Law Firms Representing Plaintiffs in Trademark Cases Filed 2018 to 2020*

Firm	2018	2019	2020	Total	Districts
Greer, Burns & Crain	146	191	241	578	2
Kohrman Jackson & Krantz	68	181	28	277	5
Stephen M. Gaffigan	98	98	62	258	2
The Ticktin Law Group	112	94	20	226	6
JiangIP	42	63	55	160	1
Langone, Batson & Lavery	0	80	80	160	2
Keith Vogt	42	62	55	159	1
Epstein Drangel	53	60	45	158	5
Vorys, Sater, Seymour and Pease	44	58	40	142	19
The Casas Law Firm	40	66	14	120	21
Hughes Socol Piers Resnick & Dym	0	11	98	109	2
Blakely Law Group	29	29	45	103	9
Taft Stettinius & Hollister	74	13	9	96	11
Gordon Rees Scully Mansukhani	18	27	40	85	34
Kilpatrick Townsend & Stockton	51	23	9	83	16

The most active defendants' law firm in trademark cases was Covington & Burling with 129 cases, because it was the defense counsel in the opioid cases in the Northern District of Ohio. Greenberg Traurig was second with 101 cases, which represented defendants in a variety of trademark cases. Au was third with 90 cases and often defended clients in mass counterfeiting cases.

*Figure 17: Most Active Law Firms Representing Defendants in Trademark Cases Filed 2018 to 2020*

<b>Firm</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>	<b>Districts</b>
Covington & Burling	101	24	4	<b>129</b>	11
Greenberg Traurig	35	29	37	<b>101</b>	35
Au	15	6	69	<b>90</b>	4
Gordon Rees Scully Mansukhani	20	31	21	<b>72</b>	23
Glacier Law	3	2	60	<b>65</b>	4
Nixon Peabody	7	44	10	<b>61</b>	11
Davis Wright Tremaine	29	14	17	<b>60</b>	18
Bartlit Beck	27	30	1	<b>58</b>	2
Fox Rothschild	19	17	20	<b>56</b>	21
Lewis Brisbois Bisgaard & Smith	24	20	12	<b>56</b>	26
DLA Piper	12	14	27	<b>53</b>	27
Wilson Elser Moskowitz Edelman & Dicker	18	16	19	<b>53</b>	25
Kilpatrick Townsend & Stockton	15	20	14	<b>49</b>	23
Troutman Pepper Hamilton Sanders	15	14	18	<b>47</b>	21
Knobbe Martens Olson & Bear	13	16	13	<b>42</b>	14

## Timing

This section contains two figures with timing analytics. Lex Machina provides case timing data to certain milestones, which is often used for forecasting, calendaring, and budgeting. In viewing box plots, the lines represent the lower and upper quartiles and the middle box represents the middle 50% of cases with the median number highlighted in the middle (more information is in the Understanding Box Plots section at the end of this report). The two figures below compare timing to summary judgment, trial, and termination in copyright and trademark cases that terminated over the past three years.

Copyright and trademark cases had similar timing patterns, but trademark cases tended to take a little longer except for time to trial. The median time to summary judgment was 543 days in copyright cases versus 601 days in trademark cases. The median time to trial was 832 days in copyright cases versus 829 days in trademark cases. It took a median of 147 days to reach termination in copyright cases versus 227 days in trademark cases. While this is an overview, users can see timing for more specific case types such as file sharing or mass counterfeiting, as well as for judges, courts, or opposing counsel, using the Lex Machina platform.

Figure 18: Time to Events for Copyright Cases Terminating 2018 to 2020

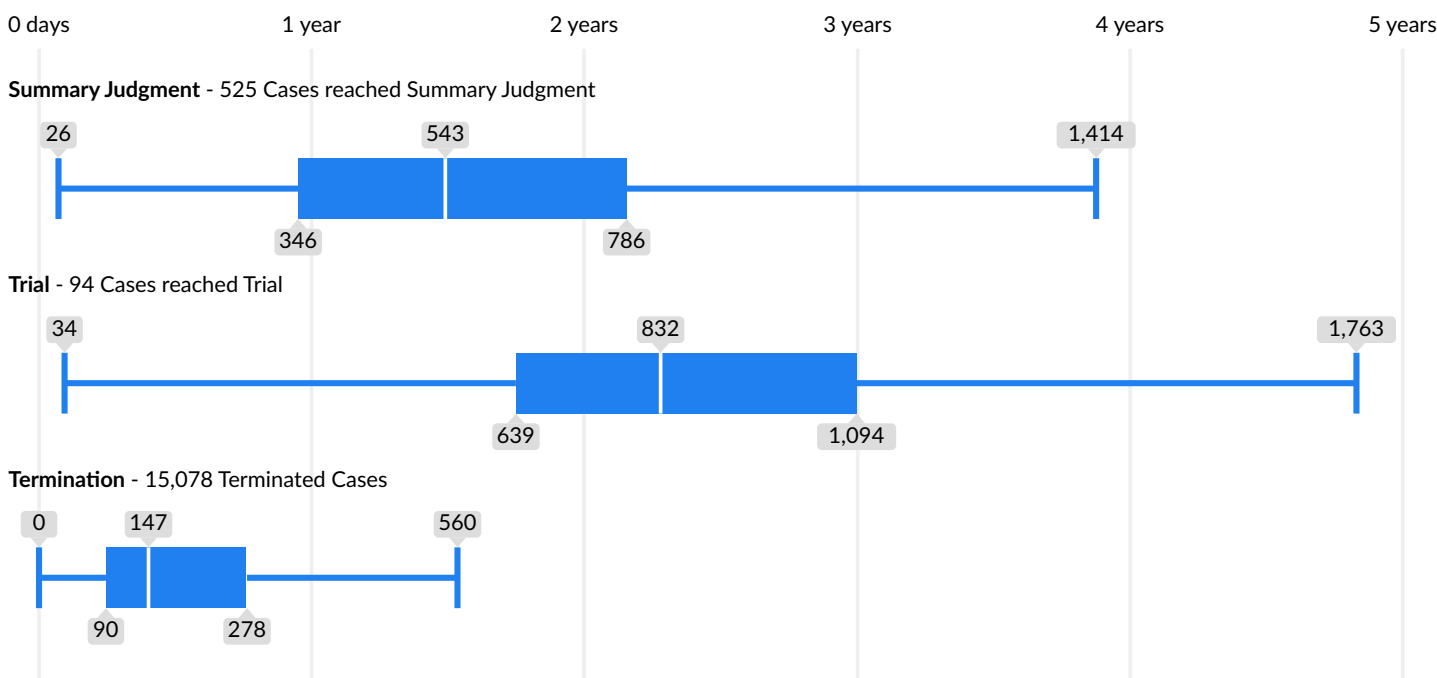
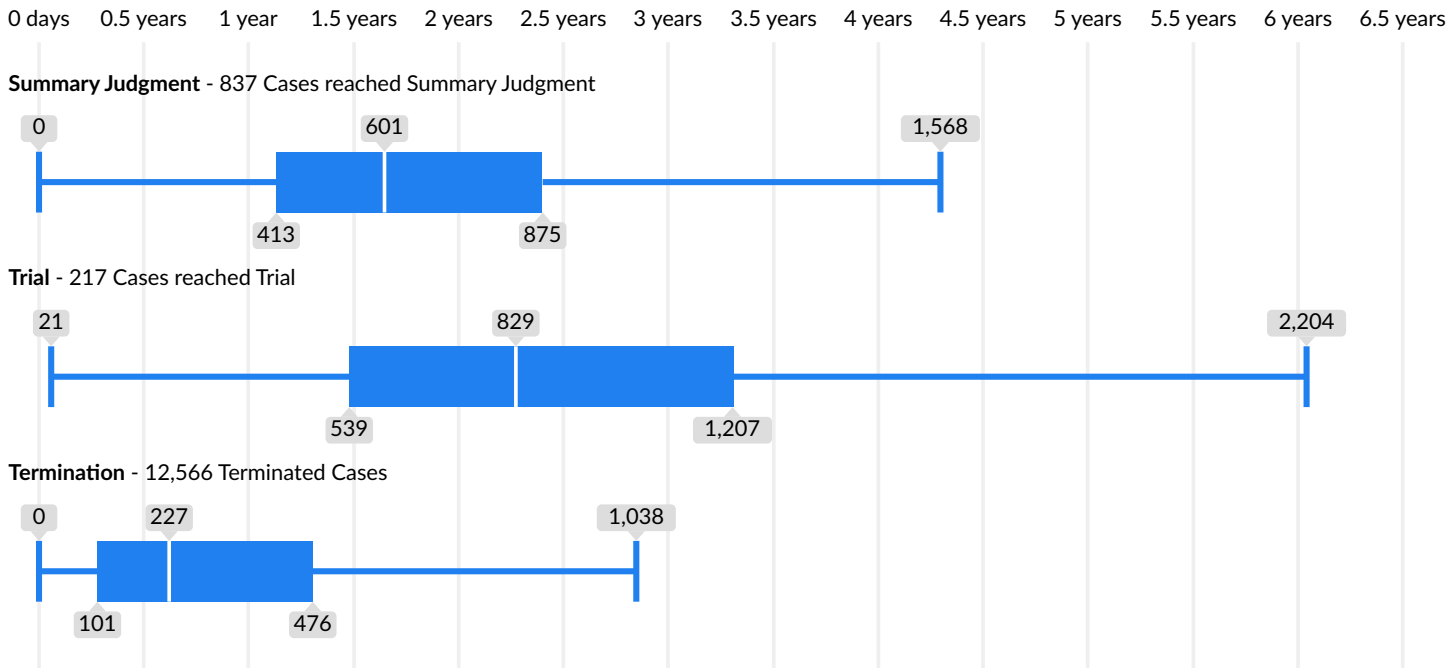


Figure 19: Time to Events for Trademark Cases Terminating 2018 to 2020



## Case Resolutions

This section includes case resolutions for copyright and trademark cases terminated in the last three years. Settlements and procedural resolutions are on the right with the parties' wins on the left. The first figure shows copyright cases, which settled 82% of the time, one of the largest proportions of settlements in any Lex Machina practice area. The second figure shows trademark cases, which settled only 56% of the time. Both copyright and trademark have large numbers of default judgments, but trademark cases have a particularly high number of cases that resolved with a default judgment (15%) due to the mass counterfeiting cases.

Looking at cases that resolved on the merits, copyright cases had more cases that resolved with a claim defendant win during a judgment on the pleadings than during summary judgment. Often judges will determine there is no substantial similarity or copying on a motion to dismiss in copyright cases. Claimants and claim defendants won pretty evenly in copyright cases that resolved at summary judgment (83 vs. 85 cases). However, claimants won over four times as often as claim defendants in copyright cases that resolved at trial (58 vs. 13 cases).

In trademark cases, cases most often resolved on the merits at summary judgment, with claim defendants winning more often than claimants (154 vs. 118 cases). However, claimants won twice as often as claim defendants in cases that resolved at trial (118 vs. 47). As this figure looks at the way cases terminated, defendants are likely to have more judgments on the pleadings and summary judgments that resolved the case due to the nature of those proceedings. Often the case will go on if the claimant wins at those stages of trial.

Figure 20: Case Resolutions for Copyright Cases Terminating 2018 to 2020

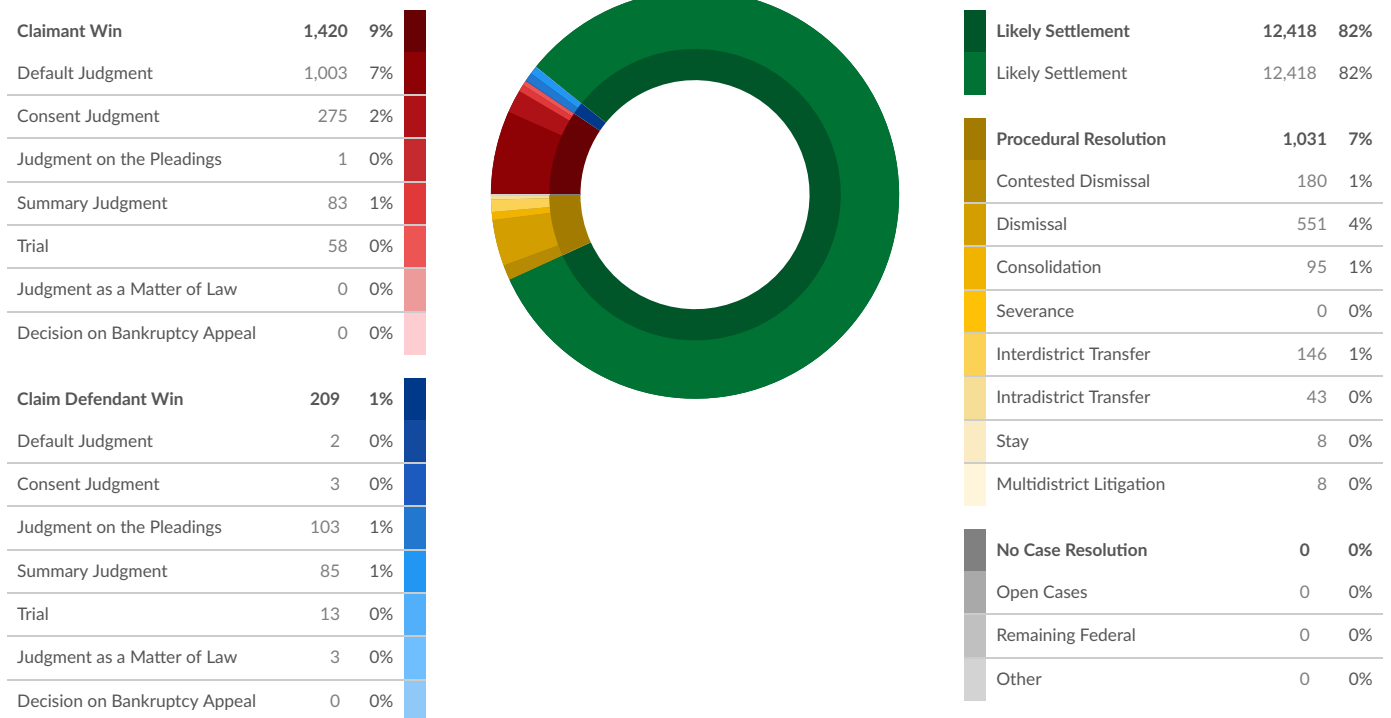
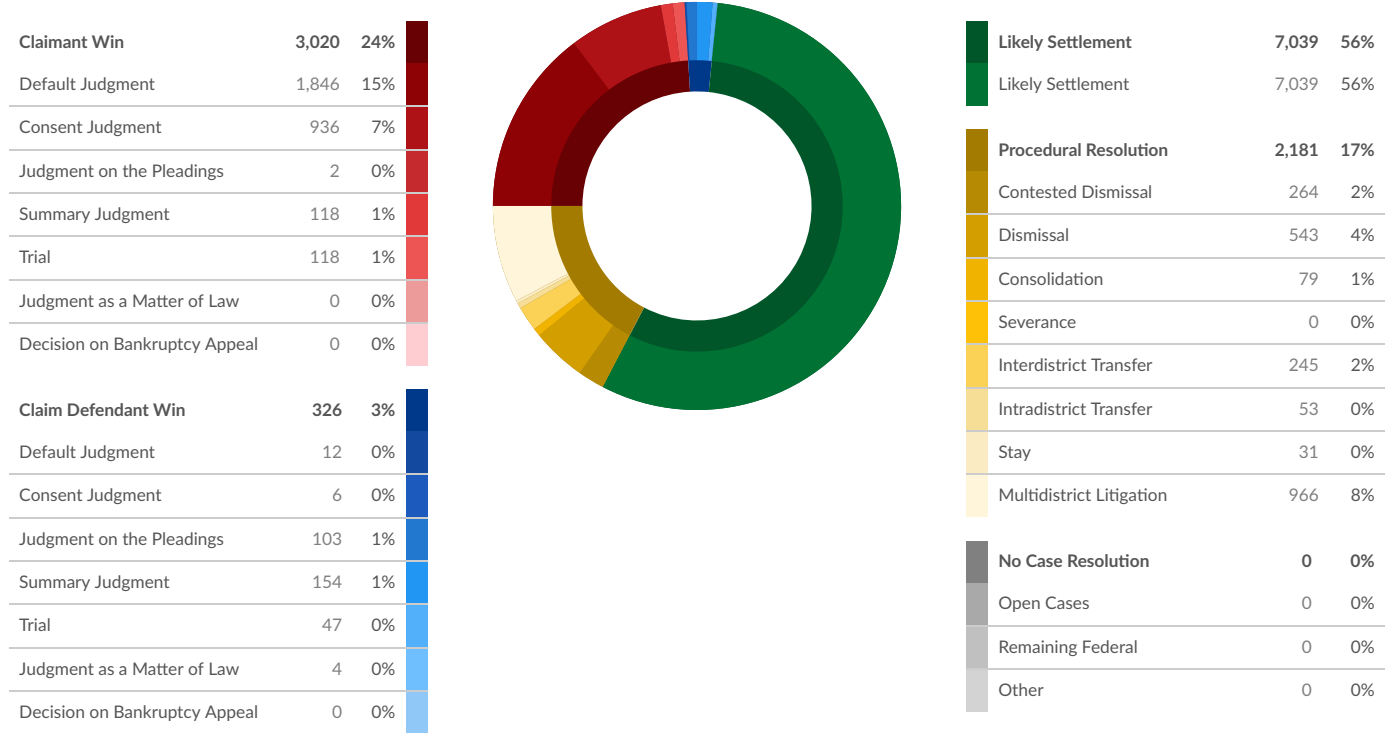


Figure 21: Case Resolutions for Trademark Cases Terminating 2018 to 2020





## Findings

The first figure in this section shows the number of cases with a copyright or trademark finding at various judgment events over the last three years, as well as the percentage change between each year. In particular, this table helps analyze how court activity changed due to, or in spite of, the pandemic. The number of cases with a finding decreased at almost every event, with the exception being cases with a finding during a judgment on the pleadings, which increased slightly between 2019 and 2020. It's no surprise that findings at trial dropped the most, with 52% fewer cases with findings at trial in 2020 than in 2019.

The next two figures in this section show the number of cases with a finding at various events in copyright and trademark cases. Infringement was the key claim in both copyright and trademark cases. These practice areas had large numbers of cases with infringement findings at default judgment: 1,026 copyright cases and 1,925 trademark cases. While the majority of those cases with infringement findings at default judgment also had willfulness findings in trademark, about half had willfulness findings in copyright.

Looking at cases with findings on the merits, there were 86 copyright cases with findings of “No Infringement” during a judgment on the pleadings. Judges will often find that there is no substantial similarity or copying in granting a motion to dismiss in copyright cases. Findings at summary judgment and trial are more informative on many issues. Some claims or issues in these practice areas were relatively even in terms of findings at these stages. For example, when looking at cases that terminated in the last three years, courts found that the claimant owned or had a valid copyright in 37 cases at summary judgment and also found the claimant did not own or have a valid copyright in 33 cases. In copyright cases, courts found in favor of claimant more often than claim defendant at trial. Courts found infringement in 44 cases versus 18 cases with a finding of no infringement at trial. The only exception was fair use, but the numbers were very low: two cases had findings of fair use and one case had a finding of no fair use at trial.

In trademark cases, courts also made large numbers of findings during a judgment on the pleadings, but not quite at the same proportion as in copyright cases. At summary judgment, courts found in favor of claim defendant more often than claimants for most issues. The spread is particularly pronounced with false advertising, where courts found there was no false advertising in 79 cases at summary judgment versus only nine cases with a finding of false advertising. Claimants often obtained findings in their favor at trial, but it is a bit more even. Courts found trademark infringement or false designation of origin at trial in 56 cases versus 43 cases with the reverse finding.

**Figure 22: Cases with Copyright or Trademark Findings by Judgment Events from 2018 to 2020**

Judgment Type	2018	2019	Change	2020	Change
Any	1,226	1,480	21%	1,376	-7%
Default Judgment	786	1,017	29%	993	-2%
Consent Judgment	118	109	-8%	95	-13%
Judgment on the Pleadings	94	105	12%	107	2%
Summary Judgment	194	202	4%	162	-20%
Trial	60	66	10%	32	-52%

Figure 23: Cases with Copyright Findings in Cases Terminating 2018 to 2020

Findings	Default Judgment	Consent Judgment	Summary Judgment	Judgment as a Matter of Law	Trial	Any Judgment Event	
Ownership / Validity	9	6	1	37	21	0	73
No Ownership / Validity	2	0	34	33	9	1	78
Infringement	1,026	118	0	72	44	0	1,221
No Infringement	6	4	86	83	18	1	197
Willfulness / Bad Faith	457	22	0	12	17	0	506
No Willfulness / Bad Faith	0	1	0	4	4	0	9
License or Equitable Defense	0	0	5	13	4	1	22
No License or Equitable Defense	0	0	3	30	5	0	37
Fair Use Defense	0	0	14	20	2	0	36
No Fair Use Defense	0	0	1	21	1	0	23

Figure 24: Cases with Trademark Findings in Cases Terminating 2018 to 2020

Findings	Default Judgment	Consent Judgment	Summary Judgment	Judgment as a Matter of Law	Any Judgment Event Trial		
Ownership / Validity	9	43	0	33	25	0	109
No Ownership / Validity	10	1	27	69	17	3	126
Trademark Infringement / False Designation of Origin	1,925	193	0	75	56	0	2,210
No Trademark Infringement / False Designation of Origin	16	4	95	127	43	7	287
Dilution	195	38	0	11	5	0	246
No Dilution	3	1	20	15	5	0	44
Cybersquatting	247	8	0	13	3	0	266
No Cybersquatting	2	1	9	6	7	0	24
False Advertising	104	15	0	9	23	0	149
No False Advertising	3	0	80	79	10	0	168
Willfulness / Bad Faith	1,382	13	0	17	29	0	1,436
No Willfulness / Bad Faith	0	0	0	3	7	0	10
License or Equitable Defense	0	0	1	11	7	1	20
No License or Equitable Defense	0	0	5	32	13	1	51
Fair Use Defense	0	0	5	8	1	0	14
No Fair Use Defense	0	0	1	4	6	0	11

## Damages

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The first figure reflects total copyright and trademark damages awarded each year (excluding fees, costs, and interest) over the past ten years. The awards were based on the district court's initial decision before appeal and are not adjusted for inflation. The figure shows the number of cases with damage awards each year and the total copyright or trademark damages awarded that year. The second and third figures in this section show the total damages awarded from 2018 to 2020 by damage type and judgment event.

Copyright damages jumped in 2018 due to large default judgment awards totaling over \$2 billion in *Sony/ATV Music Publishing, LLC et al v. 172902 Ontario, Inc. et al.* Then in 2019, a jury verdict for \$1 billion was awarded in *Sony Music Entertainment et al v. Cox Communications, Inc. et al.*, which is currently stayed while on appeal. Looking at copyright damages by damage type, statutory damages were most common with nearly \$3.4 billion in statutory damages awarded in the last three years including nearly \$2.3 billion awarded on default. There was over \$1 billion in statutory damages awarded by jury verdict or on the merits, but that is almost entirely due to the *Sony* case mentioned above. Cases decided on the merits (such as bench trials and summary judgments) had a large number of attorneys' fees and costs awards. They also had more actual damages/infringer's profits than statutory damages awards.

Trademark damages are unique in Lex Machina's system, because a large number of cases include mass counterfeiter default damages. While these are common, they did not skew the numbers below. To illustrate how common these are, 395 cases had mass counterfeiter default damages awarded in 2020 versus only 169 cases with statutory damages awarded under the Lanham Act in 2020. These were not counted in the aggregate numbers below because the damages were awarded per defendant (e.g., \$50,000 per defendant) and the ultimate number of defendants remained uncertain. Beyond mass counterfeiter default damages, there are still large default judgments that affect trademark damages.

While there are fluctuations each year in the amount of damages awarded, the number of cases has remained relatively steady since 2013. The increase in damages in 2013 is due to the damages awards of over \$900 million in *Apple Inc. v. Samsung Electronics Co. Ltd. et al.* These awards are considered other/mixed in Lex Machina because they "compensate Apple for both trade dress dilution and patent infringement." The award was overturned at the Supreme Court and later retried.

Similar to copyright, courts awarded \$5.3 billion in trademark statutory damages with \$4.9 billion awarded on default. Taking into account that these numbers did not include mass counterfeiter default damages, trademark sees an astounding amount of default damages compared to other practice areas. In this practice area, actual damages/infringer's profits were higher than statutory damages in both jury verdicts and decisions on the merits by judges.

Other/mixed damages were also common in these practice areas, particularly in overlap cases where a judge doesn't specify whether the damages are under the Copyright Act or the Lanham Act, but rather awards a "statutory" lump sum somehow related to both claims.

*Figure 25: Total Copyright and Trademark Damages Awarded from 2011 to 2020 (Excluding Fees and Interest)*

Year	Copyright Cases	Copyright Amount	Trademark Cases	Trademark Amount
2020	349	\$560,627,648	252	\$336,964,088
2019	328	\$1,251,590,864	283	\$1,024,626,539
2018	307	\$2,324,683,099	273	\$1,306,580,829
2017	277	\$247,879,166	240	\$460,386,431
2016	315	\$146,730,533	224	\$661,838,164
2015	238	\$405,367,494	254	\$838,132,122
2014	275	\$232,872,839	291	\$635,066,622
2013	241	\$239,871,904	253	\$2,060,764,882
2012	214	\$487,385,504	290	\$724,793,320
2011	223	\$97,656,558	406	\$447,939,904

Figure 26: Total Copyright Damages by Type Awarded from 2018 to 2020

Name	Cases	Total Awarded	DFJ	CJ	Verdict	Merits
Actual Damages / Infringer's Profits (Copyright)	67	\$230,999,003	\$16,368,777	\$124,425	\$202,427,462	\$12,078,339
Statutory Damages (Copyright)	838	\$3,382,304,780	\$2,293,314,121	\$4,997,500	\$1,082,169,304	\$1,823,855
Other / Mixed Damage Types	86	\$523,597,828	\$132,094,308	\$101,686,987	\$289,132,192	\$684,341
Attorneys' Fees / Costs	729	\$48,618,914	\$10,653,958	\$4,362,373	\$400	\$33,602,183
Prejudgment Interest	17	\$5,311,759	\$1,434,291	\$218,120		\$3,659,349

Figure 27: Total Trademark Damages by Type Awarded from 2018 to 2020

Name	Cases	Total Awarded	DFJ	CJ	Verdict	Merits
Actual Damages / Infringer's Profits (Trademark)	747	\$1,332,489,232	\$712,223,944	\$18,662,938	\$350,025,990	\$251,576,361
Statutory Damages (Trademark)	2,077	\$5,310,295,515	\$4,930,660,569	\$88,688,482	\$99,694,000	\$191,252,464
Enhanced Damages (Trademark)	220	\$738,311,355	\$627,166,088	\$11,696,588	\$11,393,400	\$88,055,279
Other / Mixed Damage Types	797	\$2,328,256,772	\$366,149,440	\$801,420,294	\$495,915,601	\$664,771,437
Attorneys' Fees / Costs	3,614	\$344,642,281	\$94,782,385	\$10,002,108	\$400	\$239,857,388
Prejudgment Interest	327	\$139,528,083	\$12,664,767	\$1,072,949	\$14,037	\$125,776,330

## Data and Methodology

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This report presents data from Lex Machina's Legal Analytics platform. Using machine learning and technology-assisted attorney review, raw data is extracted from sources including PACER. The raw data is then cleaned, tagged, structured, and loaded into Lex Machina's proprietary platform. This report is prepared by the Lex Machina Product Team using charts and graphs from the platform. Commentary is provided by Lex Machina's legal experts.

Lex Machina supplements and corrects primary data from PACER in a variety of ways, including:

- Correcting errors ranging from spelling mistakes to complex data problems.
- Normalizing data on judges, parties, law firms, and attorneys.
- Extracting records of law firms and attorneys not found in docket reports.
- Tagging and categorizing cases.
- Annotating case resolutions, damages, and dispositive rulings.

### What Kinds of Data Does Lex Machina Offer?

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Lex Machina maintains a specialized database containing information about litigation in U.S. District Courts, several state courts, the U.S. Patent and Trademark Office's Patent Trial and Appeal Board, and the U.S. International Trade Commission. On a daily basis, Lex Machina requests and receives data from the various district courts' PACER systems on new cases and docket entries filed. Lex Machina's automated systems ensure the completeness and consistency of this data before analyzing it in conjunction with other data sources.

Lex Machina's litigation data does not include appeals or modifications of judgments on appeal.

This document was published in June 2021. The Lex Machina platform updates daily; therefore, any numbers in this report will change as new cases get added to PACER with new information. This report is meant to provide trends and general research information as of the date of publication.

#### What is a Copyright case?

A case with one or more claims of copyright infringement brought under 17 USC § 101.

#### What is a Trademark case?

A case with one or more claims under § 43 of the Lanham Act (15 U.S.C. § 1125), including trademark infringement, false designation of origin, false advertising, trademark dilution, cybersquatting, or unfair competition.

#### What is a File Sharing case?

Copyright cases involving claims of infringement for BitTorrent/P2P file sharing brought against anonymous John Doe defendants or anonymous defendants' IP addresses.

#### What are the Trademark case tags?

Lex Machina uses machine learning and natural language processing to create case tags that identify certain claims in a case. In trademark, case tags to identify these common types of claims include:

**Cybersquatting** — Trademark cases involving claims of cyberpiracy prohibited by the Lanham Act 15 U.S.C. § 1125 (d).

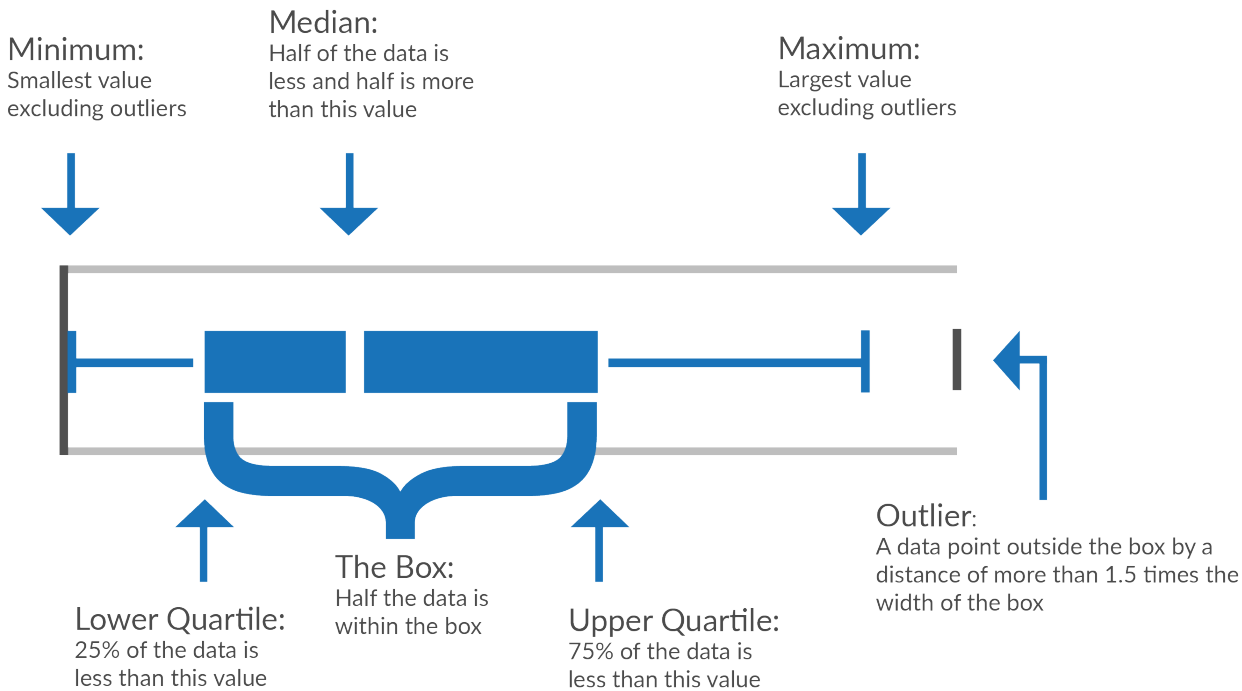
**Dilution** — Trademark cases involving claims of trademark or trade dress dilution prohibited by the Lanham Act 15 U.S.C. § 1125 (c).

**Mass Counterfeiting** — Trademark cases that allege counterfeiting against a large number of defendants. For this tag to apply to a case, the case must allege counterfeiting and meet one of the following criteria: 1) there are 20 or more defendants, 2) the case has only anonymous Doe defendants, or 3) the defendants are listed on an attached schedule.

## Understanding Box Plots

Lex Machina's analytics use a data visualization known as the box plot to convey information about the timing of significant events in a case. A box plot summarizes a series of data points to help you understand the shape or distribution of the values in those points. The box plot is drawn based on five numbers: the median, the upper and lower quartiles, and the whiskers for a distribution.

*Figure 28: Paying attention to these key parts of the plot will help you quickly understand what you need to know.*



The four observations below explain the significance of a box plot:

### Median

The middle dividing line of the box splits the data points evenly so that 50% fall to either side. It's a form of average that gives a single number representation of what to reasonably expect.

### Box bounds

The box encloses the middle-most 50% of the data points (from the 25th percentile to the 75th), with 25% of the data points falling outside to either side. This makes the box a good representation of the range one can reasonably expect.

### Box compressed or elongated

A more compressed box means that more data points fall into a smaller range of time and therefore are more consistent; in contrast, a longer box means that the data points are spread out over a wider time period and are therefore less predictable.

### Whiskers

Whiskers are drawn to show the outside bounds of reasonable expectation, beyond which data points are considered outliers. By statistical convention, box plots define outliers as points beyond more than 1.5 times the width of the box (sometimes called the "interquartile range").