

LAWDRAGON



THE PLAINTIFF ISSUE



Kalpana Srinivasan
SUSMAN GODFREY (LOS ANGELES)

KALPANA SRINIVASAN

BY KATRINA DEWEY

HERE'S THE THING ABOUT WONDER WOMAN:

She's fiction. From 1941. But the notion of the beautiful, brilliant woman who has – and does – it all is powerful.

"It's just a setup for disappointment and failure, because when does anybody have it all, and what does it even mean to have it all?" asks Kalpana Srinivasan, a Susman Godfrey partner and force of nature.

To many who know or have met her in court, Srinivasan very much fits the mold. After graduating from Stanford Law School in 2004 and clerking with the late esteemed 9th Circuit Judge Raymond Fisher, she joined Susman and rocketed up the ranks to partnership in Los Angeles in four years. She secures court appointments as lead counsel in class actions, and recently won a nearly \$1B intellectual property case for House Canary, a disruptor in the real estate industry. She's bringing structural relief to the music industry, while representing artists whose master recordings were destroyed – and routinely does deep dives into complex new technology for an array of IP cases.

In her "spare time," Srinivasan relaxes with complicated modern dance choreography and nods off reading bedtime stories to her son.

Lawdragon: You're handling some fascinating cases in the entertainment industry these days. Let's talk about some of them.

Kalpana Srinivasan: We just finished a case for Universal Cable Productions, which produced the TV show "Dig," for the USA Network. Dig was being filmed in Israel in 2014 when three Israeli teenagers were kidnapped and later found dead. When the deaths were attributed to Hamas, it retaliated with rocket fire targeting Jerusalem and Tel Aviv where the show was being filmed.

Universal's security team could no longer guarantee the security of the crew and cast on the ground – there were Universal crew members taking shelter in bunkers – so they had to move production to New Mexico and Croatia. When Universal sought coverage from its insurer, Atlantic Specialty Insurance Company, they were turned down. Atlantic cited act of war exclusions saying it did not have to pay.

LD: Why bother buying insurance if you aren't protected in situations like that.

KS: Exactly. And that's what the 9th Circuit held, that this was not an act of war at all as it did not involve fighting between two sovereign nations – Hamas was not a sovereign entity and has long been deemed a terrorist organization by the U.S. State Department. And Universal had specifically negotiated for coverage in the event of acts of terrorism.

LD: What do you enjoy about a case like "Dig"? You handle cases with far greater dollar amounts, but the entertainment cases are always so interesting.

KS: It was really fascinating to focus on this tight-knit sequence of events – from the pre-production planning for Dig through the rocket fire attacks in Israel to the insurer's decision to deny coverage. We were set to try a case laying out that story and whether the insurer acted in bad faith by denying coverage after the liability issues had been resolved in our client's favor.

The trial date originally overlapped with the appeal in the HouseCanary matter in San Antonio but the trial was continued a few weeks, making it possible for me to both argue the appeal and get ready to open at trial. The Dig case then settled the night before trial. It was a wild few weeks in lawyer life right before Covid and the lockdowns hit.

LD: Will you talk a bit about the class-action case that you won against SiriusXM on behalf of Flo & Eddie, which owned the rights to "Happy Together" and other recordings by The Turtles and the Pandora case you are still pursuing?

KS: We represented a class of individuals and groups that made sound recordings before 1972. When we originally started working on that case, there was a gap in the law. The post-1972 sound recordings were covered by federal copyright law, but pre-1972 recordings were not. So there was an open question about whether California law entitled the owners to royalties from public performances of pre-1972 sound recordings.

The district court found that a public performance right existed entitling the artists to royalties and certified a class. Effectively, it became a class where liability had already been determined, because there's no question that SiriusXM was playing those pre-1972 sound recordings but took the position that they basically could just play them for free.

We obtained a settlement with SiriusXM so that all the class members got royalties and are continuing to get royalties under California law. SiriusXM retained the right to take the underlying question up on appeal, which is, does this performance right exist?

It's been a long, interesting story, and in the middle of all of it, the Music Modernization Act came out, which confirmed that, yes, if you have a sound recording from pre-1972, you are entitled to royalty protection for that. So, the federal law has tried to now address this gaping hole that existed in the patchwork of state and federal law on copyright issues, but it doesn't fully resolve all the claims at issue. We still have the appellate issue hanging out there.

We have another action for Flo & Eddie against Pandora that has bounced through the 9th Circuit, the California Supreme Court and is now back in district court. The impact of the Music Modernization Act is playing out in that forum.

LD: You've made some real strides in helping musicians get fairly compensated in this digital age.

KS: What's interesting is that, in the big picture, we're helping out all parties in the equation. We brought a copyright case against Spotify, which doesn't have the legally complex question of whether the right exists or not. It was just a straight-up copyright infringement class action. Again, Spotify was streaming these compositions, streaming songs, and what happens is there's a lot of copyrights that go into a piece of music: the sound recording, the composition. Making sure every rights-holder gets compensated before you start streaming on a digital platform where there's so much music is more complicated than people might imagine.

In that case, there were people who weren't getting paid for their compositions. They had federal copyrights, registered copyrights, and they were not getting paid for them. We settled that case on a class-wide basis, before class certification. It enabled all of us going forward to think about how Spotify and others can do a better job of making sure they identify who needs to get paid and getting them paid.

That settlement is in process. People are in the process of claiming their rights and getting compensated. As they go and claim, they enter all of this information about their composition, their identity, how to reach them, to try and cure the problem on a going-forward basis. We were able to create structural relief for Spotify, by getting them this information from class members that they want. They want to make sure they're paying people. They just don't

know how to do it. So, we're building an informational database for them to resolve that going forward.

LD: Through your career, including going back to your time as a journalist for the Associated Press, you've seen technology and its impact on businesses kind of outstrip the ability of existing structures to keep up. When people conceived of a Spotify, just for example, it wouldn't shock me that they wouldn't foresee all of the rights-holders that they would need to compensate.

KS: Right. The class action gave Spotify an opportunity to try to figure out how to fix this systematically.

LD: Meanwhile, it just wouldn't be economically worthwhile for the vast majority of the artists to try to bring individual lawsuits.

KS: Absolutely. It doesn't make sense for them to do that. There may be some artist out there who has the wherewithal and wants to make the point, or somebody who has some enormous catalog, but in reality, many of them don't. In the pre-1972 cases, for example, the major labels had their own settlement, but that left artists who weren't on a major label without any real negotiating power to make sure they got paid. There, the ability to bring those cases on a class-wide basis is even more important, and in the Spotify case, we were able to do some calculations that showed we had done better for our class members than the major labels did. It shows the quintessential value in being able to bring class-action cases.

We also have a putative class case against higher education publisher Cengage which has sought to move college coursebooks and other materials into online platforms from physical textbooks. But the company has done that without paying the contractual royalties it originally negotiated with authors – mostly professors. It's an example of trying to force these technological changes without having a plan for addressing existing legal obligations.

LD: You're practicing at an amazing time of change and turbulence in the intersection of technology and the law.

KS: It's an area where you see the struggle and the importance of people having a remedy for being wronged, then you help to make the law better by having these fact-intensive cases where courts see this is how an issue is playing out. This is how copyright law is playing out when you now have digital streaming services.

You can show that it's not quite what Congress may be intended when they wrote a law that applied to broadcasters and selling a CD at a store. They didn't

think that CD would then be played for millions of people on a streaming service where somebody collects a lot of revenue for it and pays nothing to the original artist. Or when authors signed contracts to get royalties for their books sold – they did not expect to get a fraction of those royalties just because their works are now bundled with other offerings online.

Law is not an abstraction, so how do you make sure the law is addressing what's happening in the real world? I think it's important for the courts to see what is playing out factually in these markets and these businesses because that's what gives legs to whatever legal decision they are going to make.

LD: You're a real voice of now. There are these forces that have out-sized influence trying to keep things as they were. It's so critical to have lawyers making it coherent how things have evolved and making sure the law recognizes that.

KS: And to give context. People know, for example, "Hey, I'm in California. If I have employees, I can't really write up some noncompete agreement that keeps them from going to work for a rival, because that's not the way the law is here." So what else can they do to make sure that somebody is not going to take their stuff and run off and use it in another business?

It's an area where the specific facts of a case can help give depth to the law: Maybe somebody goes to a competitor, and you can't go after them for violating a noncompete agreement. But if they took 10 USB drives with them filled with their prior employer's data – which is again a very common scenario we see now in California – how do you handle that? There's an interplay between what the law permits and what's really happening. You can be part of determining how that changes and develops. There's a lot going on. Seeing it play out in different areas has been great, both on the entertainment, music, copyright side, and then on a more traditional patent-protection side. There haven't been too many dull moments.

LD: I was going to ask if you ever sleep, but I think I know the answer.

KS: I do sleep. I would say last year and now with Covid I've tried to go back to some things that I like to do which, frankly, more than anything, is just to keep my brain fresh.

LD: Such as?

KS: I like to dance, modern dance. I've been going to a dance studio over the past year or so. Some of the dancing is really challenging and requires you

to have mental focus. It's so easy to try to "do something" or have an activity, but find that the activity is not compelling enough to force you to shut off the other things. I like to have an activity where there's a little bit of challenge – and a lot of fun, too. Some of the classes that I go to, you have to learn specific choreography. If you don't pay attention, you will be behind. I have kept up with that while sheltering at home because most of my instructors are still teaching on Instagram or Zoom or other online platforms.

LD: That's so fun. We need full-contact pastimes.

KS: Sometimes just stepping away from what you're doing and immersing yourself in something else that you enjoy, you come back with better ideas, clearer ideas, maybe different ways to approach a problem that you have. I think the challenge has been finding a good activity that forces me to create that distance, but I certainly have been working on that.

I know there are people who like to meditate. I can do that once in a while, but perhaps I lack the discipline. My mind will be in a thousand places, and sometimes I don't come out feeling like, "Oh, my brain is really fresh and clear." It's like, no, I've been thinking about what I have to do this weekend or whether I responded to that email. Especially now. I'm fortunate to have so many different kinds of cases, so many interesting, very busy, active cases, but of course, that means lots of calls, emails, different fire drills happening at any given moment. I think to keep your sense of calm so that those things keep moving forward, no matter how many of them there are, you do need to have a little space where you can get away mentally.

I've done a lot of work on trying to retool how I manage doing that. I'm thinking only about the choreography for that hour, which trains my mind to focus really intensely for a period of time on one thing and then move onto something else. That was really helpful especially in getting ready for the HouseCanary appeal, which was a deep dive into a large record, to step away and come back to the prep with new ideas and ways to approach the argument.

Sharpening that skill remains very much needed during this time when we are working and sheltering at home. The work can expand to fill the days and the personal and familial demands – physical and emotional – are more complicated than ever. Taking a break for a virtual dance class or a workout feels like both a luxury and a necessity to keep focused on the work and build some fortitude to handle whatever else might happen in a day.