

Media & Entertainment Group Of The Year: Covington

By Tiffany Hu

Law360 (January 31, 2020, 2:00 PM EST) -- Covington & Burling LLP advised Disney through the antitrust regulatory process for its \$71 billion deal with 21st Century Fox and represented major record labels in copyright lawsuits against Charter Communications over music piracy, earning the firm a spot as one of Law360's 2019 Media & Entertainment Groups of the Year.

The firm, which has more than 100 attorneys in the communications and media industry group, has been growing "quite a bit," with an increased presence on the West Coast and in New York, according to practice group co-chair Matthew DelNero.

"We've historically had a strong regulatory core and continue to have that, but I think at this point we feel like we're at the right scale, and you see that in the types of clients we work with," DelNero said. "We're able to serve those clients because we've invested so much in the practices."

Robyn Polashuk, who co-chairs the group with DelNero, said the firm's "seamless and collaborative" practice is in part because of its compensation model, which she said allows them to "bring all kinds of support to our clients, without any friction in connection with some of the economics."

"It really does create a supportive environment for clients that can call anybody who they feel has the right answer for them, to pick up the phone and get an answer on any issues that may grow out of their deal," she said.

One of the major transactions that Covington worked on was Disney's blockbuster deal for Fox's assets, including film and television studios and television networks.

"We handled the process of regulatory approval both in the U.S. in something like six months — which is pretty extraordinary — as well as in some other countries, and moved that deal through pretty efficiently," Polashuk said.

Covington also handled the investigation before the U.S. Department of Justice, which signed off on the transaction in June 2018 after Disney agreed to sell 22 regional sports networks owned by Fox. The transaction closed in March.



The firm additionally represents various units of Universal Music Group, Sony Music Entertainment and Warner Music Group — the so-called Big Three music companies — in a copyright lawsuit filed in March that claims Charter is committing infringement by letting its users pirate music.

Rather than working with the labels to curb the problem, Charter chose "to prioritize its own profits over its legal obligations," ignoring hundreds of thousands of statutory infringement notices from the record labels, according to the lawsuit. As a result, Charter has operated its service as "an attractive tool and safe haven for infringement," the companies said.

The case was the latest in a series of similar lawsuits, which represent a novel legal tactic from music owners who have long complained that internet service providers, or ISPs, like Charter don't do enough to stop illegal downloading.

While other courts have rejected claims of vicarious infringement, which asks merely whether an ISP gained direct financial benefit from infringement, a magistrate in October issued a recommendation in Charter's case that said the vicarious claim could potentially hold water. The judge said Charter drew infringers to its service with promises of fast speed and loose rules — meaning the ISP might have directly benefited from such infringement.

Neema Sahni, a partner in the firm's Los Angeles office, said the team is "deep in discovery" in the lawsuit against Charter, noting that the case has shown to be important for the industry.

"There have been a couple of verdicts that are significant, and it shows that this is really a place where the music industry had just a tremendous amount of its music illegally downloaded by its users, and the ISPs — at least the defendants in this case — were doing nothing to stop it," she said. "We're really pleased and proud to represent [our] clients."

In addition to its recent growth, Covington has also been focusing on diversity and inclusion efforts, DelNero said, pointing out that the firm recently had its most diverse partnership class in its history, the 14 lawyers included nine women and six who are from ethnically diverse backgrounds, he said.

"We feel that the media and entertainment industry is growing more diverse, and we're growing more diverse with them," DelNero said. "And that's certainly something we hear a lot from our clients: both how important it is to them, and that they appreciate the intentionality we're bringing to our diversity efforts."

--Additional reporting by Bill Donahue. Editing by Orlando Lorenzo.