

Technology Group Of The Year: Covington

By J. Edward Moreno

Law360 (February 11, 2022, 2:01 PM EST) -- The technology practice at Covington & Burling LLP scored several precedent-setting victories in federal court and helped clients navigate the nascent world of nonfungible tokens, or NFTs, in the past year, earning the firm a place among Law360's 2021 Technology Groups of the Year.

Louise Nash, chair of Covington's technology industry group, told Law360 she credits much of the practice group's success to its broad reach, which allows it to deal with matters ranging from mergers and acquisitions to compliance and litigation. The practice group has its roots in compliance counseling, which allowed the practice to grow as technology companies pioneering novel marketplaces have to maneuver through new government regulations. The firm has also been at the forefront of driving those new laws, Nash said.

Covington's technology group comprises more than 500 lawyers representing more than 1,000 technology clients spanning the firm's offices in the U.S., Europe, the Middle East, Asia and Africa.

"Our practice is incredibly broad, so it touches litigation, and it also touches the full range of regulatory issues that are coming up in the context of emerging technologies or new applications for technology," Nash said.

Data privacy has been one of the most prominent spaces in which Covington attorneys have helped clients navigate. Lisa Peets, a Covington partner who advises clients on data protection matters, told Law360 that's changed drastically since she first started practicing in this space, when the primary regulatory framework that clients were focused on was intellectual property.

"But with the advent of more robust data protection laws, in particular in Europe, that has changed and now data protection and privacy has been central in many compliance matters," Peets said.

Another new area for some Covington clients is NFTs, which have been around since 2015 but have exploded in popularity much more recently. Covington attorneys working with financial technology clients have worked on NFT-related business since at least 2017, which put them in a great position to begin advising clients when NFTs began gaining popularity in the content industry in 2021.



"It was new for [Covington clients], but luckily for us, we had folks that were already familiar with blockchain technology and even NFTs specifically," said Adrian Perry, a partner and co-chair of Covington's music industry practice group. "Just applying that knowledge from the fintech world into the entertainment world has led to some fun collaborations."

Perry said the area is exciting to work in because they're helping to develop what NFT contracts should look like, because there is currently very little in the way of regulatory guidance or established industry standards right now. Alongside other Covington partners, Perry has advised Fox Entertainment and Sony Music Entertainment, among others, as they launch their NFT marketplaces.

The "full service" nature of the firm has been invaluable in maneuvering that new space, Perry said.

"You have to attack this thing from all angles and let clients move forward with confidence in this new area," Perry said. "And to do that you have to have all these different folks coming together as a unit to provide that advice."

In the past year, Covington has served as lead counsel to Facebook Inc., recently renamed Meta Platforms Inc., in handling two high-profile proposed class actions brought by former content moderators in California and Florida federal courts.

The moderators claimed that the online content they were required to view caused them psychological harm for which Facebook should be held liable. A Florida federal judge in May dismissed these claims with prejudice, ruling that they hadn't shown that the social media giant and the contractor that employed them had concealed the risks of trauma, while the parties in the California suit recently obtained final approval of a \$52 million settlement that covers all content moderators employed by Facebook's vendors in four states.

Ashley Simonsen, a Covington litigation partner and Law360 2021 Class Action MVP, called it a "multidisciplinary effort" that required support from the firm's employment team and attorneys counseling companies on their content moderation policies and practices.

At the time, Covington was the first firm to represent a technology company against this type of class action, Simonsen said, and since then at least two more similar lawsuits have been filed against major technology companies.

"In any case, when you're on the frontier you're going to be kind of laying the groundwork for arguments that are likely to be presented in future cases," Simonsen said.

Covington also represented TikTok Inc. and its Chinese parent ByteDance Ltd. after former President Donald Trump issued an executive order in August 2020 attempting to ban the popular video-sharing app based on data privacy concerns. Trump's order alleged that TikTok "automatically captures vast swaths of information from its users" and shares it with the Chinese government.

Covington was ultimately able to obtain multiple injunctions blocking the ban, and President Joe Biden eventually revoked the Trump order that sought to ban the app. According to Alexander Berengaut, a Covington partner and Law360 2021 Cybersecurity & Privacy MVP who led the team working on the dispute, at issue in the case were limitations set forth in the International Emergency Economic Powers Act that protect personal communication and the exchange of ideas.

"These limitations long predated apps like TikTok, and interpreting those limitations in this new technological context made the case particularly novel," Berengaut said.

--Editing by Andrew Cohen.

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