

A Law Student's Perspective

Sports and Entertainment General Counsels

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The United States sports and entertainment industries are the largest in the world. These industries in the United States represent a third of the global sports and entertainment industry, which is \$717 billion. This includes motion pictures, television programs and commercials, streaming content, music and audio recordings, broadcast, radio, book publishing, video games, and ancillary services and products.¹ The U.S. industry is expected to reach more than \$825 billion by 2023. This increase will come with many issues, so general counsel within the sports and entertainment industries have plenty to look forward to and learn.² In this article, I will discuss the experiences of the panelist with respect to being general counsel. I will also discuss recent trends of general counsels, factors that affect the selection of outside counsel, and the use of outside counsel. The panel at the American Bar Association's Forum on the Entertainment and Sports Industries 2019 Annual Meeting consisted of Benjamin Lipman, Vice President of Legal Affairs and General Counsel for Las Vegas Review Journal as lead facilitator; Tanja Olano, General Counsel and Vice President of the Los Angeles Organizing Committee for the 2028 Olympic and Paralympic Games; Pamela Parker, Senior Vice President of Business Affairs at Sony Pictures Television; and Kelvin Smith, Executive Commissioner and General Counsel for the Big 12 Athletic Conference.

ROLES OF GENERAL COUNSEL

Today, there is a heavy demand on organizations, so having a general counsel work for an organization is much more popular than relying on third-party law firms for legal services.³ The law firm or lawyer who fills the position of general counsel must address issues reactively, by giving a legal prospective to the organization.⁴ Duties of a general counsel include reviewing contracts, handling litigation, negotiating deals, compliance with rules and regulations, and analyzing corporate transactions. Law firms and lawyers who serve as general counsel of a organization must promote a culture that maintains a high level of ethical behavior. Even though the evolution of general counsel is complex, it is a positive development for lawyers and organizations.

There is no one size fits all approach to being a general counsel for a sports or music organization. There are many factors that contribute to the many different roles of general counsel, such as how big the legal department is, how big the entity is, where the future of the entity is going, and also how much the entity depends on outside counsel for different subject matters. As general counsel for a sports or music organization, you are expected to play many different roles. The role that the general counsel plays at a smaller organization, like the Big 12 Athletic Conference,

is broad. For example, Kelvin Smith handles employment, insurance, taxation, transactional, and litigation issues that could arise at his smaller organization.⁵ At a small non-profit organization, the general counsel role requires an even boarder skill set. This is true for startup companies that begin with a small number of employees and continues to grow the organization to a larger number of employees. For example, Tanja Olano often had to play the Human Resource role when the Los Angeles Organizing Committee was just a startup organization. She also plays the role of an intellectual property lawyer for the organization.⁶ On the other hand, the roles are very different for a person who works not as general counsel, but as a business operations employee. For example, Pamela Parker's biggest responsibility is to negotiate deals for Sony.⁷ A company as big as Sony has many different departments, so there are other people to rely on who can answer questions about specific issues that arise. To be general counsel for a music or sports organization means being able to maneuver throughout various issues while working with other people to resolve issues.

OUTSIDE COUNSEL

Even with a general counsel, an organization will routinely hire outside counsel for specific matters.⁸ Today, the trend for many companies is to start out with a larger number of outside counsel and as the time goes on, lessen that amount of outside counsel. One reason to lessen the number of outside counsel is because it can be difficult bringing all the outside counsel up to speed on a particular issue. The general counsel is responsible for updating outside counsel and ensuring that the outside counsel is aware of the operations of the organization. It can be a lot of work to educate each outside counsel, so lessening the number of outside counsel is justifiable. The general counsel working on things day to day will make important connections on things that the outside counsel will not see, because outside counsel does not live and breathe the organization the same way that the general counsel does each day.

Another reason to lessen the number of outside counsel is because the company is big enough to have its own legal department that includes different areas of law. For example, Sony rarely uses outside counsel, because they employ lawyers who have knowledge in a certain area of the law. However, outside counsel is needed when a big company is doing a deal in a different country or a different state. For instance, if Sony wanted to become familiar with the laws and regulations of a different country or state, it would approach local outside counsel who are familiar with the local laws and regulations of that particular country or state. Outside counsel could present a conflict of interest, because they could be working with another organization.

A conflict of interest is most present in the studio side of a music or television and film organization where outside counsel is also working for a competitor.

Some organizations such as, the Big 12 Athletic Conference, will primarily only use one outside counsel. Utilizing one outside counsel makes it easy for general counsel, because they will always know who to ask when they have questions or concerns about an issue that they are unfamiliar with. Working with one outside counsel helps limit time spent on explaining a certain aspect of the organization to outside counsel, because outside counsel will already be familiar with the organization. Smaller organizations should utilize this one stop shop method more often in order to avoid the issues that go along with having multiple outside counsels.

SELECTION OF OUTSIDE COUNSEL

There are many different factors that affect the selection of a law firm or a lawyer to be hired as outside counsel. One factor is expertise of the local laws. If an organization has an issue in a foreign location and is in need of an expert on that location's laws, then it is in the organization's best interest to hire an expert who knows the local laws as it pertains to the issue that arises. Another factor is relationships within the industry. General counsel is likely to ask another lawyer who they respect to be outside counsel for a particular issue. The reputation of a law firm or lawyer certainly helps to make and maintain relationships within the industry, which leads to gaining more trust within the industry. Another factor is public scrutiny. The things that potential outside counsel law firms and lawyers do relative to the world are important. For example, a private non-profit organization cannot disassociate itself from the community where it is located. The taxpayers and the citizens of that community will always be interested in what the organization is doing for the community, so public scrutiny is an important factor to consider when deciding which law firm or lawyer represents the organization as outside counsel. Public scrutiny is a factor for organizations that are not non-profit as well. A company that is in Hollywood encounters a lot of public scrutiny, so things like who the organization hires or how much the organization will pay that person is constantly a topic for discussion of the public.

Diversity is another factor that affects the selection of a certain law firm or lawyer to be hired as outside counsel. Today, it is more important for organizations to hire talent that have diverse experiences and backgrounds, so the organization is not only a small segment of the population. An organization like Sony must be aware of the diversity within the company in order to ensure that the content that is being released reaches the maximum number of viewers. No one factor is more important than another when deciding who to hire as outside counsel.

LIKES AND DISLIKES

There are many things that general counsel like and dislike about working with outside counsel. One thing general counsel likes and appreciates is when outside counsel understands the ins and outs of the organization well. The

understanding of the organization by the outside counsel is critical to ensure issues are resolved properly. If the outside counsel understands the organization's business then they can anticipate issues that might arise for the organization. Time will not be wasted on explaining every aspect of the organization to outside counsel if the outside counsel is already knowledgeable on the aspects of the organization. A good way for outside counsel to anticipate issues is staying proactive by staying up to date on news that has an effect on that particular organization.

Good communication is another thing that general counsels like to maintain with their outside counsel. Members of general counsel do not like poor communication between them and the outside counsel. It is important for the outside counsel to be transparent with general counsel. It is ineffective for outside counsel to send a bill to the general counsel, while the general counsel is unaware of who was working on the matter or how the matter was resolved. Outside counsel should maintain a constant line of communication with general counsel in order for the general counsel to stay prepared for problems they might see in the future.

Members of general counsels do not like to ask outside counsel to conduct research or resolve an issue and receive information that is too complex. If the information is too complex, then the general counsel will have to do extra research to understand the complexity. Outside counsel should remember that they are hired as the experts, so when they need to explain or clarify something to general counsel it is important to give that information in a way that even non-lawyers would understand. In other words, general counsels do not want to do extra work on work that they asked outside counsel to complete. Even though there are some likes and dislikes of outside counsel, it is important for general counsels to provide their organizations with expertise, so valuable outside counsel should be a top priority for the general counsels when they seek outside help.

CONCLUSION

The role of general counsel is not clear cut and generally requires a broad skill set. The role of general counsel requires a sound judgment with the organization as the main importance. General counsel responsibilities will continue to become more complex and reliance on outside counsel is inevitable. Through the likes and dislikes, outside counsel will be important to certain organizations that do not have multiple departments. A good general counsel can provide advice that conforms within the big picture of an organization.⁹ General counsels are so valuable to an organization and the demand for general counsels will increase in the future. ■

ENDNOTES

1 *Media and Entertainment Spotlight*, SELECTUSA (Nov. 1, 2019), <https://www.selectusa.gov/media-entertainment-industry-united-states>.

2 Ross Benes, *Digital Ad Spend by Industry*, EMARKETER (July 25, 2019), <https://www.emarketer.com/content/us-media-and-entertainment-digital-ad-spending-2019>.

3 Nick Price, *The Role of the General Counsel in Governance*, BOARDEFFECT (March 9, 2019), <https://www.boardeffect.com/blog/role-general-counsel-governance/>.

4 *Id.*

5 Kelvin Smith, *Sports and Entertainment General Counsels*, ABA Forum on the Entertainment and Sports Industries' Annual Meeting (2019).

6 Tanja Olano, *Sports and Entertainment General Counsels*, ABA Forum on the Entertainment and Sports Industries' Annual Meeting (2019).

7 Pamela Parker, *Sports and Entertainment General Counsels*, ABA Forum on the Entertainment and Sports Industries' Annual Meeting (2019).

8 *What does a General Counsel Do?*, LAWTRADES (Sept. 28, 2018), <https://www.lawtrades.com/answers/what-does-a-general-counsel-do/>.

9 Norman Wain, *Why do sports organizations need in-house legal teams? A point of view from a General Counsel*, LAW IN SPORT (Mar. 11, 2015), https://www.lawinsport.com/content/articles/corporate-law/item/why-do-sports-organizations-need-in-house-legal-teams-a-point-of-view-from-a-general-counsel?category_id=123.