

Media & Entertainment Group Of The Year: Williams & Connolly

By **Grace Elletson**

Law360 (February 23, 2024, 2:02 PM EST) -- Williams & Connolly LLP pulled off a hat trick at the U.S. Supreme Court in May 2023 when it secured three victories on issues of tech company liability and photography ownership on the same day, earning it a spot among Law360's 2023 Media and Entertainment Groups of the Year.

Joe Terry, one of the firm's First Amendment and media practice group co-chairs, told Law360 that two of those cases — *Gonzalez v. Google* and *Twitter v. Taamneh* — had major implications for the media sector, as both raised questions about whether technology companies could be held legally responsible for speech that happens on their platforms.

"If Google and Twitter were found liable for conduct they weren't engaged in, but their users were engaged in, it could potentially have a really detrimental effect on their willingness to permit speech," Terry said. "It would have been pretty dangerous to put these companies in a position where they're expected to aggressively police everything that folks are saying."

Both cases claimed Google and Twitter allowed ISIS terrorists to use the platforms to further their recruitment and messaging efforts. The Google suit, brought by relatives of an American student killed in a Paris ISIS attack, questioned whether Section 230 of the Communications Decency Act should protect the company from claims that its YouTube algorithm recommended ISIS recruitment videos to certain users.

A Ninth Circuit panel found in the case involving Twitter that the U.S. relatives of a Jordanian who was killed in a terror attack in an Istanbul nightclub could sue the tech company under the Anti-Terrorism Act. The panel found the social media company did not work hard enough to remove extremist content from its platform.

But in a May 18, 2023, unanimous ruling, the high court scrapped the Ninth Circuit's decision after finding the company did not knowingly provide support to the terrorist groups, and therefore couldn't have aided or abetted the actors in violation of the ATA. On the same day, the high court also unanimously ruled in favor of Google in the *Gonzalez* case, remanding the suit to the Ninth Circuit in light of the ruling handed down in favor of Twitter.

The justices that day also sided with Williams & Connolly client Lynn Goldsmith, a photographer whose



work capturing celebrities and other notable people has landed on covers for Time, Vanity Fair and Rolling Stone. In 1981, she took a photograph of Prince that was later used by Andy Warhol to create a series of illustrations — the ownership of which was passed on to the Andy Warhol Foundation, the firm told Law360.

The foundation sought a declaratory judgment against Goldsmith in 2016, seeking permission from the courts to license the illustrations without infringing the photographer's copyright. But on May 18, 2023, the high court sided with Goldsmith in a 7-2 decision, ruling the illustrations could not be given fair use protection.

The foundation argued that if someone adds new meaning to a photographer's art, they should be able to bypass the photographer's copyright, said Tom Hentoff, co-chair of the First Amendment and media practice group who also co-chairs the firm's trademark and copyright practice group.

He said some appellate courts in recent years had begun interpreting the fair use test in a more expansive manner. This was an important decision for artists, Hentoff said, to rein in that expansive interpretation.

"Photographers make a living by licensing their work for others to use," Hentoff told Law360. "So an expansive ruling on fair use could have had a very negative impact on the ability of photographers, and other artists, to make a living."

The firm also clinched important victories for various media organizations in defamation and libel suits. In February 2023, Williams & Connolly secured the dismissal of a libel lawsuit former President Donald Trump's reelection campaign brought against the Washington Post, targeting two columns discussing allegations Russia assisted his campaign.

A trial court and the Fourth Circuit also rejected a defamation suit brought by former Massey Energy Company CEO and U.S. Senate candidate Don Blankenship alleging a large group of media companies — including CNN, The Washington Post, ABC and Fox News Network — mischaracterized his criminal history. Williams & Connolly was lead counsel on appeal and clinched a winning ruling in February 2023.

The practice group, which has about eight dedicated partners based in Washington, D.C., stands out because it consists of attorneys who specialize in various areas of law, Terry said. This allows the group to succeed in cases that straddle different issues, he added.

"It's a pretty broad practice. It's not just focused on defamation, not just focused on copyright, not just focused on the trial level, not just focused on appellate," Terry said. "It's all of those things together."

--Editing by Caitlin Wolper.