



Michael Jacobson

Of Counsel Lawyer at Cooley LLP

This month's General Counsel interview features the longstanding and highly regarded expertise of Michael Jacobson, who recently rejoined Cooley LLP as an Of Counsel lawyer.

Michael originally worked for Cooley from March 1981 until August 1998 as an associate, and then as a partner, handling primarily public securities and merger and acquisitions work. He says he then left to become the General Counsel of eBay Inc., which at the time was a 100 person pre-public startup. Michael remained at eBay until the spin-off of PayPal was completed in July 2015.

During his time at eBay, Michael was also Senior Vice President & Secretary of the multinational bidding site. During his distinguished 17-year tenure as eBay General Counsel, he grew its legal department into a 400-person global team and guided the company through a wide range of high-profile legal matters, including its highly successful 1998 IPO; its 2002 \$1.5 billion acquisition of fintech pioneer PayPal – the spinoff of which he completed in 2015 – and its \$2.6 billion acquisition and later profitable sale of Skype.

At the helm of eBay's legal department, Michael spearheaded the company's regulatory relationships and its policy group. He also established several key internet and IP legal principles by winning seminal cases such as eBay v. MercExchange (patents), Tiffany v. eBay (trademarks) and eBay v. Bidder's Edge (trespass applied to the internet).

Over the next few pages Lawyer Monthly hears about Michael's experience as the General Counsel of eBay Inc., how is work at Cooley helped him towards that, and how vice versa, with him now returning to Cooley, his experience at eBay has made him a leader in his field. Michael also talks about his next steps and goals at Cooley, as well as what it's like to be so highly esteemed and the rewards of being in his position.

What did you learn at Cooley that proved particularly useful at eBay?

Towards the end of my first tenure at Cooley, I did a lot of varied M&A work involving companies in many different industries, ranging from search engines to magazines and newspapers to commercial dishwasher manufacturers. Those deals put a premium on learning the essentials of an industry, and the laws relevant to it, quickly. At eBay, the nature of the business meant that legal issues arose from an unusually broad set of laws (from consumer safety to copyright and trademark to export control), and, in many cases, in contexts that were novel. The ability to gain a quick understanding of the law, how it would likely be applied to the novel circumstance of an internet marketplace, and then to formulate a practical solution to deal with the issue was paramount.

- How to motivate and manage teams; and
- How to train and mentor individuals.

The biggest challenge facing us at eBay in its early years was the lack of any precedent in how to apply existing law to very new circumstances. We spent much time, effort and resources establishing the legal standards for how intellectual property and other laws were to be applied to marketplaces when their customers committed legal violations (by, for example, attempting to sell counterfeit, pirated, illegal or dangerous items). Many technology companies today find themselves in similar circumstances – trying to determine or influence how existing laws should be applied to their own new approaches and technologies. I feel that I can usefully bring some of my experiences to bear on their issues.

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What did you learn at eBay that you expect to prove particularly useful now that you have returned to Cooley?

There are a number of lessons from eBay that I expect to use regularly now that I am back in private practice:

- How to put legal issues into a context that businesspeople can understand clearly.
- How to think about legal risk in the context of the business risks that are taken every day by every company (and how the way to think about those risks change as companies become larger and their business circumstances change).
- How to work with regulators so your company will not be a problem for them (and what to do if any obstacles arise).
- How to match resources spent against the likelihood and probability of an adverse outcome.
- How to think about dealing with issues in different countries.

What did your 'typical' day look like at eBay and what do you anticipate it will look like now that you are back at Cooley?

The glory and the terror of my job at eBay is that I could never be sure that my day would look anything like what I anticipated as I drove to work. That said, I would typically spend time meeting with lawyers who reported to me (a mix of substantive discussions of issues and of planning, budgeting and personnel matters), and with key business leaders (sometimes to discuss how particular legal issues might impact their plans, other times to discuss a breaking crisis, a potential transaction, or how best to prepare for upcoming events like earnings calls and Board meetings). I would also

spend a lot of time gathering and reviewing information designed to keep me apprised of the myriad of activities and potential risks that would be occurring around the world both within and outside the company. As I liked to tell my team, the first goal was “no surprises.” At Cooley, I expect that I will spend the bulk of my time as part of teams dealing with particular issues for different clients, with the rest of my time spent mentoring lawyers and using my experience wherever it will prove useful to the firm.

Did you have goals when you joined eBay 18 years ago and did you achieve them? Do you have new goals now?

When I joined eBay, my goals were to see how far we could take the business, to figure out how we could ensure that this new business model would remain legal, and to have fun. I achieved all of those goals. Returning to Cooley, my goals are to contribute to the success of the firm and its clients, to help mentor and grow the people I will be working with, and to have fun.

Over the years you have won numerous awards for your work, including a Lifetime Achievement Award; how does it feel to be recognized as one of the best in the work you do?

It is of course gratifying to receive recognition for your work. But I firmly believe that the awards I have received have very little to do with me personally and have everything to do with the teams that have actually done the work that I can then take credit for. I think that any General Counsel who hires good people, gives them a little bit of support and encouragement, and persuades their business peers to accept the resulting advice, can find themselves similarly recognized.

Do you have a 'golden nugget' of advice for General Counsels around the globe?

Hire the best people you can find (ideally better than you are) and don't be afraid to turn them loose on legal areas and projects that they are not experts at – great lawyers can do exceptional things outside their areas of expertise. **LM**

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