Supreme Court Narrows Contributory Copyright Liability for Internet Service Providers in *Cox Communications v. Sony*

Jul 25, 2026

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***Cox Communications, Inc. v. Sony Music Entertainment*, 607 U.S. ___ (March 25, 2026)**

Earlier this year, the U.S. Supreme Court issued its decision in *Cox Communications, Inc. v. Sony Music Entertainment*, reversing a ruling by the U.S. Court of Appeals for the Fourth Circuit that had affirmed a jury's contributory liability finding underlying a $1 billion verdict against Cox for copyright infringement. In an opinion authored by Justice Thomas, the Supreme Court held that an internet service provider (ISP) cannot be held contributorily liable for its subscribers' infringement merely because it continued serving accounts that it knew were associated with piracy. The decision draws a firm line around secondary copyright liability, with significant implications for ISPs, online platforms, and copyright holders alike.

Background

Sony Music Entertainment and other major record labels retained MarkMonitor to identify infringing activity (for example, illegally downloading music) occurring over Cox's network. Over roughly two years, MarkMonitor sent Cox more than 163,000 notices flagging IP addresses associated with alleged infringement. Cox responded with a system of warnings and suspensions but terminated only a small number of subscriber accounts, prompting Sony to sue Cox directly for contributing to its subscribers' infringement.

A jury found Cox liable under both contributory and vicarious liability theories, found the infringement willful, and awarded $1 billion in statutory damages. The Fourth Circuit affirmed the contributory liability finding, reasoning that "supplying a product with knowledge that the recipient will use it to infringe copyrights" was sufficient to establish liability, but it reversed as to vicarious liability. The Supreme Court granted certiorari solely on the contributory liability question.

The Supreme Court's Reasoning

Writing for the majority, Justice Thomas reaffirmed that the Copyright Act of 1976 does not expressly create secondary liability and that courts should be cautious about expanding liability doctrines beyond those already recognized in precedent. Drawing on *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417 (1984) and *Metro-Goldwyn-Mayer Studios v. Grokster*, 545 U.S. 913 (2005), the Supreme Court identified only two recognized paths to contributory liability:

- **Inducement** — a provider actively encourages or promotes infringing use of its product or service through specific acts, as the defendants did in *Grokster* by marketing file-sharing software as a piracy tool; or
- **A service "tailored" to infringement** — a product or service that lacks any substantial or commercially significant non-infringing use.

Applying this framework, the Supreme Court concluded that Cox did neither. Cox never marketed or promoted its internet service as a means of infringing copyrights and in fact discouraged infringement through warnings, suspensions, and terminations. Nor was Cox's service "tailored" to infringement, since general-purpose internet access has obvious, substantial non-infringing uses. The court emphasized that mere knowledge that a service will be misused by some users, without more, is not enough to establish the intent required for contributory liability. The Fourth Circuit's holding violated this principle.

Justice Sotomayor, joined by Justice Jackson, concurred only in the judgment. She argued the majority's two-category framework is unduly rigid and inconsistent with *Grokster*'s recognition that other common-law theories, including aiding and abetting, remain available in copyright cases. Applying the aiding-and-abetting framework from and *Smith & Wesson Brands v. Estados Unidos Mexicanos*, Justice Sotomayor nonetheless agreed Cox should prevail, reasoning Sony failed to show Cox had the specific knowledge of individual infringers necessary to establish intent to facilitate their conduct.

Key Takeaways

- **A knowledge-based theory of contributory liability is insufficient.** ISPs and other intermediaries cannot be held contributorily liable simply for continuing to serve customers after receiving infringement notices. Plaintiffs must show either active inducement or a service tailored to infringement — general awareness of misuse is insufficient.
- **Notice-and-terminate litigation strategies face a much higher bar.** The wave of ISP liability suits built on the "known repeat infringer" theory underlying the Fourth Circuit's earlier *BMG* decision is significantly weakened. Copyright holders will need to show affirmative promotional or design-based culpability, not just unaddressed notices.
- **Watch for aiding-and-abetting theories in future litigation.** Justice Sotomayor's concurrence signals an alternative path: common-law aiding-and-abetting claims requiring knowledge of specific instances of infringement. Plaintiffs may try to plead around *Cox* by alleging more granular, individualized knowledge of infringers rather than aggregate notice data.
- **Vicarious liability remains a viable theory of secondary liability in other cases.** Because the Supreme Court did not review the Fourth Circuit's reversal on vicarious liability, copyright holders retain that avenue where they can show a defendant profited directly from infringement and had the right and ability to supervise it.

Companies operating platforms with mixed lawful and unlawful uses should review their infringement-response policies in light of this decision, but should not assume immunity: aggressive promotion or service design could still support liability under the inducement, tailoring, or aiding-and-abetting theories.

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