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Supreme Court Narrows Scope of Secondary Copyright Liability in *Cox v. Sony*

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On March 25, 2026, in *Cox Communications v. Sony Music Entertainment*, the U.S. Supreme Court announced limitations on contributory copyright infringement claims, further defining the scope of secondary liability and overturning the Fourth Circuit in a case that initially led to a $1 billion jury verdict. Contributory copyright infringement is a theory of secondary liability that, particularly since the advent of the Internet, has provided a vehicle for copyright owners to sue not only individual infringers but also larger entities whose services may be used to facilitate infringement. The Supreme Court's decision on this topic could significantly impact copyright owners and potential secondary copyright infringement defendants, including Internet service providers (ISPs).

In an opinion written by Justice Thomas, the Supreme Court held that "a company is not liable as a copyright infringer for merely providing a service to the general public with knowledge that it will be used by some to infringe copyrights." *Cox Commc'ns, Inc. v. Sony Music Ent.*, ("*Majority Op.")* No. 24-171, slip op. at 1 (U.S. Mar. 25, 2026). The Court also found, based on prior Supreme Court precedents, that there are only two ways to show contributory copyright infringement: the defendant must have "induc[ed]" the infringement, or the defendant must have "sold a service tailored to infringement." *Id.* at 2. While the majority presented its opinion as consistent with prior precedent, Justice Sotomayor (joined by Justice Jackson) disagreed in a concurring opinion. According to Justice Sotomayor's concurrence, the majority "unnecessarily limits secondary liability even though this Court's precedents have left open the possibility that other common-law theories of such liability, like aiding and abetting, could apply in the copyright context." *Cox Commc'ns, Inc. v. Sony Music Ent.*, ("*Concurring Op.*") No. 24-171, slip op. at 1 (U.S. Mar. 25, 2026) (Sotomayor, J., concurring).

History of the *Cox v. Sony* Litigation

Sony and other music copyright owners sued Cox, an ISP, for failure to terminate the accounts of users that had been repeatedly identified as infringing copyrights in plaintiffs' songs. Sony's primary arguments at trial centered on Cox's actual knowledge of these infringements, Cox's policy of not terminating an account until it had received 13 notices of infringement, and that in the two-year period at issue, Cox had only terminated 32 subscribers for infringement, despite having terminated hundreds of thousands of subscribers for nonpayment during the same period. Cox countered that its warning and suspension system was effective, ending 98% of identified infringements. A jury found Cox liable for willful contributory and vicarious infringement of 10,017 copyrighted works and awarded Sony $1 billion in statutory damages. On appeal, the Fourth Circuit upheld the jury's finding of willful contributory copyright infringement (though it overturned a finding of willful vicarious infringement), concluding that Cox continued to provide known infringers with Internet access. Cox appealed the contributory copyright infringement decision to the Supreme Court.

The Majority Opinion

While the Court has examined contributory copyright infringement as it pertains to file-sharing applications in *Grokster*, *Cox* is the Court's first foray into contributory copyright infringement as applied to companies that provide general access to the Internet. Relying on *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U. S. 913, 930 (2005) (file-sharing) and *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U. S. 417, 439 (1984) (the Betamax case), the majority held that "the provider of a service is contributorily liable for a user's infringement if it ***intended*** its service to be used for infringement." *Majority Op.*, slip op. at 2 (emphasis added). The Court held that the requisite intent "can be shown only if the party induced the infringement or the provided service is tailored to that infringement." *Id.* at 7. The majority also noted that contributory liability is not articulated in the Copyright Act itself, and, thus, the majority was "loath to expand such liability beyond [its] precedents" that "recognized specific forms of secondary copyright liability that predated the Copyright Act[.]" *Id.* at 6-7.

In finding that Cox did not have the requisite intent under either of these bases, the majority focused on three points:

First, Sony was only able to identify the IP addresses associated with specific acts of infringement, not with the actual users who committed the infringement. As the Court

noted, the same IP address will be associated with all users connected to the same source, meaning that any user that connects to the WiFi network within a household, at a public library, or in a college dormitory will have their use associated with that institution's IP address for any activity while connected. Cox's knowledge, therefore, was not of the actual *infringers*, but of the *connections* they used to commit these infringements. Without that knowledge it was impossible for Cox to have induced *specific* acts of infringement. ***Second***, Cox did not actively encourage users to infringe through its *general* promotion of its service. The Court distinguished this case from *Grokster*, in which the defendants "promoted and marketed their [file-sharing] software as a tool to infringe copyrights," and where "[t]he 'principal object' of their business models 'was use of their software to download copyrighted works.'" *Majority Op.*, slip op. at 7. ***Third***, the Court found that "Cox's Internet service was clearly "capable of 'substantial' or 'commercially significant' noninfringing uses." *Id.* at 9. In other words, "Cox did not tailor its service to make copyright infringement easier. Cox simply provided Internet access, which is used for many purposes other than copyright infringement." *Id.* at 9.

The Concurring Opinion

In a concurring opinion joined by Justice Jackson, Justice Sotomayor agreed with the majority that "neither of the two prior theories of secondary liability applied by this Court covers Cox's conduct," but criticized the majority for "ignoring [] past decisions" that "expressly held the door open to other common-law liability rules." *Concurring Op.*, slip op. at 1, 4. The concurrence also notes that "[t]he Copyright Act does not expressly provide for secondary liability," but emphasized that the "Court held over 40 years ago that the Copyright Act impliedly provides for secondary liability" and that "*[s]tare decisis* carries enhanced force when a decision…interprets a statute." *Id*. at 4-5 (quotations omitted).

Relying on *Grokster* for the proposition that other theories of intent found in common law secondary liability could form the basis for a contributory infringement claim, the concurrence focused on aiding and abetting liability, noting that liability attaches under such a theory where "the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead." *Id.* at 8 (quoting Restatement (Second) of Torts §8a, Comment *b* (1936-1964)). The concurrence analogized to criminal law, using the example of how "someone who gives a gun to another, knowing with certainty that the other person will shoot someone with it, could be found to have intentionally aided a shooting even if he did not desire for anyone to be shot." *Id.* at 8-9. The concurrence nevertheless agreed with the majority's

judgment, but on the grounds that "[m]ere indifference," as Cox had shown, "is not enough for aiding and abetting liability to attach." *Id.* at 12.

Potential Impact on Future Litigation

Time will tell how *Cox* is interpreted by lower courts and how much of a practical impact *Cox* will have on copyright holders and Internet service providers. The majority presented its opinion as a straightforward application of existing precedent unlikely to change the existing scope of secondary liability rather than a significant alteration of the law. Thus, the majority framed the case before it as a question of whether to "expand" secondary liability and its opinion as preserving the status quo because "[o]rdinarily, when Congress intends to impose secondary liability, it does so expressly." *Majority Op.*, slip op. at 6-7. The concurrence disagreed, stating that the majority "without any meaningful explanation, unnecessarily limits secondary liability." *Concurring Op.*, slip op. at 1.

Another potential area of impact is the DMCA safe harbor defense, which was enacted to incentivize ISPs to take certain steps to protect copyright holders. This safe harbor provides ISPs with an affirmative defense to contributory and vicarious copyright infringement where the ISP can show it instituted reasonable measures to prevent copyright infringement, including, but not limited to a repeat infringer policy. According to the majority, the DMCA safe harbor defense is irrelevant to *Cox* as that is a separate, *additional* defense, the availability of which "shall not bear adversely upon the consideration of a [non-infringement] defense by the service provider[.]" *Majority Op.*, slip op. at 3, 10. In other words, the defense explicitly is not meant to comment on whether or not infringement can be established in the first place.

In contrast, the concurrence accused the majority opinion of "eviscerating" the DMCA's safe harbor provision by allowing ISPs to avoid secondary liability for infringement without taking the preventative steps the DMCA safe harbors were designed to encourage. Per the concurrence, the majority's rule can be interpreted as meaning "an ISP faces no liability if it sells an Internet connection to a company that the ISP knows runs a website that exclusively hosts illegally obtained copyrighted material." *Concurring Op.*, slip op. at 6. The concurrence thus postulated that ISPs may feel "free to abandon [their] current polic[ies] of responding to copyright infringement." *Id.* at 6.

It remains to be seen how district courts will apply this decision and whether ISPs will change their current policies regarding handling allegations of copyright infringement.

But, regardless, *Cox* certainly gives courts and practitioners much to consider regarding their practices and the balance of incentives offered by the Copyright Act.

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