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Knowledge Is Not Intent: Supreme Court Clarifies Online Copyright Liability

Key Updates

- In *Cox Communications, Inc. v. Sony Music Entertainment*, the Supreme Court vacated a $1 billion contributory copyright infringement verdict against Cox, drawing a clearer boundary around when online service providers can be held responsible for customer infringement.
- The Court held that infringement notices and repeat-customer activity may show knowledge of infringing use, but they do not show that a provider intended its service to be used for infringement, even if the provider does not terminate all infringing accounts

Why It Matters

- For online platforms and other multipurpose service providers, *Cox* may make customer misuse a weaker basis for copyright liability, while placing greater weight on company policies, responses and communications.

Next Steps

- Companies should consider reviewing their infringement-response policies, product features and internal and external communications to ensure they document legitimate uses, preserve a clear record of how they address complaints and do not induce infringement by their users.

Can an internet service provider face copyright liability merely because it knows some subscribers repeatedly infringe? In *Cox Communications, Inc. v. Sony Music Entertainment*, the Supreme Court answered no. The decision eliminated the foundation for a billion-dollar verdict and narrowed the path to contributory-liability claims against providers of general-purpose services.[1]

In this insight, we review the Supreme Court's decision and outline what businesses should understand about the evidence that can still create risk, notice response, and the DMCA safe harbor defense.

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Cox v. Sony: Why the Supreme Court Vacated the $1 Billion Verdict

The dispute arose from unauthorized sharing of copyrighted music through Cox's internet service. Sony Music Entertainment and other copyright owners retained MarkMonitor to detect suspected infringement and identify associated internet protocol addresses. Over roughly two years, MarkMonitor sent Cox 163,148 notices. Sony contended that Cox knew certain subscriber accounts were associated with repeated infringement but continued supplying internet access.

Cox maintained an escalating response system. It sent warnings, suspended service and made accounts subject to termination after 13 notices. Sony argued that Cox rarely followed through, noting that the company terminated only 32 subscribers for infringement during the relevant period, while Cox pointed out that its warning and suspension system ended 98% of identified infringement.

In the district court, a jury found Cox liable for contributory and vicarious infringement.[2] The Fourth Circuit rejected vicarious liability because Cox did not receive a direct financial benefit from infringement. It nevertheless upheld contributory liability, reasoning that knowingly supplying a product to someone expected to use it for infringement constituted culpable conduct.

How the Supreme Court Drew the Line for Online Service Providers

The Supreme Court rejected the Fourth Circuit's standard. Writing for a seven-justice majority, Justice Thomas emphasized that the Copyright Act does not expressly impose liability for another person's infringement. Although precedent recognizes contributory liability, the Court declined to extend it beyond established boundaries. A provider is contributorily liable only when it *intends* its service to be used for infringement.[3] The intent required by contributory infringement can be shown "only if the party induced the infringement or the provided service is tailored to that infringement."

The Court identified two ways to establish intent. A provider may affirmatively induce infringement through conduct encouraging unlawful use.[4] Liability may also arise when a service is tailored to infringement because it lacks substantial or commercially significant non-infringing uses.[5]

Here, neither theory applied. Cox did not advertise its service as a means of infringing copyrights or otherwise encourage infringement. In fact, its terms and services and warning, suspension, and termination system discouraged infringement. Further, services were not tailored to infringement since internet access has extensive lawful uses.[6] The Court therefore held that knowledge of infringement, combined with an allegedly inadequate response, could not establish contributory liability.[7]

DMCA Safe Harbor Loss Does Not Equal Copyright Liability

The Court separately addressed the Digital Millennium Copyright Act's (DMCA) safe harbor. The DMCA protects qualifying providers that reasonably implement a policy for terminating repeat infringers in appropriate circumstances.[8] Cox could not invoke that safe harbor because of an earlier ruling concerning its implementation efforts.[9] However, the Court clarified that losing the safe harbor does not establish liability. Congress specifically provided that failure to qualify does not prejudice a provider's separate defense that its conduct was not infringing.

Justice Sotomayor, joined by Justice Jackson, concurred in the judgment but criticized the majority's narrow view of secondary liability. She pointed out that *Sony* and *Grokster* left room for other common-law theories.[10] The concurrence further warned that the decision could weaken the DMCA's incentive structure. Even under a common law aiding-and-abetting approach, however, the concurrence concluded that Sony had not proven Cox intended to assist infringement; Cox was "merely supplying internet service to its customers."[11]

What the Ruling Means for Service Providers

This decision matters beyond internet service providers. Cloud platforms, payment processors, hosting services, and AI companies may invoke *Cox* when their products have meaningful lawful uses and infringement results from customer conduct. Plaintiffs will need evidence of purposeful encouragement or infringement-centered design. Large volumes of infringement notices may establish knowledge, but after *Cox*, knowledge is not intent. Further, lack of compliance with the DMCA presents no adverse risk to a non-infringement defense. Therefore, regardless of what these services know about user activity, and regardless of whether these services take steps to address infringement on their networks, they no longer face a realistic risk of liability.

Importantly, the ruling is not permission to disregard infringement notices. Documented compliance efforts may rebut inducement while preserving statutory defenses and reducing business risk. A significant risk is presented if companies' product features and internal communications suggest that infringement is a business objective or encourage infringement.

For litigators, *Cox* shifts discovery toward evidence of purpose. Plaintiffs will focus on marketing materials and design choices showing that a defendant sought infringing uses. Defendants should develop evidence demonstrating legitimate uses and good-faith enforcement practices. For clients, the lesson is direct: what a provider intended users to do matters more than what it merely knew some users were doing.

[1] *See Cox Commc'ns, Inc. v. Sony Music Ent.*, 607 U.S. 583, 595-596 (2026)

[2] *See Sony Music Ent. v. Cox Commc'ns, Inc.*, 464 F. Supp. 3d 795, 807-808 (E.D. Va. 2020), rev'd and remanded, 607 U.S. 583.

[3] *See Cox Commc'ns, Inc. v. Sony Music Ent.*, 607 U.S. 583, 593 (2026).

[4] *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930, 936–37 (2005).

[5] *See Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 442, 456 (1984).

[6] *See Cox Commc'ns, Inc. v. Sony Music Ent.*, 607 U.S. 583, 595 (2026).

[7] *See Id.* At 596.

[8] *See* 17 U.S.C. § 512(i)(1)(A) (2018).

[9] *See BMG Rts. Mgmt. (US) LLC v. Cox Commc'ns, Inc.*, 881 F.3d 293, 301–305 (4th Cir. 2018).

[10] *See Cox Commc'ns, Inc. v. Sony Music Ent.*, 607 U.S. 583, 600 (2026) (Sotomayor, J., concurring in the judgment) (pointing out that precedent neither "displace[d] other theories of secondary liability" nor "foreclose[d] rules of fault-based liability derived from

the common law.”).

[11] *Id.* at 596-608.