IP Alert | The Supreme Court Clarifies Intent is the Touchstone for Contributory Copyright Liability

By Grace Beach, Zach Getzelman, and Victoria Webb

In a landmark copyright law decision, the U.S. Supreme Court unanimously reversed a $1 billion jury verdict and shielded internet service provider (ISP) Cox Communications, Inc. (Cox) from contributory copyright liability. Cox Commc'ns, Inc. v. Sony Music Ent., 146 S. Ct. 959 (2026). The Court limited contributory copyright liability to (i) affirmative inducement of infringement or (ii) services specifically tailored to infringement. The Court rejected prior copyright case law as inappropriately expanding contributory liability, including lower-court precedent that suggested knowing facilitation—e.g., continuing to serve known infringers—could result in contributory liability for service providers. This significant shift is having an immediate ripple effect in today's Internet-based world, where many types of online service providers will likely argue they are similarly shielded from liability because their services or platforms are general-purpose and not designed to promote infringement. And, as noted in the concurring Opinion, the majority's decision also calls into question the ongoing relevance of the safe harbors of the Digital Millennium Copyright Act (DMCA), leaving open the question of whether Congress will act to change the Copyright Act in view of increasing reliance on new technologies.

The Cox Case

Several music companies, including Sony Music Entertainment, sued Cox in the U.S. District Court for the Eastern District of Virginia for both contributory and vicarious copyright infringement. On the contributory front, the music companies alleged that Cox contributed to its subscribers' infringement by continuing to provide Internet service to IP addresses Cox knew were associated with infringing activities. For example, Sony sent Cox over 160,000 notices of infringing activity corresponding to specific IP addresses over a roughly 2-year period. And although Cox took steps to limit users' infringement, including suspending Internet access to certain IP addresses, Sony pointed out that Cox ultimately terminated only 32 subscribers for infringement. Internal documents also showed Cox employees appeared to embrace the infringing uses—such as the infamous "F*** the DMCA" email. Sony thus alleged that Cox was liable for statutory damages for willfully

infringing over 10,000 copyright works. At trial, the jury sided with Sony and found Cox liable on both contributory and vicarious liability theories, awarding $1 billion in statutory damages.

On appeal, the Fourth Circuit affirmed the finding of contributory liability, applying its Circuit precedent that supplying a service or product (here, Internet service) with knowledge that a recipient/user will use it to infringe copyrights amounts to contributory infringement. But the Fourth Circuit reversed the vicarious liability verdict, finding Cox did not receive a "direct financial benefit" from the subscribers' infringements. The Fourth Circuit therefore vacated the damages award and remanded to reassess damages.

Cox appealed and the Supreme Court stepped in to review the contributory liability issue.

The Supreme Court's Contributory Copyright Liability Framework

The Supreme Court's March 25, 2026, Opinion departed from the Second Circuit's longstanding knowledge-plus-material contribution principle for contributory copyright liability set forth in Gershwin Pub. Corp. v. Columbia Artists Mgmt., Inc., a framework widely relied upon by lower courts across circuits. 443 F.2d 1159 (2d Cir. 1971).

Instead, the Supreme Court clarified the bar for secondary liability under the Copyright Act, reaffirming that mere knowledge that a service may be used to infringe does not, alone, give rise to contributory liability for a service provider. Rather, a provider is liable only where it intended its service to be used for infringement, which can be established in two ways: (1) the provider induces infringement (i.e., through actively encouraging infringement) or (2) the service is tailored to that infringement (i.e., it lacks "substantial" or "commercially significant" noninfringing uses).

Under this framework, the Court found that Cox did not encourage its users' infringement, nor did it provide a service tailored to infringement. Cox did not expressly promote or market its services for infringement or otherwise demonstrate an intent to facilitate such conduct. Rather, Cox "repeatedly discouraged" infringement by issuing warnings, suspending services, and terminating accounts whose IP addresses were being used unlawfully (though only 32 subscribers were terminated despite 163,148 infringement notices). At bottom, Cox provides Internet access, a service with substantial and indisputable noninfringing uses. Further, as the Court noted, ISPs have limited knowledge about who uses their Internet services and how they use it.

Although in agreement with the majority's holding, Justice Sotomayor (joined by Justice Jackson) wrote a concurring opinion leaving other common-law theories of secondary liability, such as aiding-and-abetting, on the table.

Other Types of Service Providers—including AI Companies—Are Likely to Leverage the Narrowed Contributory Infringement

The majority's two-track intent framework—inducement or tailoring—appears to carve an easier path for many types of defendants to argue against and avoid contributory liability even where they may have actual knowledge of infringements. Although the Cox decision involved a defendant that provided Internet services to subscribers, the Court's framework is not expressly limited to ISPs

and is potentially broad enough to extend to many other intermediaries, including: marketplace platforms, social media platforms, cloud storage providers, and artificial intelligence (AI) companies. These providers are now likely to leverage similar arguments in an attempt to shield themselves from liability.

In fact, media and AI companies are already trying to leverage Cox to avoid contributory copyright liability and even DMCA claims in pending copyright litigations. For example:

- In Entrepreneur Media, LLC v. Meta Platforms, Inc., Meta filed a letter providing notice of the decision and asking to submit supplemental briefing in support of its motion to dismiss. No. 3:25-cv-09579 (N.D. Cal. Mar. 25, 2026).
- In Abdi Nazemian et al. v. NVIDIA Corp., both parties notified the court of the decision, and the court ordered supplemental briefing on NVIDIA's motion to dismiss. No. 4:24-cv-01454 (N.D. Cal. Mar. 26, 2026).
- In Yout LLC v. Recording Indus. Ass'n of Am., Inc., a pending Second Circuit case regarding an anti-circumvention claim under the DMCA, both parties filed letters with the court opining on the applicability of the Cox decision to the case. No. 22-2760 (2d Cir. 2026). Specifically, Yout argues that the tailoring track of the Cox framework has bearing, while RIAA argues that Cox is not relevant because it addresses common law contributory liability, not statutory anti-circumvention claims.

And, with dozens of pending copyright infringement cases against AI companies, the Cox decision is likely to be frequently cited. For example, AI model creators may look to paint their models (e.g., large language models (LLMs)) as general-purpose technologies capable of substantial and commercially significant noninfringing uses. And drawing comparisons to the ISP in Cox, general LLM providers whose models are integrated into third-party applications may argue they have limited visibility into end users or specific uses. Likewise, developers of downstream systems that incorporate or rely on these LLMs may try to argue that their platforms are also typically capable of substantial non-infringing uses and are not principally designed to facilitate infringement.

On the other hand, copyright owner plaintiffs may try to limit Cox to the facts of the underlying case (i.e., to ISPs) or to distinguish by arguing that AI platforms and AI-powered tools can more easily see users' prompts than an ISP like Cox is able to see. They may also try to shift strategies to pursue direct or vicarious liability claims instead of contributory liability claims.

How the Cox decision will play out in district and circuit court decisions—where courts will need to apply the Supreme Court's holding to different facts, service providers, and scenarios in front of them—will be closely watched by copyright enthusiasts.

New Uncertainty Around the Future of the DMCA in a Technology-Driven World

The Cox decision also sparked questions about how it may affect the DMCA safe harbors. These statutory safe harbors shield qualifying online service providers from liability in exchange for prompt removal of infringing content. The majority spent a single paragraph discussing the DMCA, assuring that its framework left those safe harbor defenses untouched. Rejecting the music companies' argument that liability is presupposed under the DMCA where ISPs continue to serve known infringers, the majority instead offered only a minor clarification: that the DMCA does not expressly impose liability where a service provider fails to comply with the safe harbor rules. The

Court noted that, instead, the DMCA "merely creates new defenses" from contributory liability for such providers.

In contrast, Justice Sotomayor warned that the majority's "new rule . . . consigns the safe harbor provision to obsolescence." Further, by limiting secondary liability, she argued that the majority's decision upends the statutory incentive structure Congress created to promote online service providers to work with rights owners. It is left to be seen whether service providers will continue to make the same efforts (and expenses) to comply with the DMCA.

Key Takeaways for Copyright Owners and Service Providers in the Post-Cox World

The Supreme Court's hard line on contributory copyright liability will impact both copyright owners as well as service providers. Lower courts will likely begin to shape how the Cox standard applies to alleged infringers beyond ISPs and across differing factual scenarios soon.

For now, copyright owners may decide to focus enforcement efforts on direct infringers or specific platforms (e.g., third-party applications) that actively promote infringement, rather than on the underlying service provider (e.g., ISPs, data hosting services, LLM developers, etc.). Similarly, copyright owners have an increased incentive to find evidence of the requisite intent, such as marketing materials that include the express promotion of infringing uses, or documentation showing that the design of product or service features facilitates infringement.

On the other side, service providers should be mindful that their marketing and advertising materials, contractual terms, and user agreements may be used as evidence that infringement was encouraged. It will be especially important that these materials do not promote or facilitate infringing uses to avoid an argument that the provider "induced" infringement. And developers should be aware their intent in designing the system—including whether the service or platform is designed for non-infringing uses—is a relevant consideration.

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