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Supreme Court Scales Back Copyright Contributory Liability for Online Services

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The Supreme Court has significantly limited contributory liability of online services for copyright infringement. In *Cox v. Sony Music Entertainment*, the Court considered an appeal by internet service provider Cox Communications which music copyright owners accused of facilitating thousands of direct infringements by subscribers. A jury found Cox liable and awarded \$1 billion in statutory damages, which the Fourth Circuit affirmed as to contributory liability. On March 25, 2026, the Supreme Court reversed. The Court held that when an online service provider *knows* of infringement by its customers but does not *intend* for its service to be used that way, nor *encourage* its customers to use the service to infringe, the provider cannot be liable for contributory infringement. The decision has important implications for the liability of online services of all kinds. Given that the contributory infringement principles discussed apply under the Patent Act, the decision could have a profound effect on patent cases as well.

Background

Cox Communications is an internet service provider with millions of subscribers. While Cox can track the IP addresses that correspond to its subscriber accounts, Cox has limited knowledge of who uses the services and how they use them. Many subscribers commit direct acts of copyright infringement by uploading digital copies of copyright-protected music and making them available for download.

Sony Music Entertainment and other music copyright owners monitored infringing activity and sent Cox tens of thousands of takedown notifications. The notifications identified illegal uploads and downloads of copyrighted works and traced the infringing activity to particular IP addresses. Over a two-year period, the copyright owners sent Cox more than 100,000 notifications identifying infringing activity. The parties disputed Cox's compliance with the Digital Millennium Copyright Act ("DMCA") safe harbor: Sony argued that Cox terminated the accounts of only 32 subscribers during the claim period, while Cox argues that it acted on notices to end 98% of the identified infringements.

The copyright owners sued in the Eastern District of Virginia, claiming Cox was contributorily and vicariously liable for its customers' infringement. As to contributory liability, the copyright owners claimed Cox was liable for continuing to provide internet service to subscribers whose IP addresses it knew were associated with infringement. A jury returned a verdict for the plaintiffs on both claims and awarded \$1 billion in statutory damages. Cox appealed to the Fourth Circuit, which reversed the vicarious liability finding but affirmed the

damages verdict based on contributory infringement. The Supreme Court granted certiorari.

Majority Opinion

Justice Thomas delivered the opinion of the Court.

The Court started by reiterating the standard for contributory copyright infringement under two key copyright decisions: *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U. S. 913 (2005) and *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). “The provider of a service is contributorily liable for the user’s infringement only if it intended that the provided service be used for infringement.” There are only two ways to show intent:

1. If the party induces the infringement – that is, if it “actively encourages infringement through specific acts”;
or
2. If the service is tailored to infringement – in other words, if the service is not capable of “substantial” or “commercially significant” non-infringing uses.

The Court reasoned that the basis for the Fourth Circuit’s ruling – “supplying a product with knowledge that the recipient will use it to infringe copyrights” – did not satisfy the principles established in *Grokster* and *Sony*. There could be no liability even though Cox received notifications identifying subscribers by IP address and their acts of infringement but continued to let those subscribers infringe. That conduct, the Court held, certainly established Cox’s *knowledge* of its subscribers direct infringement, but contributory liability requires more. And here, where there was no evidence that Cox expressly promoted or marketed and infringing use, Sony could not demonstrate Cox’s *intent* for its service to be used for infringement, as principles of contributory infringement require. To the contrary, the Court observed that Cox had guarded against customer infringement through its own contracts, which prohibited infringing activity.

The Court noted that the Copyright Act itself does not “expressly render anyone liable for infringement committed by another.” And while Supreme Court precedents embrace “specific forms of secondary copyright liability that predated the Copyright Act,” the Court was reluctant to expand that liability beyond the forms recognized in cases *Grokster* and *Sony*.

Finally, the Court rejected Sony’s arguments that Congress enacted the DMCA to address precisely situations like this. “The DMCA merely creates new *defenses* from liability for such providers,” the Court said, not a new form of liability.

Sotomayor Concurrence

In a concurrence, Justice Sotomayor wrote that the majority unnecessarily limited contributory liability to two forms, even though the Court’s precedents left open the door for other common law theories of liability, like aiding and abetting. Nevertheless, she agreed with the majority that Cox was not liable because the plaintiffs failed to prove the requisite intent for aiding and abetting.

Justice Sotomayor also wrote that the Court’s reading “dismantles” the safe harbor incentives Congress created under the DMCA – that is, “creating incentives for ISPs to take reasonable steps to prevent copyright infringement on their networks, while also assuring ISPs that they do not need to take on the

impossible task of responding to every instance of infringement on their networks.” According to Justice Sotomayor, the majority opinion “consigns the [DMCA’s] safe harbor provision to obsolescence.”

Takeaways

- The decision significantly limits contributory liability as a viable theory of copyright infringement. Its reach is broad: the decision applies to services of all kinds, like social media and content platforms, not just internet service providers. It also applies not just to copyright cases but also to patent cases; the Supreme Court’s decision expressly acknowledged the “historic kinship” between copyright and patent law, and that the Patent Act tracks the two requirements of contributory liability recognized in the Cox opinion.
- Inaction in the face of knowledge of direct infringement is not enough to establish contributory liability. The Court narrowly set two ways to find contributory liability: (1) inducement through active encouragement by specific acts; and (2) tailoring a service for others to commit infringement such that the service has no substantial non-infringing uses.
- Copyright plaintiffs will have to come forward with specific facts to establish either of these two elements, which will be challenging in most cases. But other theories of liability remain. Vicarious liability arises for services that have the right and ability to control the infringing activity and that earn a direct financial benefit from it. Direct liability also may arise, such as where an online platform hosts and distributes content.
- The decision calls into question how much services still need the DMCA’s safe harbors to shield them against copyright liability. It also changes how effectively services need to implement notice-and-takedown procedures and repeat-infringer policies under the DMCA. While the DMCA remains an effective defense to an infringement claim, services of all types should reexamine their approaches and consider adjusting them in response to the change in law.

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