Cooley

Supreme Court Confirms Limits on Contributory Liability for Copyright Infringement

March 27, 2026

On March 25, 2026, in a unanimous decision, the US Supreme Court held that an internet service provider (ISP) was not contributorily liable for copyright infringement committed by its subscribers. Under the Supreme Court's ruling, the intent required for contributory liability can be shown only if the service provider induced the infringement, or the provided service is tailored to that infringement. Justice Clarence Thomas penned the majority opinion in *Cox Communications, Inc., et al., v. Sony Music Entertainment et al.*, 607 US ___ (2026). Justice Sonia Sotomayor filed the concurrence, which Justice Ketanji Brown Jackson joined.

Background of the dispute

Cox Communications is an ISP that serves millions of subscribers. In 2018, Sony and other copyright owners brought suit against Cox and its subsidiary for copyright infringement on the theory that ISPs are secondarily liable – including under theories of both contributory and vicarious infringement – for internet users using an ISP's internet services to illegally reproduce and download copyrighted works.

Over a two-year period, Cox received notice of 163,148 incidents of infringement and implemented its 13-warning plan for each, but ultimately terminated only 32 subscribers' accounts. Sony argued that this showed Cox was contributorily liable because it continued to provide internet services to subscribers it knew were infringing. Sony also contended that Cox was vicariously liable for the infringement because the ISP had a right and ability to supervise the infringers, and it financially benefitted from the acts of infringement.

Cox countered that the knowledge an ISP has about its users and their individual activities is limited. This is because, although ISPs assign an Internet Protocol (IP) address to each user's account, a single IP address may cover a house, coffee shop, university or geographic region. It is therefore difficult to ascribe an activity to a particular user of an IP address, even if the ISP is aware of the IP address where infringement is occurring. Cox also argued that its users contractually agreed to not use its services for infringement purposes, and that it merely provided a service for which a substantial number of uses are non-infringing. There was no evidence that Cox had advertised the ability to infringe via its services.

After a trial in the US District Court for the Eastern District of Virginia, the jury found in favor of Sony on both contributory and vicarious liability. It also found that Cox's infringement was willful and awarded Sony $1 billion in statutory damages. The district court denied Cox's post-trial motion for judgment as a matter of law.

Cox appealed to the US Court of Appeals for the Fourth Circuit, where the court affirmed the ruling in part, finding Cox was contributorily liable for continuing to provide internet to known infringers. The Fourth Circuit reversed the vicarious liability finding because Cox did not financially benefit directly from the infringement, vacated the damages award and remanded for the jury to reassess damages based on contributory liability alone.

Both sides petitioned the Supreme Court for review. The Supreme Court granted Cox's petition concerning contributory liability but denied Sony's petition concerning vicarious liability.

Earlier cases on contributory liability

Unlike the Patent Act, the Copyright Act does not include a provision for contributory infringement (i.e., liability for infringement committed by another). Nevertheless, the Supreme Court has recognized the doctrine of contributory liability in the copyright context on multiple occasions.

In *Sony Corp. of America v. Universal City Studios, Inc.*, 464 US 417 (1984), the Supreme Court found Sony was not contributorily liable for selling Betamax videotape recorders, which many consumers were using to create infringing copies of copyrighted works. The Supreme Court held that the sale of copying equipment, like the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. The Betamax machines were capable of substantial non-infringing uses, and the sale of such equipment to the general public therefore did not constitute contributory infringement of the respondents' copyrights.

More recently, in *MGM Studios, Inc. v. Grokster, Ltd.*, 545 US 913 (2005), the Supreme Court found that peer-to-peer file sharing companies could be contributorily liable for inducing copyright infringers in the context of distribution of a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement.

In the wake of these Supreme Court decisions, some courts went a step further. For example, the US Court of Appeals for the Ninth Circuit held that, in the online context, a "computer system operator" is liable under a "material contribution theory of infringement 'if it has actual knowledge that specific infringing material is available using its system, and can take simple measures to prevent further damage to copyrighted works, yet continues to provide access to infringing works'" (*Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 671 (9th Cir. 2017)).

The *Cox* decision

The Supreme Court sided with Cox, holding that a service provider is contributorily liable for a service user's infringement only if it induced the infringement or provided a service tailored to the infringement. Citing *Grokster,* the Supreme Court clarified that a service is tailored to infringement if it is not capable of "substantial" or "commercially significant" non-infringing uses. In doing so, the Supreme Court reinforced its long-standing precedent that service providers cannot be held liable for copyright infringement merely because they have knowledge that some users will exploit their service for that purpose. Here, the Supreme Court observed, Cox did not induce or encourage its subscribers to infringe, and in fact it repeatedly discouraged copyright infringement by users. While the case will be remanded, the Supreme Court has effectively put an end to Sony's bid to revive its $1 billion award.

In reversing the Fourth Circuit's ruling on contributory liability and remanding, the Supreme Court also confirmed that the Digital Millennium Copyright Act (DMCA) does not create liability for ISPs that continue to provide services to known infringers; rather, terminating repeat infringers to qualify for the DMCA safe harbor merely gives rise to a defense on which service providers can rely. Failure to comply with the DMCA safe harbor provisions does not itself create a basis for liability.

In the concurrence, Justice Sotomayor criticized the majority's decision for limiting common law doctrines that she would have left open as possible theories of liability, like aiding and abetting. However, Justice Sotomayor concurred in the decision because Sony could not prove that Cox had the requisite intent to be liable on a common law aiding-and-abetting theory under the facts of this case.

Significance

This case is a significant win for ISPs and other service providers that may face copyright claims relating to the actions of their users. The Supreme Court's decision confirms limits on contributory liability in the copyright context. To the extent that other theories of contributory liability had begun to emerge in the lower courts, whether under a "material contribution" theory or other common law theories, the *Cox* decision rejects such expansion of the doctrine of contributory infringement. However, service providers should continue to manage risk by maintaining reasonable policies and avoiding the paths to contributory liability left open by the Supreme Court's decision.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to

be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Brendan Hughes **Washington, DC**	**bhughes@cooley.com** **+1 202 842 7826**
John Paul Oleksiuk New York	jpo@cooley.com +1 212 479 6363
Bobby Ghajar Santa Monica	bghajar@cooley.com +1 310 883 6404
Brian Focarino Boston	bfocarino@cooley.com +1 617 937 2347
Jessica Williams Washington, DC	jwilliams@cooley.com +1 202 776 2204
Judd Lauter San Francisco	jlauter@cooley.com +1 415 693 2915

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.