

Supreme Court Faced with Two Extremes in *Cox Communications, Inc. v. Sony Music*

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On December 1, 2025, the Supreme Court of the United States heard oral argument in *Cox Communications, Inc. v. Sony Music Entertainment*, a pivotal copyright case that asks the Court to choose between two very different interpretations of contributory liability for internet service providers (“ISPs”). The Justices’ questions during the argument reflected a keen awareness of the far-reaching consequences of both views—not only for ISPs, but also for internet users, copyright holders and online platform providers more broadly. The Justices’ apparent skepticism toward outcomes that either vastly expand or practically eliminate ISP exposure to contributory liability may signal a narrow ruling and suggest that Congress will ultimately need to weigh in on the boundaries of ISP liability for users’ conduct.

In this update, we analyze the key themes that emerged during Monday’s argument and explore the broader implications of potential outcomes in the case.

Cox Communications: The Dispute and the Argument

In 2018, Sony Music Entertainment, joined by dozens of other record labels and music publishers, filed a lawsuit in the Eastern District of Virginia against Cox Communications—the largest private broadband provider in the United States. Plaintiffs alleged that they had provided Cox with notice that certain internet subscribers used Cox’s services to engage in music piracy, yet Cox did not terminate the users’ internet access.

Plaintiffs contended that Cox was secondarily liable for copyright infringement, advancing two theories:

- Vicarious Liability, which required them to prove that Cox (1) profited directly from its subscribers’ infringement and (2) had the right and ability to supervise the infringing activity.

- Contributory Liability, which required them to prove that Cox (1) knew of its subscribers' infringing activity and (2) induced, caused or materially contributed to that activity.

Plaintiffs also sought enhanced statutory damages based on willfulness, alleging that Cox had actual awareness of its subscribers' infringing activity or acted with reckless disregard for, or willful blindness of, the infringing activity.

ISPs ordinarily rely on the safe harbor provided by the Digital Millennium Copyright Act ("DMCA") to avoid secondary liability. Cox could not do so here. In an earlier case against the ISP, the Fourth Circuit affirmed a finding that Cox was ineligible for DMCA safe-harbor protection for the relevant time period because it failed to reasonably implement a policy to terminate repeat infringers' internet access—a requirement for DMCA protection. See *BMG Rts. Mgmt. (US) LLC v. Cox Commc'ns, Inc.*, 881 F.3d 293, 305 (4th Cir. 2018). Cox's 13-strike policy for repeat infringers, coupled with internal communications pronouncing "F the dmca!!!," fell woefully short of the meaningful efforts needed for safe-harbor protection. Without that protection, the jury found that Cox was liable for both willful contributory and willful vicarious copyright infringement of over 10,000 musical works and awarded statutory damages of \$1 billion. The district court upheld the verdict; Cox appealed.

On appeal, the Fourth Circuit reversed the vicarious liability verdict on the ground that Sony had not established that Cox profited from its subscribers' infringing download and distribution of plaintiffs' copyrighted songs. By contrast, the court affirmed the contributory liability verdict, finding that an ISP can be liable where it supplies services with knowledge that the recipient will use those services to infringe copyrights. The court also vacated the damages award, remanding for a new trial on damages. After the Fourth Circuit denied rehearing *en banc*, both Sony and Cox sought Supreme Court review. The Court denied Sony's petition for a writ of certiorari and granted Cox's, agreeing to consider two questions:

- What conduct qualifies as "materially contributing" to copyright infringement?
- What level of knowledge is required for a finding of willful infringement?

On Monday, the Court heard oral argument from Cox, Sony and the Deputy U.S. Solicitor General, with the questioning focused almost entirely on the first question.

As to the first question, Cox contends that merely supplying a "general-purpose internet connection to a home or business knowing that someone will use that connection to infringe" is not enough to show that Cox "materially contributed" to infringement and, as a result, is contributorily liable. Brief for Petitioner at 17. Instead, Cox analogizes to

common-law aiding-and-abetting liability and argues that “materially contributing” to copyright infringement requires inducement or some other purposeful, culpable conduct aimed at encouraging infringement. Brief for Petitioner at 17.

By contrast, Sony contends that Cox’s knowledge of specific instances of infringement and continued provision of internet services—instead of terminating infringing users’ accounts—is sufficient to find material contribution and contributory liability.

The Justices expressed several concerns about both parties’ positions on contributory liability during the session:

Cox’s Liability Standard Would Eliminate Legal Incentives to Address Repeat Infringers

At oral argument, Justices Barrett, Jackson, Sotomayor and Kagan pressed counsel for Cox on the implications of their proposed heightened standard for contributory liability. Counsel acknowledged that under Cox’s proposed rule, ISPs would have no legal incentive to act against repeat infringers. Although counsel asserted that Cox would take action as a “good corporate citizen,” Justice Kagan dismissed that assurance as irrelevant to the legal question before the Court.

Cox’s Interpretation Is at Odds with the DMCA

Justices Kagan and Jackson also raised concerns about the inconsistency between Cox’s interpretation of secondary liability and the DMCA safe harbors. The safe harbors permit intermediaries to avoid liability only if they adopt and enforce policies addressing known infringement—which assumes that knowledge of infringement can give rise to liability.

After Cox’s counsel conceded that the DMCA safe harbors would serve little purpose if the Court accepted Cox’s liability theory, Justice Jackson expressed concern that such an outcome would undermine Congress’s intent in enacting them. Counsel responded that Congress did not have ISP liability in mind when drafting the DMCA and suggested that the safe harbors reflect an outdated regulatory approach—a theme Cox offered to caution the Court against reading too much into Congress’s intent.

Sony’s Position Raises Its Own Practical and Doctrinal Concerns

The Justices’ skepticism was not limited to Cox. The Court also probed the potentially sweeping implications of Sony’s position that a provider who supplies internet service with knowledge that it will be used for infringement may be held contributorily liable.

The Justices were particularly attuned to the practical result of Sony's argument when applied to multi-user internet licenses. Justice Alito asked how Sony's theory would operate for regional ISPs, universities, libraries and other institutions where terminating a single internet account could impact hundreds or thousands of innocent users. Sony's counsel responded that ISPs and institutions could cooperate to identify individual infringers, that institutions could restrict internet capabilities to reduce infringing uses and that rightsholders could exercise discretion not to sue when such measures were impractical.

Justices Barrett and Kagan appeared unconvinced, with Justice Barrett noting that Sony's reliance on voluntary rightsholder restraint was effectively the mirror image of Cox's reliance on ISP "good corporate citizenship."

Growing Sense That Congressional Intervention May Be Needed

Multiple Justices voiced unease with the doctrinal instability surrounding secondary liability in copyright law. Justices Thomas, Kavanaugh, and Gorsuch in particular questioned how to apply existing precedents—including *Twitter, Inc. v. Taamneh*, *Metro-Goldwyn-Mayer Studios, Inc. v. Gokster* and *Sony Corporation of America v. Universal City Studios, Inc.*—and how common-law principles apply to ISP liability. Their questions suggested a reluctance to adopt either party's view without a congressional mandate.

While the Court's ultimate opinion may not explicitly call for legislation, the argument made clear that several members of the Court view the current statutory and common-law structure as ill suited to answer the questions posed in this case.

Practical Implications and Considerations of Cox Communications

The Court's skepticism toward both sides' arguments suggests it may leave broader policy questions to Congress and issue a narrow ruling—following the pattern of narrow rulings we have seen in recent intellectual property cases before the Court, including *Dewberry Group, Inc. v. Dewberry Engineers Inc.*, *Warner Chappell Music, Inc. v. Nealy* and *Jack Daniel's Properties v. VIP Products LLC*. But if the Court were to endorse either party's approach here, the consequences would be immediate and significant.

- **Adoption of Sony's View:** Endorsing Sony's interpretation would expand exposure to secondary liability for ISPs as well as companies that transmit, store or facilitate user-generated content—including cloud storage providers, AI platforms, social media sites, online marketplaces and search engines. These entities would likely need to reassess their risk profiles and consider substantial policy changes:

- Reinforcing and rigorously enforcing “reasonably implemented” repeat-infringer policies to preserve DMCA safe-harbor protections.
- Increasing coordination and communication with rightsholders to preempt or mitigate litigation.
- Terminating user accounts suspected of infringement after fewer warnings or “strikes.”
- Reducing or limiting certain services offered to users to minimize exposure.
- Raising consumer costs in anticipation of heightened enforcement and litigation risks.
- **Adoption of Cox’s View:** Adopting Cox’s position would eliminate the ability of rightsholders to rely on infringement notices sent to ISPs as an enforcement tool. Rightsholders would need to redirect their efforts toward pursuing large-scale individual infringers and intermediaries—such as piracy websites—that could meet the higher threshold for secondary liability.

Looking Ahead

Moving forward, another critical question is the degree to which a new formulation of secondary liability in copyright law would shape, or potentially clash with, theories of secondary liability in trademark and patent law. The Justices seemed sensitive to this question, as they considered whether they should follow the codified contours of secondary patent infringement as a guidepost. Debevoise is monitoring this case and will provide an update once the Justices issue their opinion.

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Please do not hesitate to contact us with any questions.



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