COX COMMUNICATIONS, INC. V. SONY MUSIC ENTERTAINMENT[1]

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In March, the United States Supreme Court is expected to rule on Cox Communications, Inc. v. Sony Music Entertainment, which involves numerous record companies suing Cox, an internet service provider, for failing to stop repeat copyright infringement by users on its network. This case could fundamentally change the way Internet service providers (ISPs) operate and create tensions with First Amendment rights. A federal jury in 2019 found Cox liable for both contributory and vicarious copyright infringement and awarded Sony Music Entertainment and the other plaintiffs over 1 billion dollars in damages. However, in 2024, the Fourth Circuit appellate court overturned the lower court's finding of Vicarious liability. Despite agreeing with the claim of Contributory liability, the court overturned the 1 billion settlement. Cox has now appealed the appeals court's ruling on contributory Copyright Infringement, and the Supreme Court will hear oral arguments for the case in December 2025 and will address the fundamental question of whether Internet service providers are liable for their users' copyright infringement.

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[1] Editor's Note: This article was written in December 2025, before the Supreme Court decided Cox Communications, Inc. v. Sony Music Entertainment. On March 25, 2026, the Court reversed the Fourth Circuit's ruling on contributory liability, holding that Cox could not be held contributorily liable on the theory before the Court because it neither induced users' infringement nor provided a service tailored to infringement. The article has been left substantially in its original form to preserve the author's pre-decision analysis; as a result, some portions refer to the case in future tense.

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I. CASE BACKGROUND AND PROCEDURAL HISTORY

In 2018, Sony Music Entertainment, along with 50 other music labels and publishers, sued Cox Communications, the largest private internet provider in the country. The plaintiffs alleged that Cox knew of, and financially benefited from, users' illegal pirating of copyrighted music. Sony claimed that Cox was liable for copyright infringement under the doctrine of secondary liability, which states that a party can be held legally responsible for a crime they did not personally commit if they partook in "encouraging, facilitating or profiting"[3] it. The case was heard in the U.S. District Court in the Eastern District of Virginia. The lawsuit alleged that Cox failed to address hundreds of thousands of copyright infringement notices by Cox internet subscribers. through peer-to-peer file sharing services, to illegally share and download over 10,000 individual copyrighted pieces of music[4]. Furthermore, the plaintiffs claim that Cox was liable for both contributory (the party knowingly causes, and contributes to another's direct infringement of a copyright) and Vicarious (materially benefited from another's direct infringement) Copyright Infringement. The contributory claim stemmed from the fact that Cox not only knew their platform was being used to facilitate copyright infringement, but they also knew of specific users who were violating copyright law, and allowed those users to continue utilizing their services. Thus, Cox contributed the necessary means for its users to commit repeated copyright infringements.[5] Cox was accused of vicarious copyright infringement because they could have stopped the continuous copyright infringement that was occurring on

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[3] DUKE UNIVERSITY SCHOOL OF LAW, *Secondary Liability for Copyright Infringement & Safe Harbors in the Digital Age*, in INTELLECTUAL PROPERTY CASEBOOK (2025).

[4] Blake Brittain, *Major Labels Ask U.S. Supreme Court to Reconsider $1 Bln Cox Copyright Case*, REUTERS (Aug. 21, 2024), https://www.reuters.com/legal/litigation/major-labels-ask-us-supreme-court-reconsider-1-bln-cox-copyright-case-2024-08-21/.

[5] Joint Appendix Vol. 1 at 34, *Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171 (U.S. filed Oct. 29, 2025).

their network service, but failed to do so, since removing users from their services would result in a financial loss[6].

Cox claimed to have a "13-strike policy,"[7] which stated that, after multiple warning notices, Cox would suspend users who engaged in copyright infringement. However, they seldom upheld the policy, and it was exceptionally rare for them to actually terminate users for repeat copyright infringement. The record reflected that "From early 2013 through March 2015 alone, Cox received more than 200,000 notices, provided under penalty of perjury, detailing specific instances of its subscribers using its network to infringe copyrighted music."[8] Cox also placed an "arbitrary cap" on the number of copyright infringement notices it would accept, arguing that they couldn't be held responsible for terminating users for violation of Copyright. However, Cox routinely cut off customers' access for late payments and delinquency, suspending internet service for over 600,000 users and businesses from 2013-2014.[9]

The fundamental question the Jury was left to answer was: Is an internet service provider financially liable for what its users do online? In 2019, the federal jury seemed to think so, and found Cox liable for both contributory and vicarious copyright infringement.[10] The jury believed that Cox knew that they were enabling their users to access copyrighted music and also financially benefited from the infringement. They also found that Cox's infringement was willful, which under 17 USC 504: Remedies for infringement: Damages and profits increases the maximum financial penalty for statutory damages.[11] The Jury awarded almost 100,000 dollars per individual infringed piece of work, with the damages against Cox

[6] *Id.* at 36.
[7] *Id.* at 5-6.
[8] *Id.* at 26.
[9] *Id.* at 367-68
[10] *Id.* at 91.
[11] 17 U.S.C. § 504(c).

totaling around 1 billion dollars. The jury believed that Cox did not take sufficient action to stop the repeat infringement and that Cox was benefiting financially from allowing users who were infringing copyright to continue using its services.

II. THE FOURTH CIRCUIT'S DECISION

Cox appealed to the Fourth Circuit in 2024, and the court reversed the finding of **Vicarious** liability. The appeals court concluded that "Cox did not profit from its subscribers' acts of infringement."[12] They found that while Cox did financially benefit from users, the financial benefit was not sufficiently tied to the act of copyright infringement, as there must be a clear and direct financial benefit to prove vicarious liability. The court used the example of *Nelson-Salabes, Inc. v. Morningside Dev*, in which the defendant had "an obvious and direct financial interest in the [developer's] infringing activities" because the owner "enjoyed the benefit of any increase in the Project's value resulting from [the developer's] infringement."[13] In this case, the act of "infringement" was directly tied to more profit for the defendant. Similarly to Cox, in the case of *Fonovisa Inc. v. Cherry Auction Inc.,* it denotes Vicarious liability, because *Fonovisa* directly benefited from its vendors selling infringed copyrighted recordings through admission fees. In the case of Cox, by merely providing the network, they did not benefit financially from the act of copyright infringement more than a user who did not infringe on copyright. The users paying a "set-up fee and flat periodic payments" to Cox services would not constitute a financial benefit directly attributable to the infringing activity. Regarding the question of whether Cox financially benefited from not removing users who had been flagged for copyright infringement, the court

[12] *Sony Music Entm't v. Cox Commc'ns, Inc.*, No. 21-1168, slip op. at 4 (4th Cir. Feb. 20, 2024).

[13] *Id.* at 10-11.

ruled that Cox was liable. By not canceling services for users who engaged in illegal activity, Cox "profit[ed] directly from the sale of internet access" to users who were engaged in illegal activity.[14] Because Cox never directly benefited from the copyright infringement, this did not meet the standard for establishing vicarious liability.

The Appeals court, however, affirmed the lower court's contributory liability findings. They held that "supplying a product with knowledge that the recipient will use it to infringe copyrights is exactly the sort of culpable conduct sufficient for contributory infringement."[15] By continuing to provide internet services to specific known users who had violated copyright infringement to avoid losing revenue, Cox knowingly allowed infringement, making their conduct culpable.[16] The Fourth Circuit Court of Appeals used the following case analogy to explain their ruling: if one were to hand a robber a hammer and the robber uses it to break open an ATM, the party that handed the robber the hammer would not be liable for robber's actions actions; however, if one does so knowing that the robber will rob the ATM, they would be liable for knowing, aiding, and abetting.[17] Cox knew that users with a history of copyright infringement were more likely to continue violating copyright laws, yet they continued to allow these repeat offenders to use their internet services.

The appeals Court vacated the $1 billion that the federal jury had initially awarded to the plaintiffs and remanded the case for a new trial to determine damages based solely on contributory liability.

[14] *Id.* at 14.
[15] *Id.* at 22.
[16] *Id.* at 23.
[17] *Id.* at 20-25.

III. SUPREME COURT REVIEW AND THE SCOPE OF CONTRIBUTORY LIABILITY

After an initial failed attempt to appeal the verdict, Cox appealed to the Supreme Court, petitioning for review of the Fourth Circuit's decision, which upheld the lower court's findings of contributory damages. Cox argued that simply providing internet access should not automatically make internet service providers liable for their customers, even if those customers use it to engage in illegal activity. In 2025, the Supreme Court granted review on the question of what constitutes contributory liability under copyright law. The Supreme Court heard oral arguments from both parties in December 2025, and it is expected to deliver a decision in June 2026 as to whether Cox is culpable for contributory liability for the copyright infringement of their users.[18]

During the oral arguments, Cox's lawyer, Rosenkranz, argued that by applying contributory liability, the court opened the door to "no sure-fire way for an ISP to avoid liability," since anyone can use an ISP as a means for illegal activity. [19] Rosenkranz demanded that the court revise the Fourth Circuit's decision, lest internet companies become liable to police any/all tort cases that occur on the internet. Supreme Court Justices Roberts and Sotomayor pushed back on this point, asserting that Cox was capable of only cutting off the internet to specific users, but chose not to.[20]

Rosenkranz tried to establish a Supreme Court precedent that would absolve ISPs of culpability in cases of secondary liability He invoked the logic of the 2023 Supreme Court case *Twitter, Inc. v. Taamneh*,[21] where the

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[18] *Cox Communications, Inc. v. Sony Music Entertainment*, SCOTUSBLOG, https://www.scotusblog.com (last visited Jan. 22, 2026)

[19] Transcript of Oral Argument at 4, *Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171 (U.S. Dec. 1, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-171_ap6c.pdf.

[20] *Id.* at 11.

[21] *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023).

Supreme Court ruled unanimously that Twitter (now X) was not liable for content that terrorist group ISIS[22] posted on their platform, since Twitter did not "knowingly provid[e] substantial assistance" under the Anti-Terrorism Act.[23] Neither Justice Thomas nor Justice Kagan appeared convinced by Rosenkranz's argument that this case bore any resemblance to the case of *Twitter,* saying they "were dealing with a totally different matter in Twitter than we have here." [24]

However, several justices, including Justice Alito, questioned the music industry's position. Alito raised the hypothetical question of what would happen if an ISP were forced to shut down the internet for a university because of a copyright infringement report. Justice Gorsuch, on the other hand, called into question Sony's use of secondary liability, which is not clearly defined for companies that are providing a service to the public. Gorsuch stated, "In the Central Bank of Denver...the Court refused to imply any aiding-and-abetting liability under the Securities Exchange Act…so Sony sits in some tension with our law right there. "[25]

The justices seemed relatively unconvinced by both parties' claims, but they wanted to find "a middle ground that would hold bad actors accountable without imposing impossible burdens on ISPs."[26] Justice Sotomayor notably characterized both sides as "extremes," and felt a

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[22] *Foreign Terrorist Organizations*, U.S. DEP'T OF STATE, https://www.state.gov/foreign-terrorist-organizations/ (last visited Apr. 14, 2026).

[23] 18 U.S.C. § 2333.

[24] Transcript of Oral Argument at 4, *Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171 (U.S. Dec. 1, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-171_ap6c.pdf.

[25] *Id.* at 84.

[26] Kaufman & Canoles, *Cox v. Sony Supreme Court Case*, JD SUPRA (Dec. 3, 2025), https://www.jdsupra.com/legalnews/cox-v-sony-supreme-court-case-3248289/.

middle ground solution was preferable.[27] In terms of the actual ruling, the Supreme Court may side with Cox if it concludes that the Fourth Circuit's standard for contributory liability risks imposing an unworkable obligation on ISPs to monitor and police their users' online activity. Conversely, the Court may uphold the Fourth Circuit's decision if it determines that Cox's conduct amounted to willful blindness rather than just passive negligence. Evidence that Cox selectively declined to terminate repeat infringers, particularly with high-revenue subscribers, could lead the Court to reaffirm that contributory liability applies where an intermediary knowingly allows ongoing infringement.

IV. FIRST AMENDMENT CONCERNS AND BROADER IMPLICATIONS

The American Civil Liberties Union (ACLU), alongside the Center for Democracy and Technology, raised concerns with how this case could fundamentally change the way the internet is used, as it will determine whether an ISP is liable for its customers' online actions.[28] The ACLU urged the Supreme Court to limit the scope of contributory copyright liability for internet service providers, warning that expansive liability threatens free expression online. In an amicus brief, Evelyn Danforth-Scott, an attorney for the ACLU, argued that imposing secondary liability would incentivize ISPs to broadly terminate internet access based on yet unproven suspension or violation to avoid secondary liability for copyright infringement of an unidentified user.[29]

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[27] Transcript of Oral Argument at 84, *Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171 (U.S. Dec. 1, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-171_ap6c.pdf.

[28] American Civil Liberties Union, *ACLU Urges Supreme Court to Protect Free Expression Online in Copyright Case*, ACLU (Dec. 1, 2025), https://www.aclu.org/press-releases/aclu-urges-supreme-court-to-protect-free-expression-online-in-copyright-case.

[29] Brief of Amici Curiae ACLU et al. in Support of Petitioners at 1, *Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171 (U.S. filed Sept. 5, 2025).

The ACLU's petition argues that such an approach by ISPs could risk cutting off entire households, businesses, and public institutions from the internet. The brief also notes that multiple users can be associated with a single IP address, making it difficult to identify exactly who is liable. Danforth-Scott wrote that "[c]ustomers accused of copyright infringement also transmit lawful, First Amendment-protected speech. Terminating internet access would interfere with that speech."[30] Given how much the internet is relied upon in daily life and communication, if ISPs shut off tens of thousands of users' internet access based on fear of secondary liability, lawful speech could be imposed upon, and First Amendment protections could be undermined. The ACLU's Amicus brief urges the Court to adopt a narrower standard that still protects copyright enforcement without giving ISPs unprecedented power in controlling online speech and activity.

V. OUTCOME OF THE COURT'S RULING

The Supreme Court's decision in *Cox Communications, Inc. v. Sony Music Entertainment* will have significant implications for copyright enforcement and the future role of internet service providers. If the Supreme Court reverses the Fourth Circuit's decision upholding contributory liability, it could significantly narrow the scope of liability by requiring clearer evidence of ISPs' intent and facilitation, and limit ISPs' liability for their users' conduct. If the Supreme Court affirms the Fourth Circuit's ruling, it will reaffirm that ISPs are liable for users, especially when they knowingly tolerate repeated copyright infringement for economic gain. The outcome of *Cox Communications, Inc. v. Sony Music Entertainment* will clarify the boundaries of contributory and secondary liability in the digital age and shape how courts balance copyright protection with free expression and internet access in the years to come.

[30] *Id.* at 4.