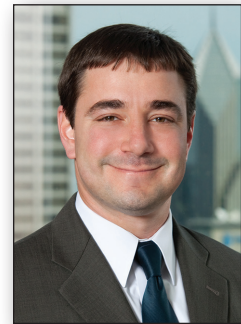


Supreme Court Limits Copyright Liability of ISPs

By Seth I. Appel



Ever since the Internet became a regular part of our lives, people have used online platforms to share copyrighted content, often to the chagrin of copyright owners. This has led to a vigorous debate about the responsibilities and legal liability of Internet services providers (“ISPs”) and other intermediaries that facilitate the exchange of music, movies and other creative works. In March, 2026, the Supreme Court issued an important decision restricting ISPs’ contributory liability for copyright infringement in *Cox Communications, Inc. v. Sony Music Entertainment*, No. 24-171, 607 U.S. ____ (2026).

Background

Cox Communications is an Internet service provider with approximately six million subscribers. As the Court observed, ISPs such as Cox “have limited knowledge about how their Internet services are used and who uses them,” and in general, they “cannot directly control how their Internet services are used.” Under its standard terms of service, Cox states that subscribers may not use their service to post, copy, transmit or disseminate infringing content. Cox also takes other steps to address infringement including sending warnings to subscribers and, eventually, terminating service after a large number of infringement notices.

The plaintiffs, Sony Music Entertainment and other major music copyright owners, used MarkMonitor to track infringements of their copyrights and trace such infringements to particular IP addresses. MarkMonitor sent over 160,000 notices to Cox over a two-year period identifying IP addresses involved in copyright infringement.

Unsatisfied with the sufficiency of Cox’s efforts to combat infringement, the plaintiffs brought suit under the Copyright Act. They alleged that Cox was liable for contributory infringement because it continued to provide Internet services to subscribers whose IP addresses it knew were associated with infringement. After trial in the district court, the jury found Cox liable for contributory infringement and vicarious infringement – and it determined that such infringement was willful – and it awarded the plaintiffs \$1 billion in statutory damages.

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On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the judgment in favor of the plaintiffs on contributory infringement. It reasoned 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.”¹

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Cox also did not offer a service tailored to infringement. Under *Grokster*, a service is tailored to infringement if it is not capable of “substantial” or “commercially significant” noninfringing uses. In other words, as Justice Sotomayor put it in her concurrence, the service must be “good for nothing else” but infringement. Of course, “countless people use the Internet for

legal activities,” the Court noted, even if some use it to share copyright works unlawfully.

The Court analogized Cox to the defendants in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U. S. 417 (1984), in which Sony sued the maker and retailers of the Betamax video tape recorder. In that landmark decision, the Court held that the defendants were not liable for contributory infringement because the Betamax product could be used to record copyrighted television programs for later personal viewing – which would not constitute infringement – even though it could also be used to reproduce and sell copyrighted television programs. Thus, it was “capable of substantial noninfringing uses.”

Likewise, Cox’s Internet service is capable of substantial noninfringing uses. The Court explained: “Cox did not tailor its service to make copyright infringement easier. Cox simply provided Internet access, which is used for many purposes other than copyright infringement.”

The plaintiffs argued that the Digital Millennium Copyright Act (“DMCA”), which provides a safe-harbor defense for service providers that have implemented certain policies, confirms that ISPs like Cox can be held liable. However, the Court pointed out, the DMCA simply creates a defense, and it does not impose liability on ISPs who serve known infringers. Moreover, the DMCA states that failure to qualify for the safe-harbor defense “shall not bear adversely upon the consideration of a defense by the service provider that the service provider’s conduct is not infringing.” 17 U.S.C. §512(l).

Justice Sotomayor concurred but objected to the majority’s “artificial limiting of secondary liability” to two specific circumstances. She expressed concern that the majority’s decision “permits ISPs to sell an internet connection to every single infringer who wants one without fear of liability and without lifting a finger to prevent infringement.” She cautioned that going forward, an ISP such as Cox would have little reason

The Supreme Court Decision

The Supreme Court reversed. It held that an ISP such as Cox was not liable for subscribers’ infringing activities where its only role was providing Internet service. Justice Thomas, writing for the majority, explained that under the Court’s precedents, “a company is not liable as a copyright infringer for merely providing a service to the general public with knowledge that it will be used by some to infringe copyrights.”

The Court relied heavily on its prior decision in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). There, the Court held that a defendant is liable for contributory infringement if it *intended* its service to be used for infringement.

To establish that a provider intended its service to be used for infringement, a copyright owner must show one of two things. First, it can show that a party affirmatively “induc[ed]” the infringement. Or, second, it can show that the party sold a service tailored to infringement.

Applying these principles, the Court found that an ISP such as Cox is not contributorily liable for copyright infringement.

The Court explained that a service provider induces infringement “it if actively encourages infringement through specific acts.” That was the case in *Grokster*, where the defendants offered peer-to-peer file-sharing software that they promoted and marketed as a tool to download copyrighted works. Thus, the “principal object” of their business models was copyright infringement.

Cox, on the other hand, did not actively encourage infringement. Although it was aware of such infringement, there was no evidence that it promoted or marketed its service for that purposes. On the contrary, “Cox repeatedly discouraged copyright infringement by sending warnings, suspending services, and terminating accounts.” The Court emphasized that “mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe.”

1. The Fourth Circuit reversed as to vicarious liability and remanded the case to the district court to reassess damages based on contributory liability alone. Vicarious liability applies where the defendant has the right and ability to supervise or control the infringing activity, and receives a financial benefit from such infringement.

to address copyright infringement at all. Nonetheless, she agreed that Cox should not be liable under either prong of the majority's test, and also found that Cox did not have the requisite intent to aid copyright infringement under a common law aiding-and-abetting theory.

The Court's decision in *Cox* was celebrated by free speech advocates such as the American Civil Liberties Union, which called it a "win for freedom of expression online."² The ACLU and others had submitted an *amicus* brief warning that holding Cox liable would lead ISPs to err on the side of terminating users' accounts based on mere accusations of infringement, which would eliminate Internet access for many Americans, constrain free speech and endanger First Amendment rights.

Despite its holding, the Court recognized the difficult situation faced by copyright owners in an age of ubiquitous online content sharing. As noted in the majority opinion, "because online infringement is so widespread, pursuing each individual infringer does little to stem the tide." Imposing liability on ISPs would give copyright owners a more effective avenue to address and redress online infringements, but in view of *Cox*, that generally will not be an option. As AI and other new technologies make online copyright infringement easier than ever before, content creators will have to rely on other means to enforce their copyrights. Even after *Cox*, the law does not tolerate online platforms centered on copyright infringement, and online service providers may still be liable if they encourage infringement. Nonetheless, *Cox* is an unwelcome development for copyright owners, and as a practical matter, it may mean that many infringements will go unaddressed. ■

2. ACLU Celebrates Supreme Court Decision Promoting Free Expression Online [Click Here](#)

Pattishall McAuliffe received top Gold Band Rankings in the prestigious *WTR 1000 Rankings* for 2026.

"Exceptionally knowledgeable, always practical, and reliably available, **Pattishall, McAuliffe, Newbury, Hilliard & Geraldson** strike the perfect balance between expertise and approachability.' **Thad Chaloeontiarana** is smart, responsive, and always has practical advice at his disposal. He is a wealth of knowledge and can instill confidence across all facets of trademark law.' His depth of experience across various matters inspires his following, while his collaborative style makes him both a valued partner and an exceptional mentor. He oversees both non-contentious and contentious matters involving BorgWarner's marks across multiple jurisdictions, including anti-counterfeiting and trademark disputes.

'**Jonathan Jennings** is a sophisticated IP attorney. He is knowledgeable, ethical, and courteous in every engagement.' Jennings, alongside TTAB ace **Phillip Barengolts**, led a successful UDRP action resulting in the transfer of a phishing-related domain to Linde plc and Linde GmbH, protecting both the LINDE brand and its goodwill.

Janet Marvel and **Seth Appel** work with a broad range of clientele to protect and enforce their IP rights. As trusted counsel to Medline Industries, they manage a global portfolio spanning 100 countries and over 700 active US filings, driving strategic growth and brand protection for the MEDLINE trademark. **Bradley Cohn** is widely recognised for his 'consistent excellence'. "Bradley is a very knowledgeable attorney and an extremely effective litigator. He is modest, yet his expertise stands out at the firm and in the trademark community."

Ashly Boesche also commands respect across the IP community, as an 'excellent rival' and 'brilliant all-round attorney'. She anticipates challenges and designs creative, risk-aware solutions that align with unique brand goals. Boesche recently acted on behalf of DNA (Housemarks) to successfully challenge a proposed mark likely to cause confusion, protecting the integrity and goodwill of the DUNLOP trademark. **Jessica Ekhoft**, **Brett August** and **Robert Sacoff** round out the powerhouse team, bringing together formidable litigation experience, masterful portfolio management, and global brand protection. Ekhoft offers a sharp litigation edge, with a track record of high-impact wins across federal courts. August is known for his results-driven approach and strategic foresight, often resolving complex disputes before trial. Sacoff, a respected thought leader in the IP space, pairs deep litigation acumen with decades of influence in shaping policy and practice."

*firm*UPDATE

PUBLICATIONS



Bradley Cohn

Brad was quoted in the February 6, 2026 *Managing IP* article, "AI fightback: when trademarks become licensing tools."