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U.S. Supreme Court Narrows Secondary Copyright Liability and Reaffirms Intent Requirement

In *Cox Communications, Inc. v. Sony Music Entertainment*, the U.S. Supreme Court narrowed the scope of secondary copyright liability, holding that contributory infringement requires proof that a defendant actively intended to enable or encourage infringement – not merely that it knew infringement was occurring. The decision reverses the U.S. Court of Appeals for the Fourth Circuit's decision, which had substantially lowered the bar for intent in indirect infringement cases. The case arose in the context of an internet service provider and therefore provides guidance for internet service providers and other intermediaries facing copyright claims.

Case Background

Sony Music Entertainment and other copyright owners sued Cox Communications, Inc., an internet service provider, alleging that Cox was secondarily liable for copyright infringement committed by its subscribers. Over a two-year period, Sony's agent sent Cox more than 160,000 notices identifying IP addresses of Cox subscribers associated with infringing activity.

Rather than suing individual users, Sony pursued Cox on theories of contributory and vicarious liability, arguing that Cox knowingly continued to provide internet service to repeat infringers.

A jury agreed, finding Cox liable on both theories and awarding $1 billion in statutory damages.

The Fourth Circuit affirmed contributory liability, reasoning that providing a service with knowledge that it will be used to infringe is sufficient to establish liability. It reversed vicarious liability, however, concluding that Cox did not receive a direct

financial benefit tied to the infringing conduct.

The U.S. Supreme Court granted certiorari on the contributory liability issue.

The Court's Holding: Intent Is Required

The U.S. Supreme Court reversed, holding that contributory copyright infringement requires proof that the defendant intended its service to be used for infringement. That intent may be established only where the defendant induces infringement or where the service is designed or tailored for infringing use and has no substantial non-infringing use.

Rejecting the Fourth Circuit's approach, the Court explained that it went beyond the two recognized bases for contributory liability and conflicted with longstanding precedent, which does not allow liability to rest solely on a provider's knowledge of infringement and failure to act.

Applying that framework, the Court found that Cox did not induce infringement because it did not promote or encourage unlawful activity and, instead, took steps to discourage it, including issuing warnings to subscribers, suspending service, and, in some cases, terminating accounts. Further, the Court also found that Cox's internet service was not tailored to infringement, as it is capable of substantial non-infringing uses.

On that basis, the Court held that Cox was not contributorily liable.

Court Aligns Copyright Law with Patent-Law Intent Standards

A central feature of the decision is the Court's alignment of contributory copyright liability with patent law principles. The Court emphasized that both doctrines require affirmative intent, which may be shown through inducement or contributory infringement, which may be shown through inducement or conduct analogous to contributory infringement under patent law, where the defendant must know of the patent and provide a product designed for infringing use with no substantial non-infringing use. As under patent law, mere knowledge of the copyright, and even of the infringement, is not enough; some level of deliberate participation is required for liability.

In doing so, the Court effectively abrogated the Fourth Circuit's prior rule reflected in *BMG Rights Mgmt. (US) LLC v. Cox Communications, Inc*, which had permitted liability based on knowledge and continued service.

Implications

The decision did not address vicarious copyright infringement because the Fourth Circuit had already reversed that portion of the judgment, finding that Cox charged all customers the same and did not receive any profit attributable to the infringement.[1]

However, the Court's narrowing of indirect copyright liability, and its alignment with analogous patent law concepts, may support arguments that vicarious liability should likewise require more than mere knowledge of infringement. There is no direct analogue to vicarious infringement in patent law. Instead, patent law generally requires not only knowledge, but also control and a benefit specifically tied to the infringing activity. It is possible that vicarious copyright liability may be limited to situations involving knowledge and control of the infringement, or at least knowledge and acquiescence, rather than passive awareness alone.

For service providers, the decision reduces exposure to claims based solely on user activity and notice-based knowledge, while underscoring the importance of avoiding conduct that could be characterized as encouraging or facilitating infringement. The decision provides meaningful guidance for structuring policies and practices to mitigate risk: that is, do as Cox did…

Going forward, in using the internet, courts are likely to focus more closely on evidence of intent, including whether a provider's policies, communications, or business practices can be viewed as promoting or enabling infringement with knowledge of infringement (e.g. inducement) or for a direct benefit beyond ordinary service fees (e.g., vicarious infringement).

The Court's reasoning also signals that courts may increasingly look to patent law for guidance in evaluating indirect infringement claims. Patent law benefits from a centralized appellate court and a higher volume of cases in the district courts, resulting in a more developed and consistent body of law than exists in the copyright context. Finally, the Court clarified that the Digital Millennium Copyright Act

safe harbor does not create liability where none otherwise exists but instead provides an additional defense.

This decision will likely have immediate implications for ongoing and future litigation involving internet service providers, platforms, and other technology intermediaries, particularly where claims are based on knowledge of user conduct rather than affirmative intent. More broadly, the decision is likely to have a significant impact on the scope of liability for indirect copyright infringement.

This blog was drafted by Sadaf Deedar and DJ Healey, attorneys in the Spencer Fane Houston office. For more information, visit spencerfane.com.

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[1] *Sony Music Ent. v. Cox Commc'ns, Inc.*, 93 F.4th 222, 233 (4th Cir. 2024), *rev'd and remanded*, No. 24-171, 2026 WL 815823 (U.S. Mar. 25, 2026).

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