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## Intellectual Property Alert

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### **Supreme Court limits secondary liability for copyright infringement**

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The US Supreme Court outlines the limits of secondary liability for copyright infringement and safe harbor incentives under the Digital Millennium Copyright Act.



#### **What's the impact?**

- ISPs aren't contributorily liable without intent—mere knowledge of user infringement isn't enough.
- Contributory liability exists only if a service induces infringement or is designed for infringing use.
- Failure to qualify for safe harbor doesn't imply liability, potentially reducing ISP incentives to enforce repeat-infringer policies.

On March 25, 2026, in *Cox Communications v. Sony Music Entertainment*, 607 U.S. \_\_\_\_ (2026), the United States Supreme Court unanimously reversed the Fourth Circuit's finding that Cox Communications was contributorily liable for the copyright infringement of its Internet subscribers, holding that Cox lacked the requisite intent. Justice Thomas delivered the majority opinion. Justice Sotomayor, joined by Justice Jackson, concurred in the judgment but disagreed

with the majority's holding that contributory and vicarious liability are the only two forms of secondary liability available under the Copyright Act.

## Background

Cox Communications is an Internet service provider (ISP) serving approximately six million subscribers. Sony Music Entertainment and other major copyright holders enlisted an entity called MarkMonitor to track online infringement. During the roughly two-year period at issue, MarkMonitor sent Cox 163,148 notices identifying subscriber Internet Protocol (IP) addresses associated with infringement. Sony sued Cox in the Eastern District of Virginia, and a jury found Cox contributorily liable and awarded \$1 billion in statutory damages. The Fourth Circuit affirmed, reasoning that supplying a service with knowledge that users will [infringe copyrights](#) is sufficient for contributory liability. The Supreme Court granted certiorari.

## The majority opinion

The Court held that “[t]he provider of a service is contributorily liable for the user’s infringement only if it intended that the provided service be used for infringement.” The intent required for contributory liability can be shown in only two ways: (1) inducement, where the provider actively encourages infringement through specific acts; or (2) where the provided service is tailored to infringement—that is, the service is incapable of commercially significant non-infringing uses. These two bases track the framework established in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), and *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), and mirror the contributory liability analysis under patent law. 35 U.S.C. §§ 271(b), (c).

Applying this framework, the Court found neither basis satisfied. Cox did not induce infringement—it never promoted its service as a tool for piracy and, to the contrary, contractually prohibited infringing use and maintained a graduated enforcement system of warnings, suspensions, and terminations. Nor was Cox’s service tailored to infringement, as general Internet access is plainly capable of substantial lawful use. The Court emphasized that knowledge of infringement alone is insufficient. Although Cox received tens of thousands of notices, ISPs like Cox cannot determine which individual at a given IP address—shared among household members, coffee shop patrons, or dormitory residents—committed the infringement.

## The DMCA safe harbor

Sony argued that the DMCA safe harbor—under which ISPs can avoid secondary [liability for copyright infringement](#) if they adopt and reasonably implement a policy terminating repeat infringers “in appropriate circumstances,” 17 U.S.C. §512(i)(1)(A)—would be rendered meaningless if ISPs are not liable for continuing to serve known infringers. The Court rejected this argument,

holding that the DMCA does not expressly impose liability on ISPs who serve known infringers; it merely creates additional defenses from liability. The Court pointed to 17 U.S.C. §512(l), which provides that failure to qualify for the safe harbor “shall not bear adversely upon the consideration of a defense by the service provider that the service provider’s conduct is not infringing.”

## The concurring opinion

Justice Sotomayor agreed Cox is not liable on the facts of this case but criticized the majority for holding that contributory and vicarious liability are the only two forms of secondary liability available for copyright infringement. She argued that *Sony* and *Grokster* defined secondary liability by reference to common-law principles and left open additional theories such as aiding and abetting.

Nevertheless, drawing on the Court’s recent decisions in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), and *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 US 280 (2025), Justice Sotomayor concluded that Cox would not be liable even under an aiding and abetting theory. Under those precedents, aiding-and-abetting requires proof the defendant intended to help the wrongdoer succeed—a standard Cox’s conduct does not meet given its lack of knowledge about which specific users committed infringement.

Justice Sotomayor also warned that the majority’s narrowing of secondary liability to inducement and tailoring effectively eliminates the incentive for ISPs to adopt and implement the anti-infringement policies the DMCA safe harbor was designed to encourage.

## Key takeaways

This decision significantly reshapes secondary copyright liability and the role of the DMCA safe harbor. For ISPs and other service providers, the ruling provides substantial protection: mere knowledge that some users engage in infringement will not create contributory liability absent inducement or tailoring. For copyright holders, the decision means enforcement efforts must focus on direct infringers or on platforms that actively encourage or are designed to facilitate infringement, rather than on underlying ISPs. The practical consequence flagged by Justice Sotomayor’s concurrence—that ISPs now have diminished incentive to implement DMCA-compliant anti-infringement policies—may invite a legislative response from Congress.

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