Cox Communications, Inc. v. Sony Music Entertainment (U.S. 2026): A Case Commentary on Platform Liability and the Intent Standard for Contributory Infringement

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Case: *Cox Communications, Inc. v. Sony Music Entertainment*, No. 24-171, 607 U.S. 583 (2026) (preliminary print), decided March 25, 2026 (Thomas, J., for the Court; Sotomayor, J., concurring in the judgment, joined by Jackson, J.).

Background

Cox Communications is an Internet service provider with about 6 million subscribers. 607 U.S. at 589. Each subscriber account is tied to an Internet Protocol address, but many people can share one address, as in a household, a coffee shop or a college dormitory. The Court accepted that providers like Cox know which address belongs to which account but cannot tell one individual user from another, and cannot directly control how their service is used. *Id.*

Sony Music Entertainment and other major music copyright owners hired MarkMonitor to detect infringement online. Its software traced apparently infringing uploads and downloads to particular IP addresses and sent notices to the relevant provider. In the roughly two-year period at issue, MarkMonitor sent Cox 163,148 notices. *Id.* at 590. Cox described a graduated response: a warning after the second notice for an account, temporary suspensions after further notices, and exposure to termination after 13 notices. *Id.* Its subscriber terms also prohibited infringing use. *Id.*

The parties characterised that system very differently. Sony pointed out that Cox terminated only 32 subscribers for infringement during the claim period while terminating hundreds of thousands for nonpayment, and cited employee statements expressing frustration with the notices. Cox responded that its system ended 98% of identified infringement. *Id.* at 590–591. Because an earlier Fourth Circuit decision had foreclosed Cox's reliance on the Digital Millennium Copyright Act (DMCA) safe harbour for the relevant period, Cox defended on the merits. *Id.* at 591 n.*.

A jury found Cox contributorily and vicariously liable for willful infringement and awarded $1 billion in statutory damages. *Id.* at 591. The Fourth Circuit affirmed on contributory liability, reasoning under its own precedent 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." *Id.* at 592. It reversed on

vicarious liability, vacated the damages award and remanded. The Supreme Court granted Cox's petition on contributory liability and denied Sony's petition on vicarious liability. *Id.*

Holding

The Court reversed. A provider of a service "is contributorily liable for the user's infringement only if it intended that the provided service be used for infringement," and that intent "can be shown only if the party induced the infringement or the provided service is tailored to that infringement." *Id.* at 592–593. Cox did neither, so it was not contributorily liable. *Id.* at 595. The judgment was reversed and the case remanded for further proceedings consistent with the opinion. *Id.* at 596.

Seven Justices joined the opinion of the Court. Justice Sotomayor, joined by Justice Jackson, agreed that Cox was not liable but rejected the majority's reasoning. *Id.* at 585, 596–597.

Reasoning

A narrow starting point

The opinion begins from the premise that the Copyright Act does not expressly make anyone liable for infringement committed by another. *Id.* at 592. Because Congress ordinarily imposes secondary liability expressly when it intends to, the Court said that although its precedents recognised specific forms of secondary copyright liability that predated the Act, "we are loath to expand such liability beyond those precedents." *Id.*

Two routes to intent

Within that frame, the Court recognised two ways to show the intent contributory liability requires. *Id.* at 593. The first is inducement: a provider "actively encourages infringement through specific acts," as in *Grokster*, where the Court described the file-sharing companies as having promoted and marketed their software as a tool to infringe. *Id.* The second is a service tailored to infringement, meaning one not capable of substantial or commercially significant noninfringing uses, the standard the Court traced to *Sony Corp. of America v. Universal City Studios* and the Betamax video recorder. *Id.* at 593–594. The Court noted that both routes track the inducement and contributory infringement provisions of patent law, 35 U.S.C. § 271(b) and (c). *Id.* at 594.

Across its precedents, the Court said, it had "repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe." *Id.*

Applying the rule to Cox

On inducement, Cox did not encourage its subscribers to infringe, Sony offered no evidence of express promotion or marketing of infringement, and Cox "repeatedly discouraged copyright infringement by sending warnings, suspending services, and terminating accounts." *Id.* at 595. On tailoring, Cox's service was plainly capable of substantial noninfringing uses: "Cox simply provided Internet access, which is used for many purposes other than copyright infringement." *Id.*

The Fourth Circuit's knowledge-based rule therefore went beyond the two recognised forms of liability. The Court put the point directly: "Holding Cox liable merely for failing to terminate Internet service to infringing accounts would expand secondary copyright liability beyond our precedents." *Id.*

The DMCA argument

Sony argued that the DMCA's safe harbour, which protects providers that terminate repeat infringers "in appropriate circumstances," would do nothing if providers could not be liable for serving known infringers. The Court answered that "Sony overreads the DMCA." *Id.* at 596. The statute does not expressly impose liability; "The DMCA merely creates new defenses from liability for such providers." *Id.* It also states that failing to qualify for the safe harbour does not bear adversely on a provider's defence that its conduct is not infringing. *Id.* (quoting 17 U.S.C. § 512(l)).

The concurrence in the judgment

Justice Sotomayor agreed that neither recognised theory fit Cox's conduct but argued that the majority "unnecessarily limits secondary liability." *Id.* at 597. In her view, *Sony* and *Grokster* left room for other fault-based theories drawn from the common law, including aiding and abetting. *Id.* at 599–600. She warned that the majority's rule leaves internet service providers with no realistic prospect of secondary liability and so "consigns the safe harbor provision to obsolescence." *Id.* at 601.

She nonetheless concurred because, applying the aiding-and-abetting principles of *Twitter, Inc. v. Taamneh* and *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, the record could not support the required intent. *Id.* at 602–606. A notice identifies a connection, not the person using it; Cox could not know who in a household, or who among the hundreds or thousands of users of a connection supplied to a regional provider, was infringing. "That informational gap is fatal here." *Id.* at 606–607. She also observed that, even under the majority's view, providers could still face liability if they designed a service to facilitate infringement or promoted it as infringement-friendly. *Id.* at 602 n.*.

Significance

Intent, not knowledge. The decision makes the provider's intent the decisive question and confines proof of that intent to inducement or tailoring. After *Cox*, knowledge that subscribers infringe, even detailed knowledge from notices, is not by itself a basis for contributory liability under the Court's framework.

A closed list. The majority's statement that intent "can be shown only" through the two routes is the most consequential line in the opinion. *Id.* at 593. The concurrence reads it as shutting the door on other common-law theories, and that disagreement is likely to shape future litigation.

Platform liability more broadly. The case concerned an internet access provider, and the opinion's reasoning is framed around that service. In the author's view, the same framework is likely to be argued by other online intermediaries, such as hosting services and platforms, whose services are capable of substantial lawful use. How far courts will extend it to services with more control over content than an access provider has is a question the opinion did not need to answer.

The DMCA's changed role. By holding that the safe harbour neither presupposes nor creates liability, the Court reduced the practical pressure the safe harbour had placed on access providers. The concurrence argues that this upsets the balance Congress struck. *Id.* at 600–602. Whether Congress responds is an open policy question.

Conduct still matters. The majority relied in part on Cox's warnings, suspensions and terminations as evidence that it did not induce infringement. *Id.* at 595. A provider that marketed infringing uses, or designed features around them, would stand in a very different position.

Practical Takeaways

The following are general observations drawn from the decision for organisations that provide online services, not legal advice about any particular service.

- **Messaging is evidence.** Because inducement turns on active encouragement, marketing, product descriptions and internal statements about infringing uses carry real legal weight.
- **Design for lawful use.** A service capable of substantial noninfringing uses sits outside the tailoring route; features designed around infringement could change that.
- **Anti-infringement steps still have value.** The Court cited Cox's warnings and terminations as evidence against inducement, so a documented response policy remains relevant even where the DMCA safe harbour is not the decisive issue.
- **Rights holders may shift strategy.** With knowledge-based claims against access providers narrowed, copyright owners may focus on direct infringers, on inducement evidence, or on legislative change.
- **Watch the concurrence's theory.** Arguments based on common-law aiding and abetting were rejected by the majority's framework but endorsed in principle by two Justices, so their treatment in lower courts deserves attention.

These observations draw on pages 589–608 of the preliminary print and are offered to support informed discussion with qualified counsel.

Open Questions

The Court did not decide what further proceedings on remand would involve, and the vicarious liability question was not before it because certiorari on that issue was denied. *Id.* at 592. The opinion does not address how its two-route framework applies to services that host or curate user content rather than simply transmitting it. And the debate between the majority and the concurrence over whether other common-law theories survive remains unresolved in practice until lower courts apply the decision.

For organisations that run online services, the most practical lesson of *Cox* is that what a provider says and builds, rather than what it knows, now sits at the centre of contributory copyright liability.

References

- *Cox Communications, Inc. v. Sony Music Entertainment*, No. 24-171, 607 U.S. 583 (2026), preliminary print, Supreme Court of the United States: https://www.supremecourt.gov/opinions/25pdf/607us2r22_k4lo.pdf
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