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# muddied harbors: u.s. supreme court holds that isp is not contributorily liable for its users' infringement

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Today, the United States Supreme Court decided *Cox Communications, Inc. v. Sony Music Entertainment*, No. 24–171, 607 U.S. \_\_\_ (2026), reversing a billion-dollar jury verdict against internet service provider Cox Communications (“Cox”). Justice Clarence Thomas, joined by six other justices, found that Cox was not a secondary copyright infringer merely because it provided a service with knowledge that some subscribers would use the service to commit copyright infringement. In a concurrence joined by Justice Jackson, Justice Sotomayor agreed with the result but found the majority opinion too limiting in its definition of contributory infringement.

## Background

Sony Music Entertainment and other major music copyright owners (collectively, “Sony”) sued Cox after sending over 163,000 infringement notices—transmitted via the third-party service MarkMonitor—identifying IP addresses of Cox subscribers associated with repeated illegal uploading and downloading of copyrighted music. Sony alleged that Cox was secondarily liable, both contributorily and vicariously, for continuing to provide internet access to subscribers who had engaged in repeat infringement. Relying on both theories, a jury returned a \$1 billion verdict.



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Based on precedent in the lower courts, the Fourth Circuit affirmed the jury's verdict on contributory liability, reasoning that one who supplies a product or service with knowledge that the product or service will be used to infringe is a contributory infringer. The Fourth Circuit, however, reversed on vicarious liability.

Both sides petitioned for certiorari on the Court of Appeals' rulings adverse to them. The Supreme Court granted certiorari on the contributory liability question only.

### The Majority Opinion

Writing for the 7-2 majority, Justice Thomas first noted that the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, does not expressly render anyone liable for infringement committed by another. He then pointed out that the provider of a service is contributorily liable for copyright infringement only if it intended that the service be used for infringement. According to the majority, intent can be shown only in one of two ways: (1) inducement, in which the provider actively encourages infringement through specific acts such as promotion or marketing of the service for infringing purposes, as in *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005); or (2) tailoring, in which the service is not capable of substantial or commercially significant noninfringing uses, as discussed in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). The Court stated that given the absence of statutory language providing for secondary liability, it was "loath to expand such liability beyond those precedents."

The Court found that Cox satisfied neither prong. As to inducement, the Court noted that Cox neither promoted nor encouraged infringement; to the contrary, Cox sent warnings, suspended service, and terminated accounts. On the issue of tailoring, Cox's internet service plainly has substantial noninfringing uses—a point that even the Fourth Circuit did not dispute. Accordingly, the Court expressly rejected the Fourth Circuit's rule that knowledge of infringement combined with continued provision of service is sufficient, reaffirming that mere knowledge, or a failure to take affirmative steps to prevent infringement, cannot alone support contributory liability.

Sony had strenuously argued that the Court's ruling would render meaningless the safe harbor provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512(i)(1)(A). This section of the DMCA protects ISPs that adopt and reasonably implement policies for terminating repeat infringers. The majority dismissed this argument, asserting that the DMCA merely creates new defenses from liability and expressly provides that failure to qualify with the safe-harbor rules "shall not bear adversely upon" a defense by the service provider that its conduct is not infringing. § 512(l).



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### ***The Sotomayor Concurrence***

Justice Sotomayor, joined by Justice Jackson, concurred in the judgment but wrote separately to criticize the majority for unnecessarily foreclosing other common-law theories of secondary liability. She noted that *Grokster* expressly left open the possibility of aiding-and-abetting liability in copyright cases, and that the majority's rigid two-prong test in fact renders the DMCA safe harbor a dead letter. On the latter point, the concurrence noted that Cox's own counsel conceded at oral argument that under the majority's rule, the safe harbor provision would not do anything at all going forward.

Nonetheless, Justice Sotomayor concurred in the result. Applying the aiding-and-abetting framework enunciated in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), and *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), she concluded that Sony failed to establish the requisite intent because Cox cannot identify which individual users committed infringement. Rather, Cox can identify only IP addresses, which may be shared by an entire household, coffee shop, dormitory, or regional ISP serving thousands of users. The concurrence reasoned that without knowledge of who the actual infringers are and without "pervasive, systemic, and culpable assistance" for a more generalized theory of liability, Sony had at most shown that Cox was "indifferent" to infringement.

### **Takeaways**

**Contributory liability standard significantly narrowed.** The opinion purports to establish a firm rule: knowledge of infringement, even combined with a failure to act on that knowledge, is not sufficient to impose contributory copyright liability. Only inducement or provision of a service tailored to infringement will support such a claim. This is a substantial departure from long-established law in the lower courts (*see Gershwin Publishing Corp. v. Columbia Artists Mgmt., Inc.*, 443 F. 2d 1159, 1162 (2d Cir. 1971)), which provided the basis for the Fourth Circuit's "knowledge plus continued service" standard.

**DMCA safe harbor implications.** While the majority held that the DMCA safe harbor is not rendered superfluous by its decision, Justice Sotomayor's concurrence highlights a practical reality that will not be lost on the ISP industry: if ISPs face no contributory liability for knowingly serving infringers, there is little incentive to maintain repeat-infringer policies beyond contractual or reputational considerations.



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Whether Congress responds with legislation that statutorily defines secondary liability remains to be seen.