

ALERT

Cox Communications Penalized With \$1 Billion Jury Verdict in Copyright Infringement Lawsuit

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On December 19, 2019, a jury in Alexandria, VA, awarded the major record companies and music publishers a staggering \$1 billion in damages against Cox Communications for failing to prevent repeated infringement by Cox's customers. This is surely one of the largest jury awards ever in a copyright infringement case. The jury found that Cox had committed willful contributory and vicarious copyright infringement of over 10,000 works, and awarded nearly \$100,000 in statutory damages per work, for a total of \$1 billion.

Under the Copyright Act, the jury could have awarded statutory damages against Cox ranging from as little as \$750 per infringed work, for a total of \$7.5 million, up to \$150,000 per infringed work, for a total of \$1.5 billion. The jury chose an amount close to the top of that range, indicating they were clearly troubled by Cox's failure to prevent repeated infringement by thousands of Cox's subscribers.

In an earlier case brought by BMG Rights Management against Cox, the U.S. Court of Appeals for the Fourth Circuit had held that Cox's failure to adopt, reasonably implement, and inform users of a policy for terminating repeat infringers stripped Cox of an important safe harbor from liability under copyright law (Section 512 of the Digital Millennium Copyright Act). The appeals court ruled that Cox's 13-strikes repeat infringer policy was plainly inadequate under federal law. The major record companies and music publishers seized on this earlier ruling to sue for \$1.5 billion in damages for what they claimed was the massive repeated infringement of their works.

The jury's verdict, even if reduced on appeal, sends a clear message to internet service providers everywhere that they have an obligation to adopt and reasonably implement a policy for terminating repeat

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infringers, or face potentially enormous damages.