

## Knowing Isn't Enough: The Supreme Court Redefines ISP Liability for Piracy

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When users pirate music, movies, or other creative works online, the internet service provider ("ISP") supplying their connection may know more than you might think. Companies like Cox Communications receive thousands of automated notices identifying exactly which subscriber accounts are associated with illegal downloading — in Cox's case, such notices accrued over a period of two years. In *Cox Communications v. Sony Music Entertainment*, decided March 25, 2026, the Supreme Court confronted a deceptively simple question: if an ISP knows a subscriber is using its service to steal copyrighted content and keeps providing that service anyway, is the ISP itself liable? A jury of the lower court said "yes," issuing relief to the tune of roughly \$1 billion. The Supreme Court has now unanimously reversed the jury's decision, although the Justices aren't in agreement with respect to their rationale and extent.

Writing for the majority, Justice Thomas held that an ISP can only be liable for contributing to its users' infringement if it intended that the provided service be used for infringement, particularly in two narrow circumstances: 1) if the ISP actively encouraged the illegal activity, or 2) if the service itself was essentially designed for piracy. The Court found that Cox never promoted piracy and, in fact, issued warnings to and suspended infringing accounts. The majority made clear that simply knowing about infringement and failing to cut off service to every potential infringing account (and, indeed, the record suggests that Cox did not know with total particularity which accounts engaged in infringement) is not enough. Justice Sotomayor, concurring, agreed Cox was not liable but warned that the majority had gone too far in strictly defining only two theories of "intent." She argued that the ruling diminishes the DMCA safe harbor, which was specifically designed to give ISPs an incentive to crack down on repeat infringers in exchange for legal protection. If ISPs can't be held liable regardless of the very strictly defined theories of intent, that no longer has material effect. Justice Jackson joined Justice Sotomayor in her concurrence.

For technology providers, implementing procedures to warn against infringement, and even taking action such as suspending service, may successfully ward off secondary liability. For copyright holders, particularly in the music, film, and entertainment industries, this decision has the potential to present a significant setback for IP enforcement, as avenues for pressuring ISPs to police their networks have been substantially narrowed. Going forward, rights holders may need to focus enforcement efforts more directly on individual infringers or on platforms that actively facilitate piracy, rather than on the companies providing the underlying internet connections. While the decision is a major win for ISPs, the Sotomayor concurrence reasoning could signal that future litigation (or future legislation) may set new standards.