24-171 COX COMMUNICATIONS, INC. V. SONY MUSIC ENTERTAINMENT

DECISION BELOW: 93 F.4th 222

LOWER COURT CASE NUMBER: 21-1168

QUESTION PRESENTED:

1. This Court has held that a business commits contributory copyright infringement when it "distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps to foster infringement." *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster*, *Ltd.*, 545 U.S. 913, 919 (2005). The courts of appeals have split three ways over the scope of that ruling, developing differing standards for when it is appropriate to hold an online service provider secondarily liable for copyright infringement committed by users.

Did the Fourth Circuit err in holding that a service provider can be held liable for "materially contributing" to copyright infringement merely because it knew that people were using certain accounts to infringe and did not terminate access, without proof that the service provider affirmatively fostered infringement or otherwise intended to promote it?

2. Generally, a defendant cannot be held liable as a willful violator of the law-and subject to increased penalties-without proof that it knew or recklessly disregarded a high risk that its *own* conduct was illegal. In conflict with the Eighth Circuit, the Fourth Circuit upheld an instruction allowing the jury to find willfulness if Cox knew its *subscribers'* conduct was illegal-without proof Cox knew its own conduct in not terminating them was illegal.

Did the Fourth Circuit err in holding that mere knowledge of another's direct infringement suffices to find willfulness under 17 U.S.C. § 504(c)?

CERT. GRANTED 6/30/2025