

SUPREME COURT DECISION IN COX COMMUNICATIONS V. SONY HIGHLIGHTS THE ROLE OF ONLINE USER AGREEMENTS

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On March 25, 2026, the Supreme Court ruled on Digital Millennium Copyright Act issues in *Cox Communications v. Sony*. The Court held that Cox had not induced its users to infringe on the rights of songwriters, singers, bands, or performers. Sony—the same company that successfully argued in 1984 that Betamax machines were not inherently infringing—had asked the Court to find Cox contributorily liable for users' copyright infringement. The Court ruled against Sony and declined to do so.

Within that ruling, the Court implicitly approved Terms of Use, Privacy Policies, Acceptable Use Policies, and similar agreements between users and their ISPs or content hosts. Cox has an Acceptable Use Policy linked from its website that is accessible to subscribers. The policy—unchanged since April 2020—states that users “may not use the Service to post, copy, transmit, or disseminate any content that infringes the patents, copyrights, trade secrets, trademark, moral rights, or proprietary rights of any party.”

Justice Thomas, writing for the Court, noted that Cox “contractually prohibits its subscribers from using their [internet] connection ‘to post, copy, transmit, or disseminate any content that infringes the patents, copyrights . . . or proprietary rights of any party.’”

This suggests the Supreme Court views a user policy for a website, social media network, or online service as a binding contract between the host and the user. Were it otherwise, the Court could not characterize Cox's Terms of Use as a contractual prohibition.

District and circuit courts have been split on whether such policies bind users; courts in Florida and New York have generally found they do, while Minnesota courts have implied they often do not.

This Supreme Court acknowledgment provides good reason for content hosts—including websites, ISPs, and social media sites—to audit and update their Terms of Use, Privacy Policy, and Acceptable Use Policy. Such policies are also useful for sites using chatbots to communicate with visitors.

Because an updated policy constitutes a contract, a well-crafted policy can protect against accusations of contributory infringement and mitigate class action risks.

Berger Singerman attorneys, including Heidi Tandy and Geoff Lottenberg, are available to collaborate on a range of user agreements.

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