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COMMENTARY

RETHINKING CONTRIBUTORY TRADEMARK INFRINGEMENT AFTER *COX COMMUNICATIONS*[*]

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INTRODUCTION

The United States Supreme Court's March 2026 decision in *Cox Communications, Inc. v. Sony Music Entertainment*, a case that addressed secondary liability in the context of copyright claims, risks upending established principles of secondary liability in the trademark context. Until *Cox*, online platforms and service providers have operated under the understanding that failing to act on their knowledge of infringing activities could potentially expose them to contributory liability under both copyright and trademark law. *Cox* undermines that assumption by adding, at least for copyright claims, a requirement that a plaintiff seeking to hold a defendant liable for contributory infringement must prove that the defendant intended that its services would be used to facilitate the infringement.[1] That intent can be shown by proving either (1) active inducement or (2) the provision of a service tailored to infringing uses, meaning a service incapable of substantial non-infringing

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1 Cox Commc'ns, Inc. v. Sony Music Entm't, 146 S. Ct. 959, 967 (2026).

uses.[2] Contrary to long-accepted precedent, the Court held that knowledge alone, even combined with a failure to act, is not sufficient to state a claim for contributory copyright infringement.[3]

Although the *Cox* decision focused solely on copyright law and involved an Internet service provider ("ISP"), its reasoning will likely carry significant implications in the trademark context for the doctrine of contributory infringement.[4] Under the Supreme Court's 1982 *Inwood Labs* test, a party can be contributorily liable for trademark infringement if it intentionally induces infringement or continues to supply a product to one it knows or has reason to know is infringing.[5] The breadth of the "reason to know" standard, in particular, has led to extensive litigation seeking to hold platforms and other parties liable—at times successfully—for tolerating or ignoring signs of their users' infringing activities.

Cox did not discuss *Inwood Labs*, but its categorical rejection of "knowledge-plus-inaction" as a basis for contributory copyright liability calls into question the traditional test for contributory trademark infringement. That, in part, is because the Supreme Court has previously held that it should be *harder* to prove contributory trademark infringement than it is to prove contributory copyright infringement.[6] If knowledge plus inaction is no longer sufficient to establish contributory copyright infringement, then it very likely is also insufficient to establish contributory trademark infringement.

This commentary examines the tension between *Cox* and *Inwood Labs*, and how courts may seek to resolve it in the coming years. We begin with a background on contributory liability in copyright and trademark law, and then explore how *Cox*—and the Supreme Court's subsequent application of similar principles in its recent patent decision, *Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*—might impact the interpretation of contributory trademark liability. We conclude with practical guidance for both

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2 *Id.*

3 *Id.* at 964.

4 Courts have already begun considering how the reasoning from *Cox* might apply to claims of contributory trademark infringement. For example, in *Pepaj v. Barcode Corp.*, the United States District Court for the District of Columbia dismissed the plaintiffs' claim for contributory trademark infringement against the commercial landlord of the accused infringer and, in doing so, noted that "although the [c]ourt need not decide whether [the p]laintiffs' trademark claim must also satisfy [the *Cox*] standard," the plaintiffs had not "come close to alleging that [the defendant]—which, like the [I]nternet service provider at issue in *Cox* [], is a general provider of commercial services—actively encouraged infringement through specific acts, or (nonsensically) somehow leased a real property that could only be used for digital violations of the Lanham Act." *See* Pepaj v. Barcode Corp., No. 22 CV 1397, 2026 WL 2117294, at *6, n.3 (D.D.C. July 22, 2026).

5 Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc., 456 U.S. 844, 854 (1982).

6 *See* Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 439 n.19 (1984).

platform providers and rightsholders seeking to navigate this shifting legal terrain.

I. THE PRE-*COX* LANDSCAPE: COMPARING CONTRIBUTORY LIABILITY STANDARDS

Unlike the Patent Act, neither the Copyright Act nor the Lanham Act expressly includes a cause of action for another party's infringement.[7] The doctrines of contributory liability for both copyright and trademark law were judicially created, drawing on long-standing common law principles of secondary liability. This might suggest the two doctrines would have developed in parallel, but they have not: while courts have recognized a "historic kinship" between patent and copyright law that supports cohesive secondary liability standards across those two fields, they have expressly declined to extend that cohesion to trademark law.[8] As a result, before *Cox*, contributory trademark infringement was generally evaluated under a different—and narrower—standard than contributory copyright infringement.[9] The following sections examine each doctrine in turn.

A. Contributory Trademark Infringement

Recognizing that the Lanham Act is silent on the question of secondary liability, courts have based the doctrine of contributory trademark infringement on the common law of torts. The Supreme Court's 1982 decision in *Inwood Labs* established the current governing test: a party can be contributorily liable for trademark infringement if it either (1) "intentionally induces another to infringe," or (2) "continues to supply its product or service to one whom it knows or has reason to know is engaging in trademark

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[7] *Compare* 35 U.S.C. § 271 *with* 17 U.S.C. §§ 101–1332 *and* 15 U.S.C. §§ 1051–1141n.

[8] *Sony,* 464 U.S. at 439 n.19 ("Given the fundamental differences between copyright law and trademark law, in this copyright case we do not look to the standard for contributory infringement set forth in *Inwood Laboratories v. Ives Laboratories* . . . which was crafted for application in trademark cases."). This distinction is rooted in the separate authorization for these areas of the law in the U.S. Constitution. While copyright and patent law are authorized by Article I, Section 8, Clause 8, of the U.S. Constitution, trademark law is authorized by the commerce clause. *See In re* Trade-Mark Cases, 100 U.S. 82, 93-94 (1879) ("Any attempt . . . to identify the essential characteristics of a trade-mark with inventions and discoveries in the arts and sciences, or with the writings of authors, will show that the effort is surrounded with insurmountable difficulties."). The Patent Act expressly provides for secondary liability for parties who "actively induce[] infringement" under 35 U.S.C. § 271(b) or sell a component of a patented invention that they know to be made or adapted for infringement and that is unsuitable for substantial noninfringing uses under 35 U.S.C. § 271(c). Despite the absence of a parallel provision in the Copyright Act, the Supreme Court has recognized that the copyright doctrine tracks these statutory patent law provisions. *Cox,*146 S. Ct. at 968.

[9] *Sony*, 464 U.S. at 439 n.19.

infringement."[10] These two prongs operate independently; proving either is enough to support liability.

The *Inwood Labs* Court drew from two earlier cases to formulate these tests. The Court derived the first prong—intentional inducement—from *William R. Warner & Co. v. Eli Lilly & Co.*, a 1924 Supreme Court decision addressing unfair competition. In *Warner*, a pharmaceutical manufacturer's salesman induced druggists to dispense its product, Quin-Coco, when filling prescriptions for the plaintiff's competing product, Coco-Quinine.[11] The Court held the manufacturer secondarily liable for the druggists' conduct based on the common law principle that "[o]ne who induces another to commit a fraud and furnishes the means of consummating it is equally guilty and liable for the injury."[12]

The Court derived the second prong—the "knows or has reason to know" standard—from *Coca-Cola Co. v. Snow Crest Beverages, Inc.*, a 1946 District of Massachusetts decision. In *Snow Crest*, Coca-Cola sued a competing cola manufacturer, alleging that the defendant should be held contributorily liable for the actions of bars that substituted the defendant's product when customers specifically ordered plaintiff's COCA-COLA product.[13] The district court rejected the claim, holding that a supplier is not required to refuse sales to customers who merely *might* pass off goods; rather, the plaintiff must show that the supplier had "knowledge that the [purchaser] will or can reasonably be expected to commit a tort" with the supplied product.[14]

The *Inwood Labs* Court synthesized *Warner* and *Snow Crest* into the modern two-pronged test for contributory trademark infringement. Since *Inwood Labs*, interpretation of the test's first prong—intentional inducement—has remained relatively consistent.[15] The scope of the second prong has not, however, as courts have grown increasingly divided on what "knows or has reason to know" means in practice.

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10 *Inwood Lab'ys*, 456 U.S. 844, 854 (1982).

11 William R. Warner & Co. v. Eli Lilly & Co., 265 U.S. 526, 529-30 (1924).

12 *Id.* at 530-31 (citing Hostetter Co. v. Brueggeman-Reinert Distilling Co., 46 F. 188, 189 (E.D. Mo. 1891)).

13 Coca-Cola Co. v. Snow Crest Beverages, 64 F. Supp. 980, 982-87 (D. Mass. 1946), *aff'd*, 162 F.2d 280 (1st Cir. 1947).

14 *Id.* at 989.

15 Perfect 10, Inc. v. Visa Int'l Serv. Ass'n, 494 F.3d 788, 800-01, 807 (9th Cir. 2007) (holding that payment system providers were not contributorily liable for infringement where they merely provided their services to the direct infringers but did not otherwise take affirmative steps to foster infringement, such as by "promot[ing] their payment system as a means to infringe"); *see* Kelly-Brown v. Winfrey, 717 F.3d 295, 314 (2d Cir. 2013) (affirming the dismissal of contributory trademark infringement claims against corporate sponsors where the complaint merely alleged that defendants sponsored an event with an infringing title, which did not amount to inducement).

Courts broadly agree that a defendant cannot avoid contributory trademark liability by remaining willfully blind to specific infringement—that is, by "shield[ing] itself from learning of the particular infringing transactions by looking the other way."[16] The more difficult and contested question is whether knowledge that infringement is *generally* occurring on a platform or premises, as opposed to knowledge of *specific* instances, can satisfy the "knows or has reason to know" requirement when a particular plaintiff seeks to state a claim.

As a practical matter, the difference between these two circumstances is stark. In the former situation, a rightsholder would succeed if it repeatedly notified a platform about a specific infringer and the platform did nothing in response. In the latter, a rightsholder could succeed despite having never notified the platform if it could show that the platform was generally aware that third parties were infringing other rightsholders' marks on its platform.

Some courts, most notably the Second Circuit in *Tiffany v. eBay*, have held that a platform's *general* knowledge of infringing activity is insufficient for liability—the plaintiff must demonstrate that the defendant had contemporaneous knowledge of *specific* infringing listings or sellers, and then failed to act.[17] The *Tiffany* Court grounded this interpretation in *Sony v. Universal*, a copyright case. According to the *Tiffany* Court's reading of *Sony v. Universal*, the Supreme Court observed that "*Inwood [Labs']* 'narrow standard' would have required knowledge by [defendant] of 'identified individuals' engaging in infringing conduct"—not merely awareness that some portion of users might be infringing.[18] Although the discussion of *Inwood Labs* in *Sony* was *dicta*, it remains the only Supreme Court elaboration on the knowledge prong, which the *Tiffany* court found persuasive.[19]

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16 *See* Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93, 109 (2d Cir. 2010) (citing Hard Rock Café Licensing Corp. v. Concession Servs., Inc., 955 F.2d 1143, 1149 (7th Cir. 1992); Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259, 265 (9th Cir. 1996)).

17 *See id.* (agreeing with district court that "Tiffany's general allegations of counterfeiting failed to provide eBay with the knowledge required under *Inwood [Labs]*.") *See also* Y.Y.G.M. SA v. Redbubble, Inc., 75 F.4th 995, 1003 (9th Cir. 2023) (agreeing with *Tiffany* and clarifying that the duty to root out and stop infringement does not arise until a defendant knows about specific instances of infringement, and even then, "that duty only covers specific instances of infringement the defendant knows or has reason to know about"); Rosetta Stone Ltd. v. Google, Inc., 676 F.3d 144, 163 (4th Cir. 2012) (citing *Sony*, 464 U.S. at 439 n.19) ("It is not enough to have general knowledge that some percentage of the purchasers of a product or service is using it to engage in infringing activities; rather, the defendant must supply its product or service to 'identified individuals' that it knows or has reason to know are engaging in trademark infringement.").

18 *Tiffany*, 600 F.3d at 108-09. ("We find helpful the Supreme Court's discussion of *Inwood* in a subsequent *copyright* case, *Sony Corp. of Am. v. Universal City Studios, Inc.*").

19 *Id.*

A growing number of courts, however, have held that even general knowledge of widespread infringement could suffice to create liability in specific cases if the defendant failed to take reasonable steps to address it—effectively imposing a duty to act even absent notice of specific infringing activities.[20] This approach emerged from the "flea market cases," in which flea market operators were held contributorily liable for infringing activities of market vendors. In those cases, contributory liability was predicated on evidence that operators had general knowledge of widespread infringement occurring on their premises and failed to take corrective action, such as inspecting vendors' booths for counterfeit items.[21] Courts have applied similar reasoning in "landlord cases," holding commercial landlords liable for the infringement of their tenants based on knowledge of widespread infringement and failure to act.[22]

This unresolved split between the *Tiffany* specific-knowledge rule and the flea market/landlord cases' general-knowledge approach—which some district courts have applied to online platforms[23]—will likely face renewed scrutiny as courts grapple with *Cox*'s implications for secondary liability more broadly.

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20 *See* Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc., 658 F.3d 936, 943 (9th Cir. 2011) (requiring only "that defendants provided their services with actual or constructive knowledge that the users of their services were engaging in trademark infringement" to support contributory trademark infringement); 1-800 Contacts, Inc. v. Lens.com, Inc., 722 F.3d 1229, 1254 (10th Cir. 2013) (noting courts would not require "knowledge of the particular offender to impose contributory liability" in a case where the "defendant need not know the identity of the infringer to stop the allegedly infringing practice without affecting legitimate conduct"); Coach, Inc. v. Goodfellow, 717 F.3d 498, 504-05 (6th Cir. 2013); *see also* Atari Interactive, Inc. v. Redbubble, Inc., 515 F. Supp. 3d 1089, 1108 (N.D. Cal. 2021) ("[T]he balance of authorities suggests that contributory infringement could occur when a service provider fails to take reasonable steps to prevent infringement while having general knowledge that such infringement is taking place."), *aff'd in part, appeal dismissed in part*, No. 21-17062, 2023 WL 4704891 (9th Cir. July 24, 2023). *See generally* David H. Bernstein and Michael Ponteza, *Why the Reasonable Anticipation Standard is the Reasonable Way to Assess Contributory Trademark Liability in the Online Marketplace*, 2011 Stan. Tech. L. Rev. 9 (2011).

21 *See, e.g.*, Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259, 265 (9th Cir. 1996) ("[A] swap meet cannot disregard its vendors' blatant trademark infringements with impunity."); *Coach*, 717 F.3d at 504-05 (discussing corrective actions not taken by defendant operator).

22 *See, e.g.*, Luxottica Grp., S.p.A. v. Airport Mini Mall, LLC, 932 F.3d 1303, 1315 (11th Cir. 2019) ("[T]he jury reasonably could have found that a cursory visual inspection of 130 booths to see if they displayed what appeared to be counterfeit Luxottica eyewear was not so burdensome as to relieve the defendants of the responsibility to investigate after being informed by Luxottica that unnamed subtenants may have been engaging in illegal activity."); Omega SA v. 375 Canal, LLC, 984 F.3d 244, 253-55 (2d Cir. 2021) (holding landlord liable for infringement by tenants where failure to respond to on-premise infringement in the past was sufficient evidence of willful blindness as to the specific instances of infringement at issue).

23 *See, e.g.*, *Atari Interactive, Inc.*, 515 F. Supp. at 1108.

B. Contributory Copyright Infringement

As is the case with trademark law, there is no provision of the Copyright Act that imposes secondary liability; the doctrine "emerged from common law principles and [is] well established in the law."[24] The Supreme Court, however, expressly declined to apply *Inwood Labs*' trademark standard to secondary copyright claims in *Sony v. Universal*, noting that the trademark test was the "narrow[er]" of the two.[25]

Instead, before *Cox*, many courts applied a "knowledge plus material contribution" test: a party could be held liable if it (1) knew or had reason to know of infringing activity, and (2) materially contributed to it.[26] To limit their potential exposure, especially under the "reason to know" prong, many platforms and service providers looked to the safe harbor provisions of the Digital Millennium Copyright Act ("DMCA"), which shield qualifying service providers from liability if they meet certain conditions—including maintaining and implementing a policy for terminating repeat infringers.

Cox fundamentally changed this landscape. Although Justice Thomas's majority opinion sought to frame its holding as merely an extension of existing precedent, the opinion both limits the means of proving contributory infringement and substantially narrows the relevance of the DMCA's safe harbor. The Supreme Court held that contributory copyright liability requires proof of intent to facilitate the primary infringement, which can be established in only two ways: (1) active inducement of infringement through specific acts, such as express promotion or marketing of a service for infringing purposes, or (2) provision of a service "tailored" to infringement—meaning a service that lacks substantial or commercially significant non-infringing uses.[27] Knowledge alone, even combined with inaction, is insufficient to support contributory copyright liability.

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24 Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 930 (2005) (citing *Sony*, 464 U.S. at 486).

25 *See Sony*, 464 U.S. at 439 n.19 ("If *Inwood [Labs']* narrow standard for contributory trademark infringement governed here, respondents' claim of contributory infringement would merit little discussion. Sony certainly does not 'intentionally induce[]' its customers to make infringing uses of respondents' copyrights, nor does it supply its products to identified individuals known by it to be engaging in continuing infringement of respondents' copyrights[.]").

26 *Sony Music Entm't v. Cox Commc'ns, Inc.*, 93 F.4th 222, 233 (4th Cir. 2024), *rev'd and remanded*, 146 S. Ct. 959 (2026), *affirming-in-part, vacating-in-part, reversing-in-part Sony Music Entm't v. Cox Commc'ns, Inc.*, 464 F. Supp. 3d 795, 816 (E.D. Va. 2020); A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1020 (9th Cir. 2001) (quoting Cable/Home Commc'n Corp. v. Network Prods., Inc., 902 F.2d 829, 845 & 846 n.29 (11th Cir. 1990) ("Contributory liability requires that the secondary infringer 'know or have reason to know' of direct infringement.")).

27 *Cox*, 146 S. Ct. at 967.

The Court also clarified the role of the DMCA's safe harbor provisions. According to *Cox*, the DMCA creates defenses to a finding of liability; it does not impose affirmative duties where no liability exists.[28] A provider's failure to qualify for the DMCA safe harbor is thus irrelevant to the liability analysis in the absence of intent.

II. THE LIKELY IMPACT OF *COX* ON CONTRIBUTORY TRADEMARK INFRINGEMENT DOCTRINE

Although *Cox* addressed only copyright law, and the Supreme Court has historically rejected "the proposition that a . . . kinship exists between copyright law and trademark law,"[29] there are compelling reasons to think that the holding in *Cox* requires a rethinking of trademark's secondary liability doctrines.

A. Why Cox *Likely Requires Rethinking the Interpretation of Inwood Labs*

Three considerations suggest that the reasoning in *Cox* may prompt courts to reconsider the scope of contributory trademark liability under *Inwood Labs*.

First, both trademark and copyright contributory liability doctrines are judicially created rather than statutory, drawing on common law principles of secondary liability that cut across substantive legal fields. As Justice Sotomayor observed in her *Cox* concurrence, doctrines of secondary liability are found in virtually every area of the law and are derived from a long common law tradition; accordingly, "the scope of secondary liability . . . should be defined by reference to other areas of the law."[30] Unlike the substance of copyright and trademark law—which derive from statutes with independent constitutional foundations—the law of secondary liability is rooted in a common law tradition not tied to any particular type of substantive claim.[31] Although the Supreme Court's traditional resistance to finding any "kinship" between the substance of copyright law and trademark law is well grounded in these distinct foundations, it is not obviously the case that the same hesitation should apply to secondary liability, which is grounded in neither the statutes nor the different constitutional provisions at issue.

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28 *Id.* at 969.

29 *Sony*, 464 U.S. at 439 n.19.

30 *Cox*, 146 S. Ct. at 971 (Sotomayor, J., concurring).

31 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 25:17 (5th ed. 2026) ("The main source of possible indirect liability for trademark infringement is the doctrine of contributory infringement. This is a judicially created doctrine 'that derives from the common law of torts.'" (quoting *Tiffany*, 600 F.3d at 103-04)).

Second, the policy rationale motivating an intent requirement for contributory copyright infringement—that knowledge-plus-inaction imposes excessive burdens on intermediaries and chills legitimate commerce—applies with equal force to trademark law.[32] Platform operators and service providers face the same practical challenges in policing infringement and the same concerns about over-deterrence, regardless of whether the claim sounds in copyright or trademark.

The traditional justification for keeping trademark and copyright doctrines separate does not apply here. Courts have declined to harmonize the substantive law because copyright and trademark serve fundamentally different purposes: copyright incentivizes the creation of expressive works, while trademark protects consumers from confusion and preserves the goodwill of mark owners.[33] But the rules governing *secondary* liability for intermediaries do not distinguish between those distinct purposes. Instead, secondary liability rules address a conceptually distinct question: when should a party be held responsible for the infringing activities of another. The answer turns on factors like the intermediary's knowledge, intent, and relationship to the direct infringer—which apply regardless of whether the underlying claim sounds in copyright or trademark law.

Third, and perhaps most practically, *Cox* turns the traditional hierarchy of secondary liability on its head. In *Sony v. Universal*, the Supreme Court observed that trademark law imposes *narrower* secondary liability than copyright.[34] Yet if the current interpretation of *Inwood Labs* prevails, the opposite becomes true, and plaintiffs would now have a clearer path to holding intermediaries liable for trademark infringement. This reversal (which contravenes the *Sony v. Universal* Court's framing of the two doctrines) will reshape litigation strategy, pushing plaintiffs toward trademark claims as the preferred vehicle for reaching platforms and service providers.

These considerations suggest that even if courts are not strictly required by the language of *Cox* to harmonize the doctrines, the

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32 Brief for the United States as Amicus Curiae Supporting Petitioners at 29, Cox Commc'ns, Inc. v. Sony Music Entm't, 146 S. Ct. 959 (2026) (No. 24-171) ("The court of appeals' sweeping view of contributory copyright infringement could carry serious adverse consequences. Under the decision below, so long as an ISP knows that a specific account is 'substantially certain to infringe,' the ISP is liable for all direct infringement committed on that account. . . . That approach would give ISPs a powerful incentive to err on the side of termination after receiving a notice of infringement for a particular account." (citations omitted)).

33 *See* United States v. Giles, 213 F.3d 1247, 1252 (10th Cir. 2000) ("A trademark is meant to identify goods so that a customer will not be confused as to their source. A copyright is intended to protect the owner's right in an abstract design or other creative product. These differing purposes inform the different rights each law creates.").

34 *Sony*, 464 U.S. at 439 n.19.

shared common law foundations and the desire to create a coherent legal landscape may push them in that direction.

B. Potential Impact of Cox *on the Inwood Labs Framework*

If courts do move toward harmonization of contributory liability standards for trademark and copyright claims, the implications will affect the two prongs of the *Inwood Labs* test differently. Although *Cox* largely reinforces existing law on intentional inducement—and the Supreme Court subsequently provided concrete guidance on what constitutes "active steps" in the related patent context[35]—*Cox* could put substantial pressure on the knowledge prong that has long carried most contributory trademark cases.[36]

1. Intentional Inducement

The first prong of the *Inwood Labs* test—intentional inducement—closely parallels *Cox*'s first basis for contributory copyright liability: inducement via active encouragement of infringement through specific acts.[37] But that prong is rarely invoked in the trademark context, as trademark cases have focused overwhelmingly on the knowledge prong. The courts that have addressed this prong have generally set a high bar, requiring affirmative acts that directly encourage infringement—an approach consistent with and reinforced by *Cox*'s articulation of inducement in the copyright context.[38]

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35 Hikma Pharms. USA Inc. v. Amarin Pharma, Inc., 146 S. Ct. 1391 (2026) (quoting Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754, 760 (2011)) (defining "active steps" as those that "involve the taking of affirmative" . . . compared to "passive, 'steps to bring about the desired result.'").

36 The extent of this pressure depends upon whether courts embrace the more cautious reading of *Cox* referenced in Section I(B) above—namely, that knowledge of specific infringing users plus complete inaction could support a theory of inducement, under some circumstances. Notably, even if courts do embrace this reading it (1) challenges prior holdings that general knowledge and inaction can lead to contributory trademark infringement, (2) calls into question whether "reason to know" is enough to support liability, and (3) may reframe the way courts approach the prongs of the *Inwood Labs* test, as specific knowledge plus inaction would be a form of inducement—not a separate prong.

37 *Cox*, 146 S. Ct. at 967.

38 *See, e.g.*, Gucci Am., Inc. v. Frontline Processing Corp., 721 F. Supp. 2d 228, 248-49 (S.D.N.Y. 2010) (finding that plaintiff adequately alleged inducement by Durango, a company that connects "high risk" merchants with credit card processing services, because it claimed Durango designed and advertised its services to signal its utility for counterfeit sellers and brought the direct infringer to the table by helping to set up a system to avoid chargebacks; plaintiff did not, however, adequately allege inducement by Frontline, a credit card processor, because it did not claim that Frontline courted the direct infringer or helped to set up its processing services.); *Perfect 10, Inc.*, 494 F.3d at 807.

Cox's exploration of "inducement" should also provide useful guidance on this underdeveloped prong in trademark law. For example, the *Cox* Court's citation to *Grokster* provides a classic example of inducement: defendants who distributed promotional materials advertising copyrighted works as available for download, effectively marketing their platform as a tool for infringement.[39]

The Supreme Court's recent application of these principles in the patent context further confirms that *Cox* sets a high threshold that further insulates patent and copyright defendants from inducement claims based on passive conduct. In *Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*, a unanimous Court cited *Cox* in holding that "'inducement must involve the taking of affirmative,' as opposed to passive, 'steps to bring about the desired result' of patent infringement."[40] There, Amarin alleged that Hikma's labeling and marketing of a generic drug encouraged patent infringement by inducing doctors to substitute the generic drug for Amarin's patented use.[41] The Court held Hikma's alleged statements did not plausibly show sufficient "active steps" to encourage infringement.[42] Relying again on *Grokster*, the Court clarified that inducement "cannot be based only on 'vague' language 'combined with speculation about how [others] may act.'"[43] It may, however, be achieved through "implicit encouragement," so long as the inducement is "'clear' to the relevant audience and 'affirmative.'"[44] *Hikma* thus reinforces a demanding standard for inducement that may well inform the same prong as *Inwood Labs*.

2. Knowledge and Supply

Cox is more likely to disrupt interpretation of *Inwood Labs*' second prong—the "knows or has reason to know" standard—which now stands as a significant outlier in the realm of contributory liability. *Cox* made clear that contributory copyright infringement cannot rest on general knowledge of infringement and continued provision of services alone; something more is required. This holding is in direct tension with the second prong of *Inwood Labs*, which

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39 *Cox*, 146 S. Ct. at 967 (citing *Grokster*, 545 U.S. at 926). *Grokster* concerned peer-to-peer file sharing. Affirmative promotion of peer-to-peer software as being designed for infringing uses showed purposeful encouragement beyond merely distributing a dual-use technology. 545 U.S. at 941.

40 *Hikma*, 146 S. Ct. at 1400 (quoting Global-Tech Appliances, Inc. v. SEB S.A., 563 U. S. 754, 760 (2011) and citing *Grokster*, 545 U.S. at 935, and *Cox*, 146 S. Ct. at 966).

41 *Id.* at 1396.

42 *Id.* at 1402.

43 *Id.* at 1401 (quoting Takeda Pharms. U.S.A., Inc. v. W-Ward Pharm. Corp., 785 F.3d 625, 632 (Fed. Cir. 2015), and citing *Grokster*, 545 U.S. at 937).

44 *Id.* (quoting *Grokster*, 545 U.S. at 937, 938).

courts have read to impose liability based on precisely that combination of general knowledge and continued services.

Although completely abandoning liability based on knowledge and inaction may ultimately require the Supreme Court to overrule *Inwood Labs*, the Court has already hinted at a narrower construction of *Inwood Labs* in a footnote in *Sony v. Universal*. More specifically, the Court articulated the holding of *Inwood Labs* in the following way:

> [A] manufacturer or distributor could be held liable to the owner of a trademark if it *intentionally induced* a merchant down the chain of distribution to pass off its product as that of the trademark owner's or if it continued to supply a product which could readily be passed off to a particular merchant *whom it knew* was mislabeling the product with the trademark owner's mark.[45]

The *Sony v. Universal* formulation of the *Inwood Labs* test omits liability based on merely a "reason to know" of infringement and requires either intent or actual knowledge—a more demanding standard that is closer to (though potentially still more permissive than) the holding in *Cox*. Courts could interpret *Cox* as supporting this narrower view of *Inwood Labs*' second prong, which would shift the inquiry toward evidence of specific knowledge of, and intent to facilitate, actual infringement, as opposed to general knowledge of infringement and steps taken (or not taken) to stop or prevent that infringement.

The consequences of such a change in the law would be significant: it would call into doubt the aforementioned "flea market" and "landlord" cases, in which defendants were held contributorily liable based on general knowledge of widespread infringement (even *unrelated* infringement affecting third-party rightsholders) and a failure to take remedial action, such as inspecting vendors' booths for counterfeit items.[46] Under a narrower reading of *Inwood Labs*' second prong, as now informed by *Cox*, such generalized evidence would likely be insufficient to establish contributory liability; plaintiffs would instead need to demonstrate that the defendant knew about and intended to facilitate specific infringing acts.

Even the Second Circuit's comparatively demanding *Tiffany* standard—which required eBay to have knowledge of specific infringing listings, not merely generalized awareness that counterfeit Tiffany goods were sold on the platform—would require recalibration to conform to *Cox*. Although *Tiffany*'s rejection of generalized knowledge mirrors *Cox*, and its emphasis on eBay's prompt removal of specific listings identified by Tiffany as

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45 *Sony*, 464 U.S. at 439 n.19 (emphasis added).

46 *Luxottica Grp.*, 932 F.3d at 1315; *Fonovisa*, 76 F.3d at 264; *Coach*, 717 F.3d at 504-05.

counterfeit is consistent with an intent-based inquiry, other aspects of *Tiffany* are harder to reconcile with *Cox*.

Most significantly, *Tiffany*'s holding expressly preserved the doctrine of willful blindness, under which a defendant who deliberately avoids learning about infringement can be "charged with knowledge" sufficient for liability.[47] That doctrine finds some foundation in *Inwood Labs*' articulation of liability based on whether a defendant "knows or has reason to know" a third party is engaged in infringement (which is the portion of the holding the Court did not reiterate in *Sony*). But willful blindness requires only deliberate avoidance of knowledge—not intent to facilitate any particular infringing act—and thus falls well short of the culpability threshold *Cox* demands.

The *Tiffany* court also evaluated eBay's general anti-counterfeiting policies and practices to assess whether eBay had intentionally shielded itself from discovering infringement. These broader inquiries are difficult to square with a test focused strictly on intent to facilitate particular infringing conduct. If the test is whether the defendant's platform service is tailored to infringing uses, it is hard to see why any of this would matter (at least as a legal matter). The eBay platform that provides a marketplace for buyers and sellers to transact obviously has substantial, commercially significant non-infringing uses, and was not tailored to infringement. That is true whether or not eBay expends resources on its own anti-counterfeiting practices.

If *Cox*'s intent requirement migrates to trademark law, the consequences extend in both directions: the permissive "general awareness" standard of the flea market cases would fall away, and even the more rigorous *Tiffany* framework would be pared back to its core specific-knowledge holding—moving the focus away from willful blindness and inquiries into platform-wide anti-counterfeiting infrastructure.

III. PRACTICAL CONSIDERATIONS FOR AN EVOLVING LANDSCAPE

Unless (or until) courts reconsider the contours of contributory liability under trademark law, platform providers must recalibrate their compliance priorities around trademark risk, while brand owners should leverage the comparatively favorable trademark framework to maximize enforcement outcomes. The following subsections address each perspective in turn.

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47 *Tiffany*, 600 F.3d at 109; *Omega SA*, 984 F.3d at 254 ("*Tiffany*'s discussion of willful blindness confirms that a defendant may be held liable for contributory trademark infringement despite not knowing the identity of a specific vendor who was selling counterfeit goods, as long as the lack of knowledge was due to willful blindness.").

A. For Platform and Service Providers

To mitigate exposure under *Inwood Labs*, service providers should consider the following practical steps:

- Maintain robust notice-and-takedown procedures for trademark complaints. Courts have frequently considered factors relevant to DMCA compliance—such as repeat infringer and takedown policies—when conducting the *Inwood Labs* analysis, even though the DMCA safe harbor does not extend to trademark claims.
- Thoroughly document anti-counterfeiting and anti-infringement policies, including employee training efforts, to demonstrate that policies were not merely cosmetic but were actively enforced.
- Respond promptly to specific infringement notices identifying sellers or listings to avoid establishing requisite knowledge under *Inwood Labs*.

Importantly, these steps could remain helpful for avoiding copyright claims as well. Although *Cox* and *Hikma* set a high bar for inducement in the copyright and patent contexts respectively—requiring "affirmative" steps designed to bring about infringement rather than mere knowledge or inaction—platforms should still avoid conduct that could constitute "implicit encouragement." As the *Hikma* Court noted, inducement need not be express; it can be achieved through implicit encouragement so long as it is "clear" and "affirmative."[48] Accordingly, platforms should refrain from actions that could be construed as signaling tolerance of infringement.

B. For Brand Owners and Rightsholders

Although *Cox* significantly constrains copyright owners' ability to hold platforms contributorily liable for users' copyright infringement, trademark law remains a viable avenue for brand owners' enforcement. Rightsholders should recalibrate their enforcement strategies, focusing on the following considerations:

- Prioritize trademark protection and registration. Because secondary liability standards are (for the moment) more favorable to plaintiffs in trademark cases than in copyright cases, brands should ensure they are taking the necessary steps to identify, register, and protect their trademarks—including trade dress and design marks that may overlap with copyrightable elements.
- Build an evidentiary record of specific, documented infringement that can support a case under even a narrow

[48] *Hikma*, 146 S. Ct. at 1401 (quoting *Grokster*, 545 U.S. at 937).

reading of *Inwood Labs*. Rather than relying on generalized evidence of widespread infringement occurring on a platform, brand owners should focus on identifying specific instances of infringement attributable to particular direct infringers and ensuring they put platforms on notice of that infringing activity. When communicating with service providers, rightsholders should send detailed written notices that identify the infringing content with specificity, reference the intellectual property rights at issue, and request specific remedial action. These notices serve dual purposes: they may prompt the provider to act, and they create a litigation record establishing that the provider had actual knowledge of particular infringement and failed to respond appropriately.

- Establish a pattern of provider non-responsiveness. Where a platform fails to act on specific, well-documented complaints, rightsholders should continue to send follow-up notices regarding the same infringing seller or listing. Courts evaluating contributory trademark claims may consider whether the provider's failure to act in the face of repeated, specific complaints reflects an intent to facilitate the infringement.

IV. CONCLUSION

Cox significantly altered the doctrine of contributory copyright liability by eliminating knowledge-based claims and requiring proof of intent to facilitate infringement. While some have argued that *Cox*'s holding may be limited to the unique context of ISPs, plaintiffs in copyright infringement cases against OpenAI recently voluntarily dropped their contributory infringement claims following *Cox.*[49] This strongly suggests that litigants and courts are likely to apply *Cox*'s framework broadly to the conduct of actors other than ISPs.

The rigorous infringement policies and monitoring procedures once considered essential for platforms and ISPs are no longer necessarily required to avoid copyright exposure—although these policies and procedures may still serve as evidence negating inducement, and likely remain smart business practices to attract consumers who want to transact on a platform with assurances of authenticity. Contributory trademark liability, by contrast, is still anchored in the knowledge-based *Inwood Labs* framework—and, for now, stands as a significantly more potent enforcement mechanism for brand owners. This split in the law rests on a weak foundation,

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49 Elliot Weld, *NY Times, Other News Orgs Reframe AI Claims in Wake of Cox*, Law360 (June 26, 2026), https://www.law360.com/articles/2494116/ny-times-other-news-orgs-reframe-ai-claims-in-wake-of-cox.

however, and may not persist for long as courts grapple with the import of *Cox*'s holding on secondary liability doctrine in trademark law and other contexts.