

Cox
u
Sony

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James Craven

**FREE
TUNES!**

GET YER
FREE TUNES!

INTERNET PIRACY IS
NEARLY AS OLD AS THE
INTERNET ITSELF.



HOW MUCH
MONEY CREATORS
LOSE TO PIRACY IS
UNANSWERABLE
WITHOUT KNOWING HOW
MANY PIRATES WOULD
HAVE ACTUALLY PAID
FOR GOODS THEY
COULDN'T PIRATE.

THAT'S A
\$20 SALE!

THAT WAS
NEVER A SALE!

INDUSTRY STUDIES CITE EYE-POPPING
NUMBERS. A EUROPEAN UNION STUDY FOUND
LOSSES NEAR ZERO. INDEPENDENT ECONOMISTS
LAND IN BETWEEN: LOSSES ARE SIGNIFICANT
BUT A FRACTION OF INDUSTRY CLAIMS.

BUT ONE THING ISN'T CONTESTED:
EARLY INTERNET PIRACY--OFTEN GRABBING
INDIVIDUAL SONGS OFF WEBSITES AND
FILE-SHARING PROGRAMS--PRECEDED
AN INDUSTRY COLLAPSE.

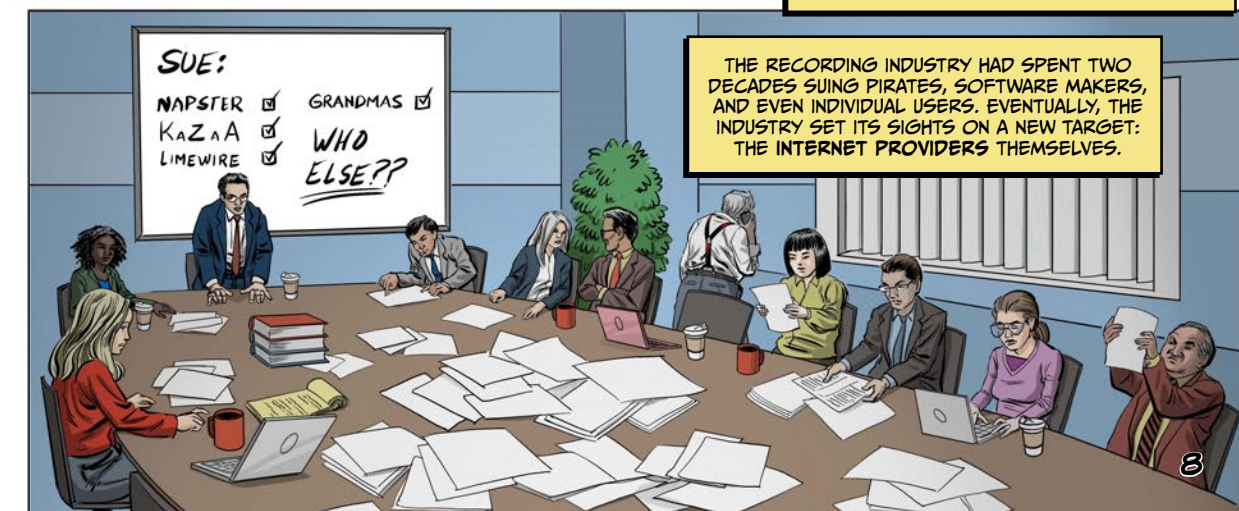
WHETHER OR NOT IT CAUSED LOST
SALES, PIRACY DID HOOK CONSUMERS ON
A MODEL OF PER-SONG DOWNLOADS
THAT WAS LESS PROFITABLE EVEN WHEN
THEY PAID. IT TOOK A DECADE TO FIND A
MODEL THAT WORKED: STREAMING, WHICH
COULD BEAT PIRACY WITH CONVENIENCE.



SUE:

NAPSTER	☒	GRANDMAS	☒
KaZaA	☒	WHO ELSE??	
LIMEWIRE	☒		

THE RECORDING INDUSTRY HAD SPENT TWO
DECADES SUING PIRATES, SOFTWARE MAKERS,
AND EVEN INDIVIDUAL USERS. EVENTUALLY, THE
INDUSTRY SET ITS SIGHTS ON A NEW TARGET:
THE INTERNET PROVIDERS THEMSELVES.

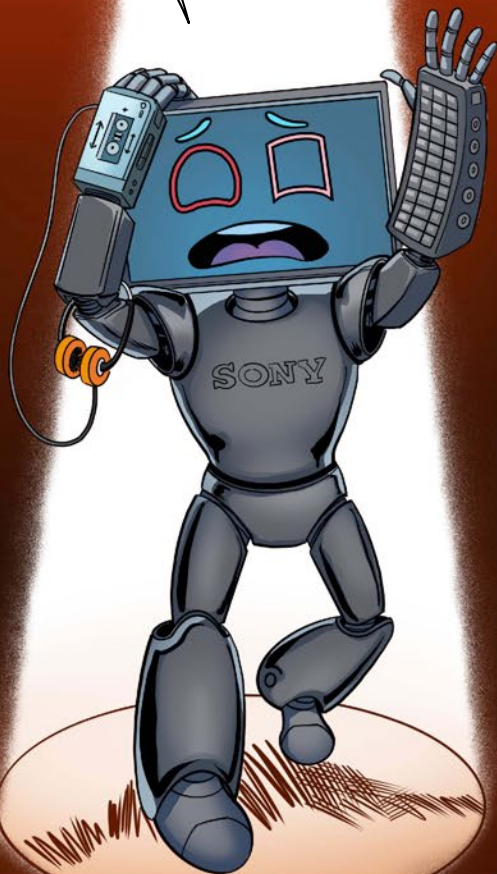


MUSIC SALES



PIRACY IS DESTROYING US!

SONY, A GIANT OF MUSIC AND ENTERTAINMENT, HAS LONG BATTLED PIRATES. BUT ITS RECORD ON COPYRIGHT ENFORCEMENT IS... COMPLICATED.



IN 2005, SONY TRIED TO FIGHT PIRACY BY PUTTING A ROOTKIT IN ITS CDS. IT INSTALLED SILENTLY, HID ITSELF, BLOCKED COPYING--AND OPENED A BACKDOOR FOR ANY MALWARE AUTHOR TO EXPLOIT.

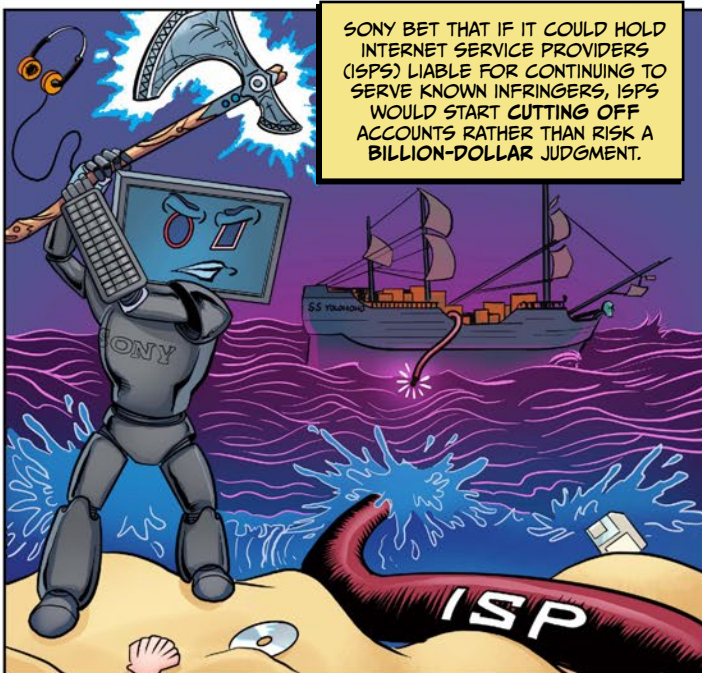
TAKE THAT CRIMINAL AWAY!

YEAH, TAKE THAT PIRATE AWAY--WAIT, WHY ARE YOU ARRESTING ME?!

BECAUSE YOU PUT MALWARE ON TWO MILLION COMPUTERS!



SONY BET THAT IF IT COULD HOLD INTERNET SERVICE PROVIDERS (ISPs) LIABLE FOR CONTINUING TO SERVE KNOWN INFRINGERS, ISPs WOULD START CUTTING OFF ACCOUNTS RATHER THAN RISK A BILLION-DOLLAR JUDGMENT.



YOUR SUBSCRIBERS ARE PIRATING MY MUSIC. YOU'RE RESPONSIBLE.

S-SEEMS LIKE MORE OF A YOU PROBLEM?



SONY'S LAWSUIT RAISES AN ANCIENT QUESTION: WHEN DOES HELPING SOMEONE'S WRONG MAKE YOU RESPONSIBLE?

PROVIDE A SERVICE TO SOMEONE WHO TURNS OUT TO BE A CROOK? USUALLY NOT YOUR PROBLEM.

LOCKED OUT OF YOUR HOUSE, HUH? HAPPENS TO EVERYONE.

THANK YOU. I FEEL QUITE SILLY.

BUT ONCE YOU KNOW THE WRONG YOU'RE HELPING, YOU CAN SHARE THE BLAME.

SO YOU LIVE IN THIS RECORD STORE...? WELL--IT'S NONE OF MY BUSINESS.

CRAVAN'S RECORDS N' TAPES

BY THE WAY, DO YOU ACCEPT PAYMENT IN CDS? NEVER OPENED!

IN 1984, SONY ITSELF FACED THIS QUESTION. ITS BETAMAX LET CONSUMERS RECORD TELEVISED CONTENT--INCLUDING COPYRIGHTED MOVIES.

SONY

YOU PAY.

YOU SOLD THE DEVICE. YOU KNEW PEOPLE WOULD COPY.

SONY

THIS PRODUCT HAS SUBSTANTIAL NONINFRINGEMENT USES. ONE WE CONSIDER FAIR USE IS RECORDING TV SHOWS TO WATCH LATER.

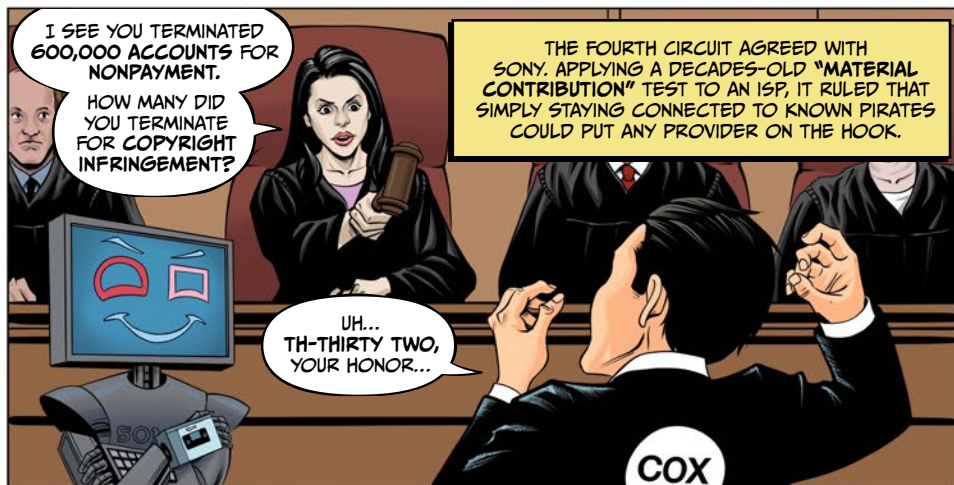
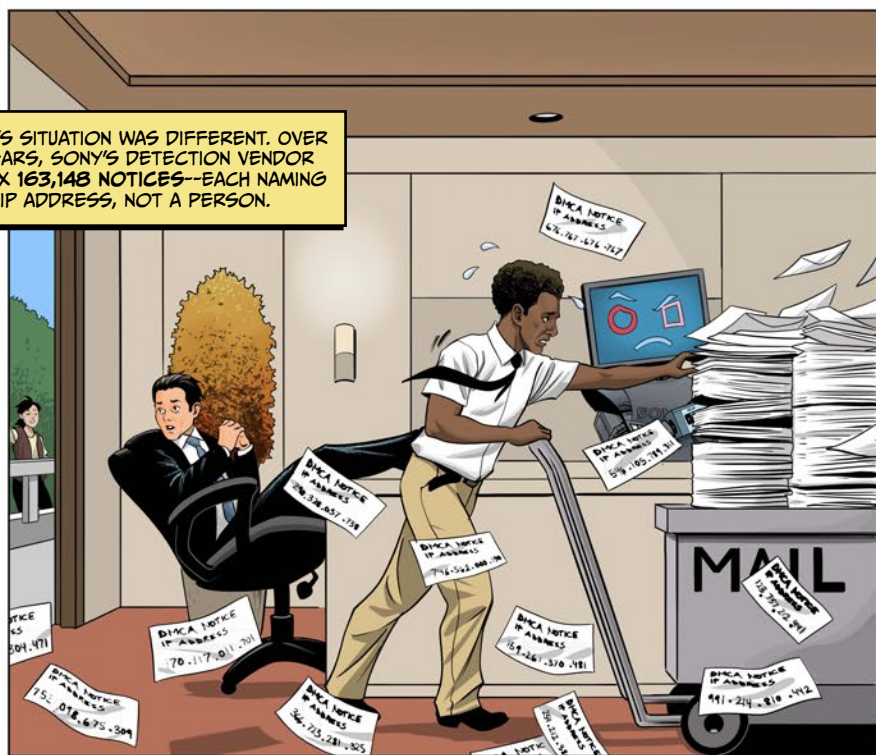
SELLING A BETAMAX RECORDER--EVEN KNOWING SOME BUYERS MISUSE IT--IS NOT INFRINGEMENT.

SONY WON, 5-4. THE BETAMAX RULE WAS BORN: MAKERS OF GENERAL-PURPOSE TOOLS AREN'T LIABLE WHEN SOME USERS MISUSE THEM.

M.A.S.H. SAVE CHEERS THURS
WHL FUTURE MON

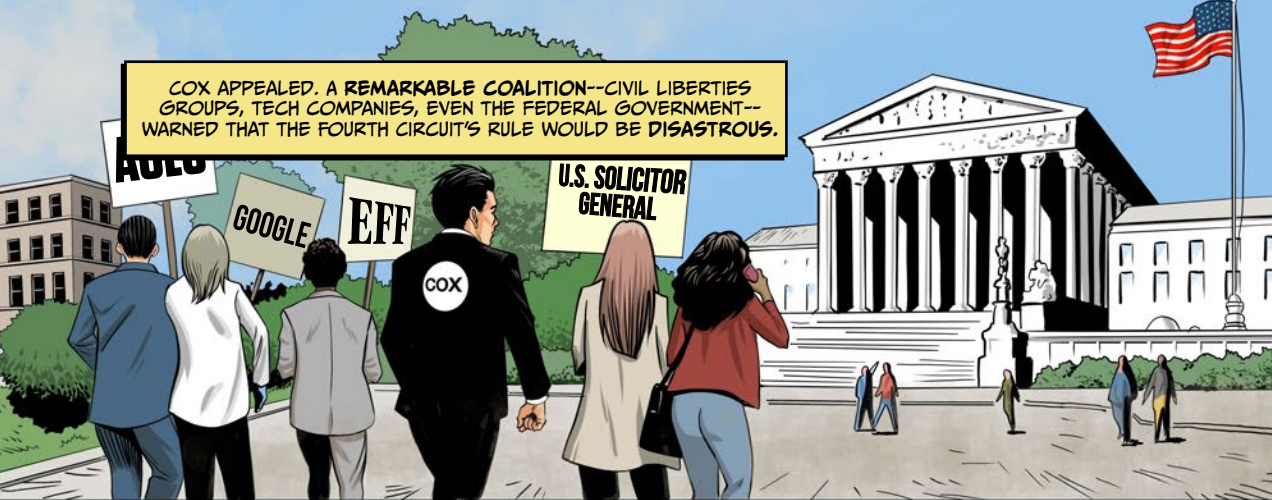
STAR WARS
BOBAC \$5

BUT COX'S SITUATION WAS DIFFERENT. OVER TWO YEARS, SONY'S DETECTION VENDOR SENT COX 163,148 NOTICES--EACH NAMING AN IP ADDRESS, NOT A PERSON.



THE FOURTH CIRCUIT AGREED WITH SONY. APPLYING A DECADES-OLD "MATERIAL CONTRIBUTION" TEST TO AN ISP, IT RULED THAT SIMPLY STAYING CONNECTED TO KNOWN PIRATES COULD PUT ANY PROVIDER ON THE HOOK.

COX APPEALED. A REMARKABLE COALITION--CIVIL LIBERTIES GROUPS, TECH COMPANIES, EVEN THE FEDERAL GOVERNMENT--WARNED THAT THE FOURTH CIRCUIT'S RULE WOULD BE DISASTROUS.



TODAY, CUTTING OFF A HOUSEHOLD'S INTERNET SEVERES IT FROM MODERN LIFE. NO CONNECTION MEANS NO REMOTE WORK...



...NO BANKING OR PAYING BILLS...



...NO TELEHEALTH OR PRESCRIPTION REFILLS...



...NO SCHOOLWORK. AND ONE IP ADDRESS ISN'T NECESSARILY ONE PERSON--IT'S TYPICALLY A WHOLE HOUSEHOLD, DORM, OR CAFÉ. LOSE THAT ONE ADDRESS, AND EVERYONE BEHIND IT PAYS, EVEN THOSE WHO NEVER PIRATED A THING.

WITH THE STAKES THIS HIGH, THE SUPREME COURT TOOK THE CASE.



ALL NINE JUSTICES DECLINED TO STICK COX WITH CONTRIBUTORY LIABILITY, THOUGH THEY SPLIT ON WHY. THE FOURTH CIRCUIT'S RULING WAS REVERSED--AND THE MATERIAL CONTRIBUTION STANDARD RETIRED.

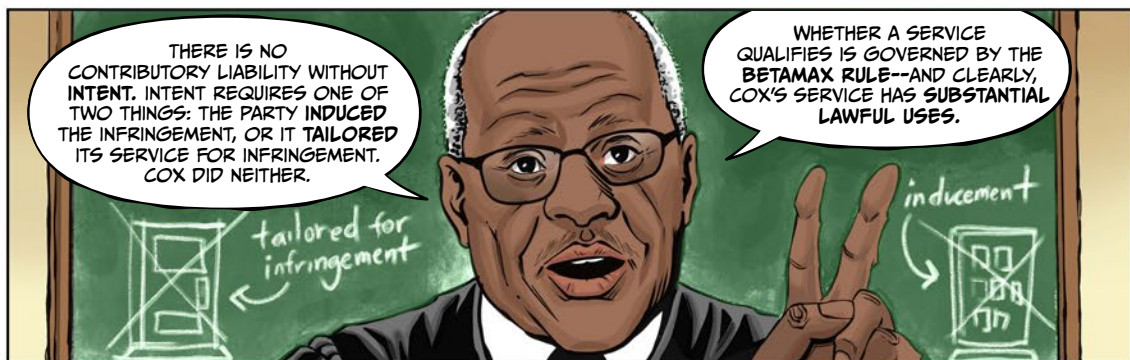
COX SIMPLY PROVIDED INTERNET ACCESS, WHICH IS USED FOR MANY PURPOSES OTHER THAN COPYRIGHT INFRINGEMENT.

MERE KNOWLEDGE THAT SOME USERS WILL INFRINGE IS NOT ENOUGH TO MAKE COX LIABLE.



THERE IS NO CONTRIBUTORY LIABILITY WITHOUT INTENT. INTENT REQUIRES ONE OF TWO THINGS: THE PARTY INDUCED THE INFRINGEMENT, OR IT TAILORED ITS SERVICE FOR INFRINGEMENT. COX DID NEITHER.

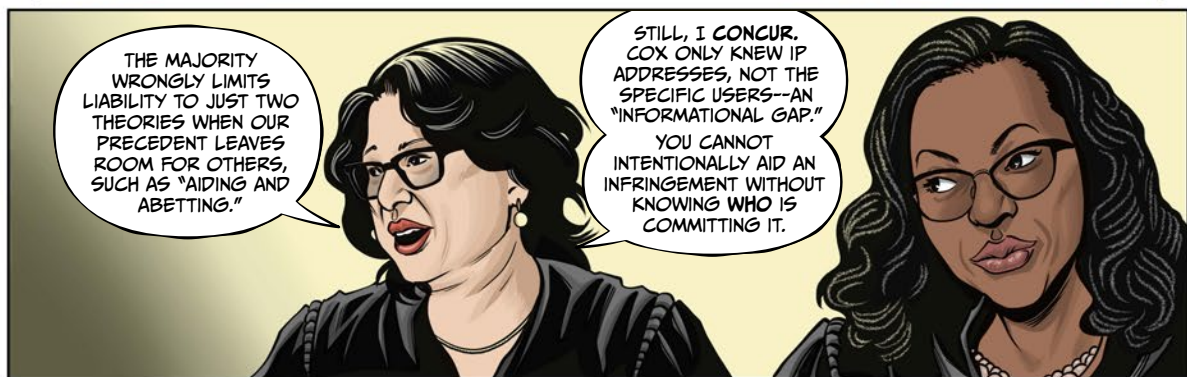
WHETHER A SERVICE QUALIFIES IS GOVERNED BY THE BETAMAX RULE--AND CLEARLY, COX'S SERVICE HAS SUBSTANTIAL LAWFUL USES.



THE MAJORITY WRONGLY LIMITS LIABILITY TO JUST TWO THEORIES WHEN OUR PRECEDENT LEAVES ROOM FOR OTHERS, SUCH AS "AIDING AND ABETTING."

STILL, I CONCUR. COX ONLY KNEW IP ADDRESSES, NOT THE SPECIFIC USERS--AN "INFORMATIONAL GAP."

YOU CANNOT INTENTIONALLY AID AN INFRINGEMENT WITHOUT KNOWING WHO IS COMMITTING IT.



THE INTERNET STAYS CONNECTED. BUT THE DEEPER QUESTION--HOW TO ACTUALLY STOP PIRATES WITHOUT BREAKING ESSENTIAL INFRASTRUCTURE--REMAINS UNSOLVED.



THIS ISN'T OVER.

