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WHAT THE INDUSTRY READS FIRST

Hit Replay: Cox Presents Final Arguments for SCOTUS Review of Sony Suit

Cox Communications is battling not only on its own behalf, but for all ISPs, in the latest update in its ongoing legal battle with **Sony** over the operator's liability as it relates to broadband customers pirating music over the network.

In a reply brief filed Monday, Cox pleaded with the Supreme Court to take a look at the case in an effort to settle the battle between ISPs and the music industry once and for all, but also to reconcile a conflict between different approaches taken by different circuit courts.

"They depict Cox as especially culpable, but are suing multiple ISPs on the same theory. This is possible only because of the widespread confusion about how this Court's decades-old contributory-liability rulings map onto the modern internet," Cox said. "This Court must resolve the confusion—and hold that ISPs are not required to police everything that happens online—before it is too late."

Where the circuit courts differ is in how they examine whether a party is guilty of willful contributory copyright infringement, and Cox doesn't believe the record companies can persuasively reconcile what it called a three-way circuit conflict. It went on to cite examples from the Second Circuit, Fourth Circuit, Fifth Circuit, Ninth Circuit and Tenth Circuit where standards used differ significantly.

The operator also specifically looked at a recent case where **Grande Communications** was sued under similar grounds by

record companies that claimed the ISP had received more than 1.3 million infringement notices tied to subscribers. A Western Texas District Court jury found Grande liable for willful contributory copyright infringement and awarded the plaintiffs \$46,766,200 in statutory damages. The Fifth Circuit upheld the jury's verdict, but ultimately vacated the damages award and remanded the case for a new trial on damages because it disagreed with the decision to award statutory damages for each individual song pirated.

Cox said the verdict was upheld in that case through the use of a "simple measures" test as a limit of liability that the Fifth Circuit believed Cox would have prevailed against.

"In fact, in distinguishing the conduct of the ISP there (Grande) from Cox's conduct, the Fifth Circuit explained that it believed Cox would prevail under the standard: '[U]nlike Cox—which implemented a 'graduated response system,'... Grande took no action in response to its subscribers' repeated infringements,'" Cox said.

Cox also fought back against arguments of record companies that ISPs are being hypocritical by not terminating customers that may be pirating content when operators terminate subscribers that don't pay their bills.

"True, after months of nonpayment, Cox—like any business—stops providing services for free. That does not justify forcing every ISP to conduct mass internet evictions for infractions worth, on average, \$1 each," it said.

The plaintiffs in the case have argued the Supreme Court

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doesn't need to reexamine this case, saying it is far from an emergency requiring that level of attention because of the existence of the Digital Millennium Copyright Act's safe harbor for ISPs that reasonably implement a policy terminating repeat infringers. Cox said the requirement of a "reasonably implemented" termination policy is ultimately no protection from a jury, and there is no solid threshold to determine what the appropriate circumstances are for dropping any household or business off the internet.

"Percolation will only make it worse. And in the meantime, ISPs will have to cut entire homes and businesses off the internet any time the music industry accuses some anonymous user of downloading a song or two," Cox said. "Review is urgently needed."

The next step forward in the case is a Nov. 22 conference where a determination could be made over whether the Supreme Court will ultimately review the case.

FRONTIER 3Q24 CHECK-IN

There's no 3Q24 earnings call from **Frontier** while its deal to be acquired by **Verizon** is pending, but the provider still delivered its quarterly financial report Tuesday. Revenue came in at \$1.49 billion, a 3.7% YOY improvement as growth in fiber products was partially offset by declines in copper-based products. Frontier added 381,000 fiber passings to reach 7.6 million total locations, and it tacked on 108,000 fiber broadband customers for a 19.3% growth compared to the same quarter last year. Consumer revenue increased 0.3% YOY to \$789 million as consumer fiber revenue was \$537 million—up 12.1% YOY. Consumer fiber broadband revenue jumped 21.8% YOY to \$414 million. Consumer fiber broadband customer churn was 1.49%, a slight improvement from 1.47% in 3Q23. On the business and wholesale side, revenue increased to \$682 million. Fiber revenue within the segment improved by 17.4% YOY to \$330 million thanks to growth in data and internet services. Churn for business and wholesale fiber customers came in at 1.5%, up from 1.24% YOY. As of the end of 3Q24, Frontier had total liquidity of \$2 billion, which includes a cash balance of \$1.3 billion and \$700 million of available borrowing capacity on its revolving credit facility.

REDSTONE MAY EXIT PARAMOUNT BOARD POST-SKYDANCE DEAL

Paramount Global's board could have a very different look following the closing of its merger with **Skydance**. According to a Form S-4 [filed](#) Monday with the **Securities and Exchange Commission**, the board post-merger will consist of up to 13 members. Under the terms of the transaction agreement,

both **Shari Redstone** and her son **Tyler Korff** will have the right to be designated to the board, but a [source](#) tells *TheWrap* that Redstone is planning on choosing to bid the board adieu when the time comes. Five of the other directors are expected to be nominated by Skydance CEO **David Ellison** (one of whom will be Ellison himself). Another two are expected to be nominees of **Redbird Capital**, and one will be whoever is named president of the combined company. Up to three additional members will be independent.

NAB CEO'S ELECTION DAY MESSAGE

As the world awaits the outcome of America's election, **NAB** President and CEO **Curtis LeGeyt** pledged that local broadcasters will be bastions of truth and transparency in a sea of misinformation. But he warned against serious threats to the First Amendment, including [calls](#) to revoke broadcaster's **FCC** licences. "Yet, even as we serve our communities, broadcasters increasingly face threats to their ability to do their jobs—either physically through verbal intimidation and violence directed towards our journalists, or politically through threats of broadcast license or spectrum revocations and harassing lawsuits," he [wrote](#) in an op/ed in *The Hill* Tuesday. "As you reflect on our election coverage this week and over the course of this cycle, be mindful that these pressures to limit or even revoke the rights of newsrooms to operate without interference pose a serious threat to our ability to fulfill this civic responsibility."

WEEKLY RATINGS

The election season fervor helped **Fox News** complete the sweep of weekly primetime and total-day ratings among cable networks for Oct. 28-Nov. 3. Fox News led the way in prime with 2.75 million viewers P2+. **ESPN** and **MSNBC** were close in second and third with 1.44 million and 1.42 million, respectively. The sports giant was helped by this week's Monday Night Football game between the Buccaneers and the Chiefs grabbing more than 20 million viewers across **ESPN**, **ESPN2**, **ESPN Deportes** and **ABC**, according to **Nielsen** fast nationals. **Hallmark Channel** is getting in the Christmas spirit in fourth with 839,000 viewers, while **CNN** rounded things out with 797,000. Fox News' total day average came in at 1.7 million. MSNBC was second with 970,000 and ESPN third at 614,000, while CNN (552,000) and Hallmark (465,000) completed the total-day top five.

PRIME VIDEO USING AI FOR RECAPS

When a show debuts a new season, there's oftentimes a rush from fans to catch up on previous chapters of the program.

Prime Video is helping folks get a refresher on things with its new X-Ray Recaps feature that uses AI to create brief summaries of full seasons of TV shows, single episodes and pieces of episodes—all personalized to the timestamp of where one was watching. It'll let viewers see quick clips of key moments, cliffhangers and other details about a show. The enhancement can be found in the Prime Video detail page or during playback on the X-Ray experience. X-Ray Recaps stems from the existing X-Ray offering that lets viewers access trivia and fun facts about a program's cast, soundtrack and production.

CTS UNVEILS CLOUD TV PLATFORM

Comcast Technology Solutions released a next-gen Cloud TV platform built for broadcasters and video service providers across the globe. It'll let companies operate a multi-platform TV experience—including both broadcast and OTT—via a managed 24/7 service. Cloud TV offers streamlined ingest, metadata management, content protection and rights enforcement, content recommendations, server-side and contextual advertising, commerce and subscriber management and content delivery and OTT distribution. It also allows for the transcoding and processing of live and on-demand video and can be scaled to unify linear, FAST, SVOD, AVOD and TVOD portfolios.

LUMEN TAPS GOOGLE TO POWER DIGITAL TWIN, AI PRODUCTS

Lumen is partnering with **Google Cloud** to help fuel its AIOps and proactive data insights across its network. Lumen is using Google Cloud's infrastructure, databases and BigQuery data and analytics platform to build Digital Win, an AI-powered real-time insights product that can detect and resolve network issues at a faster rate. Additionally, Google Cloud's Vertex AI platform and Gemini models will be used for applications that assist with technician dispatches, improve field and customer support and enhance website search functionality.

COMPANIES GET SASE CERTIFIED

AT&T, Comcast Business, Liberty Latin America, Lumen and **Verizon** were given full **MEF 3.0** Secure Access Service Edge (SASE) Certification, with **Broadcom** and **Palo Alto Networks** set to be certified in the coming weeks. MEF, the association of network, cloud and tech providers, has the certification in place to validate enterprise cybersecurity and performance amid various threats. The program's testing includes SD-WAN, Security Service Edge and Zero Trust capabilities in order to validate compliance with MEF standards. All three certification modules must be completed to achieve full SASE certification.

WBD INKS SES RENEWAL

Warner Bros. Discovery and **SES** reached a multi-year deal to

have SES provide playout services and satellite capacity to bring WBD's SD and HD channels across Austria and Germany. The agreement means WBD will have capacity for broadcasting **TLC, Eurosport 1, HGTV, Tele 5** and **DMAX** in SD. Those networks sans HGTV will remain available in HD through SES' HD+ platform.

FIBER FRENZY

Ritter Communications is bringing its RightFiber service to Paducah, Kentucky, via a \$13 million investment. Construction is underway and expected to be completed by 2025. RightFiber offers residential speeds of up to 5 Gbps and business speeds of up to 100 Gbps.

DOING GOOD

Cable One donated \$10,000 to the Salvation Army of Georgia to help residents who were impacted by Hurricane Helene. The money will go toward the nonprofit's emergency fund, which will be used to deliver assistance across affected areas of the state.

PROGRAMMING

As the second part of Season 4 for "Outer Banks" gets ready to roll out Thursday, **Netflix** revealed it's giving the series a fifth and final season. – **NBC Sports** is taking things up a notch ahead of the 2024 annual "White Out" game at Penn State. The Nittany Lions' matchup against Washington this Saturday at 8pm will be aired at select IMAX locations across the U.S. in addition to the **Peacock**-exclusive stream. Tickets are available online. Last year, ESPN took select ACC football, New Year's Six and College Football Playoff games to theaters thanks to an agreement with Theater Sports Network.

PEOPLE

Adam Ray is adding to his list of duties as **Charter's** EVP/Chief Commercial Officer while Spectrum Enterprise undergoes a leadership change. The company announced Ray will now oversee Spectrum Enterprise in addition to his current responsibilities, succeeding **Bill Archer**, who's transitioning from EVP/President, Spectrum Enterprise to an advisory role to Ray until Archer's retirement next year. Archer has been at the helm of Spectrum Enterprise for five years, helping grow overall retail revenue by more than 29%. Ray currently manages residential and SMB marketing and sales functions as well as cable operations business planning and marketing and sales analytics. Ray has been with Charter since 2005. – **Disney** is creating an Office of Technology Enablement (OTE) to help guide the company through deploying new tech such as AI and mixed reality across its film, TV and theme park divisions. OTE will be led by **Jamie Voris**, who was previously CTO of Walt Disney Studios. Voris will report to Disney Entertainment co-chairman **Alan Bergman**. Replacing Voris will be Marvel Studios head **Eddie Drake**.