

Lee Johnston in Bloomberg Law: Cox's \$1 Billion Copyright Loss

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PRACTICES Intellectual Property, Copyright, Intellectual Property Litigation

Haynes Boone Partner [Lee Johnston](#) talked with Bloomberg Law about a \$1 billion infringement award against Cox Communications Inc. that serves as a warning to other Internet service providers about the potential cost of not following copyright laws for third-party platforms.

Here is an excerpt:

The Dec. 19 verdict in the U.S. District Court for the Eastern District of Virginia awarded music industry companies nearly \$100,000 for each of more than 10,000 that songs it said were willfully infringed. The court found internal Cox emails indicated the company disregarded its responsibilities under the Digital Millennium Copyright Act.

Cox said in a statement it will appeal the “unwarranted, unjust” and “egregious” verdict, which would go to the U.S. Court of Appeals for the Fourth Circuit. It said it doesn’t condone infringement, but “shouldn’t be held responsible for the bad actions of others.”

The company also said it was the first to develop “a graduated response system” for handling copyright notices that became a model for the record industry, and that it doesn’t profit from infringement.

But discovery uncovered “some bad emails that Cox couldn’t explain away,” intellectual property attorney Lee Johnston of Haynes Boone said.

“I think that the jury felt as though Cox was really trying to make some money off not vigorously or reasonably implementing its copyright piracy policy,” Johnston, who has represented telecommunications companies, said.

Even before the big verdicts against Cox, ISPs had been put on notice by decisions indicating ISPs can be liable for copyright infringement with no safe harbor if they fail to meet DCMA requirements, attorneys said. Platforms must quickly remove infringement brought to their attention and have a policy to terminate the services of repeat infringers, requirements Wilkens called “not particularly onerous.”

“Most have already had enough counseling to train up their people to do better with respect to having a policy and reasonably implementing it,” Johnston said. “But who knows what’s in their files?”

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