

# Rightscorp Comments on BMG v. Cox Fourth Circuit Ruling

## Court Holds ISPs Can Be Held Liable For Subscriber Infringements

SANTA MONICA, CA, Feb. 07, 2018 (GLOBE NEWSWIRE) -- Rightscorp (OTCQB: RIHT), a leading provider of data analytics and litigation services, as well as copyright infringement protection services to support artists and owners of copyrighted property, today reacted to the Fourth Circuit Court of Appeals' decision in the *BMG v. Cox Communications* case, which made significant law at the appellate level in the Fourth Circuit.

Since 2011, Rightscorp has warned U.S. internet service providers (ISPs) that they are at risk if they fail to implement and enforce policies under which they terminate the accounts of their subscribers who repeatedly infringe copyrights. These theories were first put to the test when BMG Rights Management sued Cox Communications, alleging that Cox was liable for its subscribers' infringements.

BMG won a judgment of \$33 million including legal fees in that case, but Cox appealed the decision. Many tech writers derided the District Court's holdings, and predicted that the Fourth Circuit would come down squarely on the side of the ISPs.

However, in a decision handed down on Thursday, February 1, 2018, the Fourth Circuit roundly rejected almost every one of Cox's legal arguments. Accordingly, the highest court in the country to address the issues of ISP liability for subscriber infringements has now held that:

- ISPs **can** in fact be liable for their subscribers' infringements;
- The "safe harbor" **requires** a "conduit" service provider such as an ISP to implement a termination policy for subscribers who are repeat infringers;
- That "repeat infringers" **need not** have been previously adjudicated as such to be at risk under the required termination policy; and
- ISPs **need not** have actively "induced" its subscribers to infringe in order to be liable for their infringements.

Accordingly, law now exists for the first time at the Circuit Court level under which ISPs can clearly be held liable for their subscribers' infringement activity in circumstances routinely found in connection with essentially every ISP operating in the US.

Cox was successful in arguing that the District Court used a standard too favorable to BMG in its jury instructions. In its review of the lower Court's decision, the Fourth Circuit held that the jury should have been instructed that Cox must have either actually known of the infringement, or that Cox had "willfully blinded" itself to keep from knowing of it. The

District Court judge instructed the jury that Cox could be liable if it merely “should have known” of the infringement. On that technicality, the case was sent back down to the District Court to provide Cox with at least a temporary reprieve, but the remand but does not detract from the fact that the Fourth Circuit’s opinion established a new legal standard to which ISPs must abide.

Rightscorp President Christopher Sabec highlighted the new Fourth Circuit law in a statement: "After years of uncertainty on these issues, it is gratifying for the US Court of Appeals to proclaim the law on ISP liability for subscriber infringements to be essentially what Rightscorp has always said it is."

Mr. Sabec added, “With the law now clear in the Fourth Circuit, ISPs subject to suit in that jurisdiction are at risk of being found liable for subscriber infringements. While we remain prepared to assist ISPs that desire to work with the copyright community to reduce the massive infringements that occur on their networks, we have amassed a vast amount of data documenting infringements that have occurred over the past five years on the networks of essentially every ISP in the country. That data is available to any copyright holders that chooses to enforce their rights against ISPs that are not taking action against repeat infringers."

### **About Rightscorp, Inc.**

Rightscorp (RIHT) is a leading provider of data and analytic services to support artists and owners of copyrighted Intellectual Property (IP). The Company's patent pending digital loss prevention technology focuses on the infringement of rights to digital content such as music, movies, software, books and games and ensures that the rights of owners and creators are protected. Rightscorp works closely with its clients to develop programs of education and notice, and as necessary to pursue copyright infringers for their illegal file sharing activities via notifications sent through Internet Service Providers (ISPs). The Company's technology identifies copyright infringers, who are provided information about copyrights and the importance of Intellectual Property and offered a reasonable opportunity to terminate their activities and pay a nominal settlement option that is generally a fraction of the statutory minimum in an effort to avoid the need for expensive litigation. With minimum statutory penalties of \$750 and up to \$150,000 per infringement, Rightscorp's technology and process of notice allows all parties to efficiently and economically address copyright infringement without the costs and burdens of litigation. Based on the fact that 22% of all Internet traffic is used to distribute copyrighted content without permission or compensation to the creators, Rightscorp's technology and process provides one of the best and most cost efficient means of addressing this issue for both the artists and those who have infringed their works.

<http://www.rightscorp.com/>

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For further investor and media information, contact:

Andrew Haag

Managing Partner

IRTH Communications

[rightscorp@irthcommunications.com](mailto:rightscorp@irthcommunications.com)

1-866-976-4784



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