

Jennifer A. Golinveaux (SBN: 203056)
jgolinveaux@winston.com
Thomas Kearney (SBN: 267087)
tkearney@winston.com
WINSTON & STRAWN LLP
101 California Street, 35th Floor
San Francisco, CA 94111
Telephone: 415-591-1506
Facsimile: 415-591-1400

Michael S. Elkin (*pro hac vice forthcoming*)
melkin@winston.com
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Telephone: 212-294-6700
Facsimile: 212-294-4700

Attorneys for Plaintiff
COX COMMUNICATIONS, INC.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

COX COMMUNICATIONS, INC.,

Plaintiff,

v.

BMG RIGHTS MANAGEMENT
(US) LLC and RIGHTSCORP, INC.,

Defendants.

Case No. 2:21-cv-03756

COMPLAINT FOR:

**(1) DECLARATORY JUDGMENT,
(2) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17200, (3) ELECTRONIC TRESPASS
TO CHATTELS, AND
(4) NEGLIGENCE**

DEMAND FOR JURY TRIAL

NATURE OF ACTION

1
2 1. Defendants BMG Rights Management (US) LLC (“BMG”) and
3 Rightscorp, Inc. (“Rightscorp”) (collectively, “Defendants”) have engaged in an
4 abusive and unfair campaign of deliberately sending Plaintiff Cox Communications,
5 Inc. (“Cox”), an internet service provider, tens of thousands of invalid notices of alleged
6 copyright infringement with the goal of fabricating massive claims for secondary
7 infringement against Cox. If Defendants were truly trying to notify Cox’s subscribers
8 of allegations of copyright infringement, they would be sending notices to Cox’s
9 registered agent, as required by law. Cox has informed Defendants of this numerous
10 times, yet Defendants persist in misdirecting their notices to an improper email address.
11 It is obvious that Defendants’ tactic is a thinly veiled attempt to exploit the procedures
12 set forth by the Digital Millennium Copyright Act, 17 U.S.C. § 512 (“DMCA”), with
13 the goal of leveraging their improper notices to attempt to extract windfall judgments
14 for BMG and Rightscorp’s other prospective clients. Their approach is improper and
15 unlawful, and should be stopped. Cox seeks immediate and permanent redress for
16 Defendants’ intentionally wrongful actions.

17 2. As an internet service provider (“ISP”), Cox is entitled to the protections
18 afforded by the DMCA’s “safe harbor” provisions, which immunize ISPs from
19 monetary damages in secondary infringement claims where the ISP can demonstrate
20 that it has adopted and reasonably implemented a policy that provides for the
21 termination (in appropriate circumstances) of subscribers who are deemed repeat
22 infringers.

23 3. As part of Cox’s fully compliant policy, Cox, like most ISPs, maintains a
24 registered agent with the U.S. Copyright Office to receive notices of alleged
25 infringement. Cox, again like most ISPs, receives millions of notices of infringement
26 every year directed at the alleged actions of subscribers of its internet service, and Cox
27 processes them in accordance with its policy. The DMCA makes clear, however, that
28 for a notice of alleged infringement to be valid—that is, for the notice to be sufficient,

1 as a matter of law, to provide Cox notice of, or knowledge about, alleged copyright
2 infringement—the rightsholder must send the notice to the ISP’s registered agent at the
3 address provided by the ISP.

4 4. In 2017, Cox changed the address for its registered agent from
5 abuse@cox.net to CoxDMCA@cox.net. Cox updated its website and the directory on
6 the U.S. Copyright Office’s website to reflect this change. Immediately thereafter,
7 virtually every notice sender *except for Rightscorp* began to send notices to the updated
8 address. Despite Cox’s public notice, and despite multiple subsequent requests and
9 warnings, Rightscorp persisted in sending on behalf of BMG tens of thousands of
10 notices to Cox’s old address. As Cox advised Defendants on numerous occasions,
11 including through outside counsel, Rightscorp’s actions rendered the notices invalid and
12 unactionable as a matter of law.

13 5. Defendants’ brazen and deliberate non-compliance with the procedures set
14 forth by the DMCA, in the face of Cox’s repeated requests, smacks of tortious
15 misconduct. Indeed, rather than comply with Cox’s procedures like other
16 rightsholders—so that Defendants’ notices would be processed and forwarded to Cox’s
17 subscribers, potentially stemming the claimed infringement—Defendants knowingly
18 and intentionally continue to send Cox notices at an invalid address.

19 6. It is clear that Defendants have persisted in this blatant non-compliance in
20 a calculated effort to manufacture evidence to support a massive secondary
21 infringement action against Cox. Plainly, Defendants intend to claim that Cox’s
22 decision not to process these invalid notices renders it ineligible for the DMCA’s safe
23 harbor protections and, therefore, subject to potentially astronomical monetary
24 damages. By improperly holding this threat over Cox, Defendants are causing it
25 significant harm.

26 7. Defendants’ conduct puts Cox in an impossible position, giving it a
27 Hobson’s choice of either not processing the notices and facing a risk of massive
28 secondary liability claims based on an allegedly defective process for handling notices

1 under the DMCA, or needlessly incurring costs and tying up computing resources by
2 processing the notices outside of its established procedures, bypassing Cox's systems
3 (in which Cox has invested millions of dollars) for handling notices of alleged copyright
4 infringement.

5 8. Based on the allegations set forth herein, Cox seeks a declaration that:
6 (i) Defendants' notices of alleged copyright infringement sent to abuse@cox.net, which
7 is not the address of Cox's registered agent, are invalid under 17 U.S.C. §§ 512(c)(3)(A)
8 and 512(c)(B)(i); (ii) Defendants' notices sent to abuse@cox.net, which is not the
9 address of Cox's registered agent, are insufficient, as a matter of law, to provide Cox
10 notice of, or knowledge about, alleged copyright infringement; and (iii) Defendants'
11 persistent acts, in knowingly and deliberately sending notices to the incorrect address
12 with the purpose of fabricating massive infringement claims outside the protections of
13 the DMCA safe harbors, constitute actionable abusive and tortious misconduct from
14 which Cox is entitled to relief. Cox also asserts causes of action for violation of Section
15 17200 of the California Business & Professions Code based on Defendants' unfair
16 business practices; electronic trespass to chattels; and negligence. Cox seeks an order
17 enjoining Defendants from continuing these abusive practices, monetary damages, and
18 any other such further relief that the Court may deem just and proper.

19 **JURISDICTION AND VENUE**

20 9. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331
21 and 1338(a), as Cox's declaratory judgment claim arises under the Digital Millennium
22 Copyright Act, 17 U.S.C. § 512. An actual controversy exists between the parties
23 pursuant to 28 U.S.C. § 2201. The Court has supplemental jurisdiction over Cox's other
24 causes of action pursuant to 28 U.S.C. § 1367.

25 10. This Court has personal jurisdiction over Rightscorp because, on
26 information and belief, Rightscorp's principal place of business is in the State of
27 California; Rightscorp is registered to do business, and does do business, in the State of
28 California; and Rightscorp has committed the wrongful acts alleged herein from the

1 State of California.

2 11. This Court has personal jurisdiction over BMG because, on information
3 and belief, BMG purposely availed itself of the forum by entering into an agreement
4 with Rightscorp, which as alleged above is based in the State of California, to send
5 notices of alleged copyright infringement to Cox from the State of California. Cox's
6 claims arise out of actions taken by Rightscorp on BMG's behalf from the State of
7 California. Under the doctrine of vicarious liability, Rightscorp's forum-related
8 activities are imputed to BMG. Further, BMG has been registered to do business in the
9 State of California since 2009 and, upon information and belief, maintains a continuous
10 and systematic presence in the State of California. Indeed, upon information and belief,
11 BMG maintains an office in the forum at 5670 Wilshire Boulevard, Suite 1400, Los
12 Angeles, CA 90036.

13 12. Venue is proper in this District under 28 U.S.C. § 1391 because a
14 substantial part of the events or omissions giving rise to the claims occurred in this
15 District.

16 **THE PARTIES**

17 13. Plaintiff Cox is a Delaware company, with its principal place of business
18 in Atlanta, Georgia.

19 14. Upon information and belief, Defendant BMG is a Delaware company,
20 with its principal place of business in New York, New York and an office in Los
21 Angeles, California.

22 15. Upon information and belief, Defendant Rightscorp is a Delaware
23 company, with its principal place of business in Encino, California.

24 16. When Rightscorp sends notices of alleged copyright infringement to Cox
25 on behalf of BMG, Rightscorp acts as BMG's agent; accordingly, BMG is vicariously
26 liable for the wrongful acts alleged herein against Rightscorp.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.