

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

WARNER BROS. RECORDS INC., *et al.*,

Plaintiffs,

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

C.A. No.: 19-cv-00874-MSK-MEH

**DEFENDANT CHARTER COMMUNICATIONS, INC.'S MOTION TO DISMISS
PLAINTIFFS' CLAIM FOR VICARIOUS LIABILITY**

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
FACTS	3
ARGUMENT.....	5
A. Burden of Proof	5
B. Elements	6
C. Elements Not Supported by Complaint.....	7
1. Plaintiffs seek to stretch the doctrine of vicarious liability far beyond the narrow construction applied by courts.....	7
2. Plaintiffs fail to allege a causal connection between the alleged infringement and Charter’s profits; any benefit is, therefore, too indirect to state a claim.....	9
3. Plaintiffs also fail to plausibly allege Charter maintained the right and ability to control infringement by its subscribers.....	14
CONCLUSION.....	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>BMG Rights Mgmt. (US) LLC v. Cox Commc'ns, Inc.</i> , 149 F. Supp. 3d 634 (E.D. Va. 2015), aff'd in part, rev'd in part, 881 F.3d 293 (4th Cir. 2018).....	16
<i>BMG Rights Mgmt. (US) LLC v. Cox Commc'ns, Inc.</i> , 881 F.3d 293 (4th Cir. 2018)	16
<i>Coach, Inc. v. Swap Shop, Inc.</i> , 2012 WL 12887010, at *8 (S.D. Fla. Sept. 21, 2012).....	8
<i>Dennis v. Watco Cos., Inc.</i> , 631 F.3d 1303 (10th Cir. 2011).....	6
<i>Diversey v. Schmidly</i> , 738 F.3d 1196 (10th Cir. 2013).....	6, 8
<i>Ellison v. Robertson</i> , 357 F.3d 1072 (9th Cir. 2004)	9, 11
<i>Fonovisa v. Cherry Auction Inc.</i> , 76 F.3d 259 (9th Cir. 1996)	8, 16
<i>Gallagher v. Shelton</i> , 587 F.3d 1063 (10th Cir. 2009).....	6
<i>Io Grp., Inc. v. Veoh Networks, Inc.</i> , 586 F. Supp. 2d 1132 (N.D. Cal. 2008).....	16
<i>Packingham v. North Carolina</i> , 137 S. Ct. 1730 (2017)	13
<i>Perfect 10, Inc. v. Amazon.com, Inc.</i> , 508 F.3d 1146 (9th Cir. 2007)	14, 15, 16, 17
<i>Perfect 10, Inc. v. CCBill LLC</i> , 488 F.3d 1102 (9th Cir. 2007)	9
<i>Perfect 10, Inc. v. Giganews, Inc.</i> , 847 F.3d 657 (9th Cir.), cert. denied, 138 S. Ct. 504, 199 L. Ed. 2d 385 (2017).....	9, 10, 11
<i>Perfect 10, Inc. v. Visa Intern. Service Ass'n.</i> , 494 F.3d 788 (9th Cir. 2007)	16

Ridge at Red Hawk, LLC v. Schneider,
493 F.3d 1174 (10th Cir. 2007)..... 6, 14

Robbins v. Okla. ex rel. Okla. Dep’t of Human Servs.,
519 F.3d 1242 (10th Cir. 2008)..... 6, 13

Shapiro, Bernstein & Co. v. H. L. Green Co.,
316 F.2d 304 (2d Cir. 1963) 7

Shell v. Am. Family Rights Ass’n,
2010 WL 1348548 (D. Colo. Mar. 31, 2010) 9

Sony Corp. of Am. v. Universal City Studios,
464 U.S. 417 (1984) 7, 13

Sony Music Entm’t v. Cox Comm. Inc.,
2018 WL 6059386 (E.D. Va. Nov. 19, 2018)..... 1

Thomson v. HMC Grp.,
2014 WL 12589313 (C.D. Cal. July 25, 2014)..... 9, 10

Tomelleri v. Zazzle, Inc.,
2015 WL 8375083 (D. Kan. Dec. 9, 2015) 8

UMG Recordings, Inc., et al v. Bright House Networks, LLC, No. 8:19-cv-00710-MSS-TGW (M.D. Fla. Mar. 3, 2019)..... 1

UMG Recordings Inc., et al. v. Grande Comm.,
2018 WL 1096871 (W.D. Tex. Feb. 28, 2018)..... 1, 11, 12, 13

UMG Recordings, Inc. v. Veoh Networks Inc.,
2009 WL 334022 (C.D. Cal. Feb. 2, 2009), *aff’d sub nom. UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 667 F.3d 1022 (9th Cir. 2011), *opinion withdrawn, superseded, and aff’d on reh’g*, 718 F.3d 1006 (9th Cir. 2013)..... 9

Viesti Assocs., Inc. v. Pearson Educ., Inc.,
2013 WL 4052024 (D. Colo. Aug. 12, 2013)..... 6

Other Authorities

Federal Rule of Civil Procedure 12(b)(6)..... 5

Aaron Smith, “Searching for Work in the Digital Era,” Pew Research Center (Nov. 19, 2015), <https://www.pewinternet.org/2015/11/19/1-the-internet-and-job-seeking/>..... 5

Economic Advisers Issue Brief, “The Digital Divide and Economic Benefits of Broadband Access,” (March 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf.....5

In re Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 2018 Broadband Deployment Report, 33 FCC Rcd 1660 ¶ 1 (Feb. 2, 2018)5

In re Promoting Telehealth for Low-Income Consumers, Notice of Inquiry, 33 FCC Rcd 78255

Remarks of Commissioner Jessica Rosenworcel, Federal Communications Commission, 20 Years of Connecting Schools and Libraries: Policy Summit, (Jan. 24, 2018), <https://docs.fcc.gov/public/attachments/DOC-320122A1.pdf>.....5

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.