

2008-1001

---

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

---

ROBERT JACOBSEN,  
Plaintiff-Appellant,

v.

MATTHEW KATZER and  
KAMIND ASSOCIATES, INC. (doing business as KAM Industries),  
Defendants-Appellees.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA IN CV-06-01905,  
JUDGE JEFFREY S. WHITE

---

MOTION FOR LEAVE FOR *AMICI CURIAE* CREATIVE COMMONS  
CORPORATION, THE LINUX FOUNDATION, THE OPEN SOURCE  
INITIATIVE, SOFTWARE FREEDOM LAW CENTER, YET ANOTHER  
SOCIETY, DBA THE PERL FOUNDATION, AND WIKIMEDIA  
FOUNDATION, INC. TO PARTICIPATE IN ORAL ARGUMENT

Anthony T. Falzone (Counsel of Record)  
Christopher K. Ridder (Of Counsel)  
STANFORD LAW SCHOOL  
CENTER FOR INTERNET & SOCIETY  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, California 94305-8610  
Telephone: (650) 724-0517  
*falzone@stanford.edu*

April 4, 2008

*Counsel for Amici Curiae*

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

JACOBSEN v. KATZER et al.

No. 2008-1001

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Amici Curiae certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Creative Commons Corporation, The Linux Foundation, The Open Source Initiative, Software Freedom Law Center, Yet Another Society, dba The Perl Foundation, and Wikimedia Foundation, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.

4. [X] There is no such corporation as listed in paragraph 3.

5. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Anthony T. Falzone and Christopher K. Ridder, Stanford Center for Internet & Society

2/1/08

Date

Signature of counsel

Anthony T. Falzone

Printed name of counsel

Reset Fields

## **MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

Amici respectfully move the Court, pursuant to Federal Rule of Appellate Procedure 29(g), for leave to participate in the oral argument scheduled for May 7, 2008. Mr. Jacobsen has consented to the filing of this brief. Amici attempted to obtain consent to the filing of this brief from Matthew Katzer and KAMIND Associates, but they have refused their consent. In addition, Katzer and KAMIND have indicated that they will file a response to this motion.

On December 28, 2007, Amici moved this Court for leave to file an amicus brief, and the motion was granted on January 22, 2008. The Court issued an Oral Argument Order on March 21, 2008.

Amici Creative Commons Corporation, The Linux Foundation, The Open Source Initiative, Software Freedom Law Center, Yet Another Society, dba The Perl Foundation, and Wikimedia Foundation, Inc. are organizations that support, facilitate, and depend upon a robust ecosystem of public licensing. Amicus The Perl Foundation in particular relies upon a version of the Artistic License at issue in this case as the license pursuant to which the Perl programming language is distributed. Amici are uniquely situated to explain to the Court the impact that its decision may have on the vast array of industry participants and users who have come to depend upon the viability and enforceability of public licenses.

Literally millions of public licensors, including some of the largest corporations in America, have depended upon the copyright system securing to them the copyright protections necessary to license their works in ways that encourage innovation and creativity by inviting users to copy, modify and distribute creative works, subject to certain important limitations. Public licensing depends on the premise that copyright owners who grant permission for some uses of the work, but not all, may seek redress in copyright infringement when rights not licensed are infringed. If applied generally to public licensing, the District Court's ruling that the violations of the Artistic License at issue in this case sound in contract, not copyright, could threaten the protections afforded by the copyright system that public licensors have relied on.

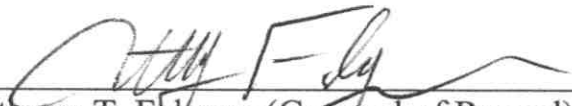
Amici believe that if granted leave to participate in the oral argument in this matter, they will be able to provide valuable assistance to the Court in understanding the important issues at stake in this case, and the consequences that could flow from application of the District Court's decision. Specifically, Amici can provide an important and helpful perspective regarding (a) the importance of preserving the institution of public licensing in America, (b) the importance of copyright infringement remedies to public licensors and the risks posed by the effective forfeiture of copyright that are implied in the District Court's decision, and (c) the well-established legal principle that someone who acts outside the

scope of a copyright license is liable for infringement, and why that principle applies in this case. Given their unique and extensive experience with public and open source licensing, Amici are also prepared to discuss the interpretation of the Artistic License in light of the relevant legal principles, including federal copyright law.

When the Court granted leave for Amici to file their brief, it recognized the ability of Amici to offer a unique perspective helpful to the Court beyond what the lawyers for the parties are able to provide. *See National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). This perspective will be equally valuable at oral argument, where the Court will have an opportunity to hear from and question Amici regarding "considerations of fact, law or policy" that are not otherwise being presented by the parties," *National Organization for Women*, 223 F.3d at 617.

Wherefore Amici respectfully move that the Court grant leave for *Amici Curiae* to participate in the oral argument scheduled for May 7, 2008.

Respectfully submitted,



---

Anthony T. Falzone (Counsel of Record)  
Christopher K. Ridder (Of Counsel)  
STANFORD LAW SCHOOL  
CENTER FOR INTERNET & SOCIETY  
Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, California 94305-8610  
Telephone: (650) 724-0517  
[falzone@stanford.edu](mailto:falzone@stanford.edu)

April 4, 2008

*Counsel for Amici Curiae*

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2008-1001

ROBERT JACOBSEN,

Plaintiff-Appellant,

v.

MATTHEW KATZER and  
KAMIND ASSOCIATES, INC. (doing business as KAM Industries),

Defendants-Appellees.

ON MOTION

[PROPOSED] ORDER

Upon consideration of the motion of CREATIVE COMMONS CORPORATION, THE LINUX FOUNDATION, THE OPEN SOURCE INITIATIVE, SOFTWARE FREEDOM LAW CENTER, YET ANOTHER SOCIETY, DBA THE PERL FOUNDATION, and WIKIMEDIA FOUNDATION, INC. for leave to participate in oral argument, the Court finds that Amici's argument will assist in the determination of this Appeal. Accordingly, IT IS ORDERED that leave to participate in oral argument is GRANTED.

FOR THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_

United States Court of Appeals  
For the Federal Circuit

**CERTIFICATE OF SERVICE**

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
2008-1001**

-----)  
ROBERT JACOBSEN,  
*Plaintiff-Appellant,*

v.

MATTHEW KATZER and  
KAMIND ASSOCIATES, INC.  
(doing business as KAM Industries),  
*Defendants-Appellees.*

-----)  
I, John C. Kruesi, Jr., being duly sworn according to law and  
being over the age of 18, upon my oath depose and say that:

I am retained by STANFORD LAW SCHOOL, CENTER FOR INTERNET AND SOCIETY,  
Attorneys for Amici Curiae.

That on the **4<sup>th</sup> day of April, 2008**, I served the within **Motion to Participate in  
Oral Argument** in the above captioned matter upon:

VICTORIA K. HALL  
LAW OFFICE OF VICTORIA K. HALL  
3 Bethesda Metro Suite 700  
Bethesda, MD 20814  
(301) 280-5925

R. SCOTT JERGER  
FIELD JERGER LLP  
510 SW Alder St. Suite 910  
Portland, OR 97205  
(503) 228-9115

**via Federal Express, overnight delivery** by placing two true copies for each in  
properly addressed wrappers, and placing them in an official depository maintained  
by Federal Express.

April 4, 2008

