

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

RESPONSE TO JACOBSEN'S POST-ARGUMENT CITATION OF
SUPPLEMENTAL AUTHORITIES

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

May 12, 2008

Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

JACOBSENv. KATZER et alNo. 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.

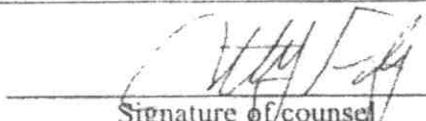
4. There is no such corporation as listed in paragraph 3.

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 counselAnthony T. Falzone
Printed name of counsel

RESPONSE TO JACOBSEN'S POST-ARGUMENT CITATION OF SUPPLEMENTAL AUTHORITIES

Pursuant to Federal Rule of Appellate Procedure 28(j) and Federal Circuit Rule 28(i), *Amici Curiae* hereby respond to Plaintiff-Appellant Jacobsen's Citation of Supplemental Authorities.

Mr. Jacobsen has retained the full range of economic interests included in his copyright grant with respect to those rights not licensed, and with respect to parties who breach the conditions of the Artistic License.

While copyright law does not inherently protect moral rights, such as the right to be credited, this rule "applies only absent an appropriate contractual provision expressly geared at that credit; breach of such an express contractual condition could, given appropriate contract construction, render uncredited reproduction infringing."¹ See Nimmer on Copyright § 8D.03(A)(1).

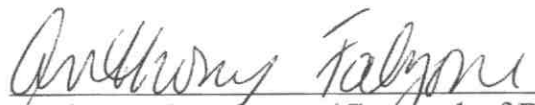
Nimmer, and the authorities cited in *Amici's* brief, support the proposition that a copyright licensor may recover in copyright for violations of a license condition or for infringing conduct outside the scope of the license. This rule furthers the purpose of the copyright act by giving effect to the full range of incentives that copyright law is designed to provide to authors. Economic interest

¹ As discussed in *Amici's* brief, contrary to the District Court's findings this is not an attribution case, because the "notice" requirements constitute limitations on how the JMRI package and files may be modified.

is not merely pecuniary interest: many public licensors are incentivized by the ability to impose license terms that support their contribution to the public and increase the economic and social value of their work, and by the reputational benefit of public licensing. Companies such as IBM and Red Hat derive tremendous economic value from their contributions to publicly licensed works such as the Linux operating system.

Copyright law does not presume which particular license terms are likely to create incentives - it leaves that choice up to authors, who are in the best position to decide how to leverage their exclusive rights.

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

May 12, 2008

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2008, I caused (2) copies of the foregoing
RESPONSE TO JACOBSEN'S POST-ARGUMENT CITATION OF
SUPPLEMENTAL AUTHORITIES to be served via the overnight service of
Federal Express on:

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