

No. 17-1625

IN THE
Supreme Court of the United States

RIMINI STREET, INC., *et al.*,

Petitioners,

v.

ORACLE USA, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE* COPYRIGHT
ALLIANCE IN SUPPORT OF RESPONDENTS**

KEITH KUPFERSCHMID
TERRY HART
COPYRIGHT ALLIANCE
1331 H Street, NW, Suite 701
Washington, DC 20005
(202) 540-2247

ELEANOR M. LACKMAN
Counsel of Record
SARA GATES
COWAN DEBAETS ABRAHAMS
& SHEPPARD LLP
41 Madison Avenue, 38th Floor
New York, New York 10010
(212) 974-7474
elackman@cdas.com

Counsel for Amicus Curiae

284932

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
INTERESTS OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT	6
I. THE NINTH CIRCUIT’S INTERPRETATION OF 17 U.S.C. § 505 TO ALLOW RECOVERY OF “FULL COSTS” ADVANCES THE PURPOSES OF COPYRIGHT LAW	6
A. Awards of “Full Costs” in Copyright Cases Have a Long History in the Law.....	9
B. Allowing Recovery of “Full Costs” Encourages Parties to Invest in Meritorious Claims That Protect Creators’ Rights and Advance the Goals of Copyright Law	12
C. Making Full Costs Available to Parties in the Digital Age Is More Important Than Ever	18
D. The Statute Is Clear and Supports an Award of Full Costs.....	22

II. PETITIONERS' INTERPRETATION OF THE LAW WOULD UNDERMINE COPYRIGHT POLICY AND SIGNIFICANTLY CHILL COPYRIGHT CLAIMS	28
A. Barring a Prevailing Party from Recovering Full Costs Would Discourage Copyright Litigation.....	28
B. The Equities Should Not Favor Wrongdoers	33
CONCLUSION.....	36

TABLE OF AUTHORITIES

Cases	<u>Page(s)</u>
<i>Feist Publications, Inc. v. Rural Telephone Service Co.</i> , 499 U.S. 340 (1991).....	7
<i>Fogerty v. Fantasy, Inc.</i> , 510 U.S. 517 (1994).....	<i>passim</i>
<i>Fox News Network, LLC v. TVEyes, Inc.</i> , 883 F.3d 169 (2d Cir. 2018)	19–20
<i>Harper & Row Publishers, Inc. v. Nation Enters.</i> , 471 U.S. 539 (1985).....	20
<i>Kirtsaeng v. John Wiley & Sons, Inc.</i> , 136 S. Ct. 1979 (2016).....	<i>passim</i>
<i>Roberts v. Sea-Land Servs., Inc.</i> , 566 U.S. 93 (2012).....	23–24
<i>Sony Corp. of Am. v. Universal City Studios, Inc.</i> , 464 U.S. 417 (1984).....	7
<i>Taniguchi v. Kan Pac. Saipan, Ltd.</i> , 566 U.S. 560 (2012).....	23
<i>Twentieth Century Music Corp. v. Aiken</i> , 422 U.S. 151 (1975).....	7, 26
<i>Williams v. Gaye</i> , 895 F.3d 1106 (9th Cir. 2018).....	20

Wisconsin Cent. Ltd. v. United States,
138 S. Ct. 2067 (2018).....23

Wyatt Tech. Corp. v. Malvern Instruments, Inc.,
No. CV 07-8298 ABC (RZX),
2010 WL 11404472
(C.D. Cal. June 17, 2010).....10

Statutes & Constitutions

17 U.S.C. § 10124

17 U.S.C. § 505*passim*

17 U.S.C. § 91125

28 U.S.C. § 182111, 25, 28

28 U.S.C. § 192011, 25, 28, 33

1831 Act, ch. 16, § 12, 4 Stat. 436.....9

Act of Mar. 4, 1909, ch. 320, § 40,
35 Stat. 10754, 9, 27

Copyright Act of 1976*passim*

U.S. CONST. art. I, § 8, cl. 8.....7

Other Authorities

AM. INTELLECTUAL PROP. LAW ASS'N, REPORT OF
THE ECONOMIC SURVEY 2017 (2017)13

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.