

No. 2006-1441

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MACROVISION CORPORATION,
Plaintiff-Appellee

v.

SIMA PRODUCTS CORPORATION,
Defendant-Appellant

On Appeal from the United States District Court
For the Southern District of New York
Senior Judge Richard Owen, Case No. 05-CV-5587

**MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
AMERICAN LIBRARY ASSOCIATION, ASSOCIATION OF
RESEARCH LIBRARIES, AMERICAN ASSOCIATION OF LAW
LIBRARIES, MEDICAL LIBRARY ASSOCIATION, SPECIAL
LIBRARIES ASSOCIATION, CONSUMER ELECTRONICS
ASSOCIATION, HOME RECORDING RIGHTS COALITION, AND
ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF SIMA
PRODUCTS CORPORATION AND URGING REVERSAL**

The Computer & Communications Industry Association (CCIA),
American Library Association (ALA), Association of Research Libraries
(ARL), American Association of Law Libraries (AALL); Medical Library
Association (MLA), Special Libraries Association (SLA), Consumer
Electronics Association (CEA), Home Recording Rights Coalition (HRRC),
and Electronic Frontier Foundation (EFF) respectfully move, pursuant to
Fed. R. App. P. 29(b), for leave to file the attached brief *amici curiae* in

support of Sima Products Corporation, urging reversal.

Sima Products Corporation has consented to the filing of this brief.

Amici sought consent from Macrovision Corporation via counsel, but consent was not given.

A. Interest of the Movants

The Computer & Communications Industry Association (CCIA) is dedicated to open markets, open systems, and open networks. CCIA members participate in many sectors of the computer, information technology, and telecommunications industries and range in size from small entrepreneurial firms to the largest in the industry. CCIA member companies together employ nearly one million people and generate annual revenues exceeding \$200 billion.¹

The Medical Library Association (MLA) is a nonprofit, educational organization with more than 4,500 health sciences information professional members worldwide. Founded in 1898, MLA provides lifelong educational opportunities, supports a knowledge base of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and

¹ Sima Products Corporation is a member of the Computer & Communications Industry Association and the Consumer Electronics Association. Ilana Diamond, President of Sima Products Corporation, is a member of the CEA Board of Industry Leaders.

the public.

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the communities they serve. ARL pursues this mission by advancing the goals of its member research libraries, providing leadership in public and information policy to the scholarly and higher education communities, fostering the exchange of ideas and expertise, and shaping a future environment that leverages its interests with those of allied organizations.

The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 83 countries in the information profession, including corporate, academic and government

information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives.

The American Library Association (ALA) is the oldest and largest library association in the world, with over 66,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society.

The Consumer Electronics Association (CEA) is the preeminent trade association of the U.S. consumer electronics industry. CEA members lead the consumer electronics industry in the development, manufacturing, and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, which are sold through consumer channels. Its more than 2,100 corporate members contribute over \$125 billion to the U.S. economy.²

The Home Recording Rights Coalition (HRRC) is a leading advocacy group for consumers' rights to use home electronics products for private, non-commercial purposes. Its members include retailers, manufacturers, consumers, and professional servicers of consumer electronics products.

The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit public interest organization devoted to maintaining the traditional

² See note 1, *supra*.

balance that copyright law strikes between the interests of copyright owners and the interests of the public. Founded in 1990, EFF represents more than 11,000 contributing members, including consumers, hobbyists, computer programmers, entrepreneurs, students, teachers, and researchers united in their reliance on a balanced copyright system that ensures adequate protection for copyright owners while ensuring broad access to information in the digital age.

Amici are creators and users of digital products. They are vitally interested in the appropriate interpretation of copyright law as it deals with digital technology. For that reason, some of *amici* appeared before this Court in a similar capacity in *Chamberlain Group, Inc. v. Skylink Technologies, Inc.*, 381 F.3d 1178 (Fed. Cir. 2004), and *Storage Technology Corporation v. Custom Hardware Engineering & Consulting, Inc.*, 421 F.3d 1307 (Fed. Cir. 2005).

The District Court's cursory analysis of the Digital Millennium Copyright Act (DMCA) suggests that a technology that digitizes analog content violates 17 U.S.C. §1201(b) if the digitization happens to eliminate copyright protection measures. Interpreting Section 1201(b) this broadly threatens a wide range of legitimate technologies, and by extension, a wide range of legitimate uses. This interpretation would threaten products made

and used by members of *amici*, and would impair their ability to produce and benefit from digital technology.

B. Desirability and Relevance of the Brief

A brief *amici curiae* must be desirable and relevant to the matter at bar. Fed. R. App. P. 29(b)(2). “The criterion of desirability set out in Rule 29(b)(2) is open-ended, but a broad reading is prudent.” *Neonatology Assocs., P.A. v. Commissioner*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.).

Amici submit that the brief submitted herewith is desirable because it offers a concise analysis regarding provisions of the DMCA whose interpretation can substantial affect producers and users of technology products. The brief also draws the Court’s attention to the interpretations of the DMCA by the U.S. government, as evidenced by numerous recent free trade agreements that have implemented obligations similar to the DMCA.

The proposed brief is relevant because it identifies significant facts concerning the operation of Macrovision’s technological measures as well as Sima’s products which were overlooked by the District Court, and argues that application of a properly interpreted Section 1201(b) to these facts compels the conclusion that Macrovision’s technological measure at issue does not effectively protect the rights of copyright owners. *Amici* also explain how the interpretation of Section 1201(b) advanced by Macrovision and the District Court would ban many products with lawful uses.

WHEREFORE, *amici* respectfully moves for leave to file the enclosed brief.

Respectfully submitted,

/s/ Jonathan Band

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August 14, 2006

Counsel for Amici Curiae

CERTIFICATE OF INTEREST

Pursuant to Federal Rule of Appellate Procedure 26.1 and Federal Circuit Rule 47.4, counsel for *amici curiae* certifies the following:

1. The full name of every party or amicus represented by me is:
Computer & Communications Industry Association; American Library Association; Association of Research Libraries; American Association of Law Libraries; Medical Library Association; Special Libraries Association; Consumer Electronics Association; Home Recording Rights Coalition; Electronic Frontier Foundation.
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. 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: Jonathan Band, see below.

/s/ Jonathan Band
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August 14, 2006

Counsel for Amici Curiae

Macrovision Corp.
Plaintiff-Appellee

v.

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Defendant-Appellant

No. 2006-1441

**[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE
BRIEF *AMICI CURIAE* OF COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION, AMERICAN LIBRARY
ASSOCIATION, ASSOCIATION OF RESEARCH LIBRARIES,
AMERICAN ASSOCIATION OF LAW LIBRARIES, MEDICAL
LIBRARY ASSOCIATION, SPECIAL LIBRARIES ASSOCIATION,
CONSUMER ELECTRONICS ASSOCIATION, HOME RECORDING
RIGHTS COALITION, AND ELECTRONIC FRONTIER
FOUNDATION**

This matter came before the court on August 14, 2006, on the Motion for Leave of *Amici* to File Brief *Amicus Curiae* in Support of Sima Products Corporation.

Upon consideration of the submissions in this matter,
IT IS ORDERED THAT:

- 1) The motion is GRANTED.
- 2) The movants shall be given leave to file the Brief *Amici Curiae*.

Dated

FOR THE COURT

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2006, I caused two (2) copies of the foregoing **MOTION TO FILE BRIEF *AMICI CURIAE* OF COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, AMERICAN LIBRARY ASSOCIATION, ASSOCIATION OF RESEARCH LIBRARIES, AMERICAN ASSOCIATION OF LAW LIBRARIES, MEDICAL LIBRARY ASSOCIATION, SPECIAL LIBRARIES ASSOCIATION, CONSUMER ELECTRONICS ASSOCIATION, AND HOME RECORDING RIGHTS COALITION, AND ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF SIMA PRODUCTS CORPORATION AND URGING REVERSAL** to be served via the overnight service of Federal Express on:

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