

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-1625

RIMINI STREET, INC., ET AL., PETITIONERS

v.

ORACLE USA, INC., ET AL.

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioners and seeks an allocation of ten minutes of petitioners' argument time. Petitioners have agreed to cede ten minutes of their argument time

to the United States. Granting this motion therefore would not require the Court to enlarge the overall time for argument.

1. This case concerns the interpretation of a provision of the Copyright Act, 17 U.S.C. 101 et seq., that authorizes district courts to award "full costs" in suits brought under the copyright laws, 17 U.S.C. 505. The question presented in this case is whether Section 505 permits a prevailing party to recover expenses that the party incurs as a result of the litigation, but that are not taxable under 28 U.S.C. 1920.

2. The court of appeals construed Section 505 to allow an award of expenditures that are not taxable under 28 U.S.C. 1920, and it upheld an award ordering petitioners to pay respondents approximately \$12.8 million in non-taxable costs. Pet. App. 70a-71a. The United States has filed a brief as amicus curiae supporting petitioners. The brief argues that, when the word "costs" appears in a federal cost-shifting provision that does not specify a different rule, the word is understood as a term of art that encompasses only the limited subset of expenditures that are listed in Section 1920. In using the adjective "full" to modify the defined term "costs," therefore, Section 505 simply authorizes courts to give prevailing litigants the entire amount of their taxable costs; it does not expand the types of litigation-related expenses for which a court may order reimbursement. The brief

also argues that the historical usage of the term "full costs" in Anglo-American law reinforces that understanding.

3. The United States has a substantial interest in the Court's resolution of this case. Several federal agencies have an interest in the operation of the copyright system and in the proper interpretation of the copyright laws. See, e.g., 17 U.S.C. 701 (Copyright Office); 35 U.S.C. 2(b)(8) and (c)(5) (Patent and Trademark Office). The United States has often participated in oral argument as *amicus curiae* in cases involving the proper interpretation of the Copyright Act. See, e.g., Star Athletica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002 (2017); Kirtsaeng v. John Wiley & Sons, Inc., 136 S Ct. 1979 (2016); American Broad. Cos. v. Aereo, Inc., 134 S. Ct. 2498 (2014); Kirtsaeng v. John Wiley & Sons, Inc., 568 U.S. 519 (2013). We therefore believe that the government's participation in oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

DECEMBER 2018