

Case No. 02-4125

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**In the  
United States Court of Appeals  
for the Seventh Circuit**

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IN RE: AIMSTER COPYRIGHT LITIGATION

**On Appeal from the United States District Court  
For the Northern District of Illinois, Eastern Division**

**Case No. 01-C-8933  
The Honorable Marvin E. Aspen**

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**DECLARATION OF FRED VON  
LOHMANN IN SUPPORT OF MOTION  
FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF**

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Attorneys for Amicus Curiae

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I, Fred von Lohmann hereby declare:

1. I am a Senior Staff Attorney at the Electronic Frontier Foundation (EFF), one of the proposed amici herein. The facts contained in the following declaration are known to me of my own personal knowledge and if called upon to testify, I could and would competently do so.

2. Upon reviewing the April 25, 2003, ruling of the District Court in *MGM v. Grokster*, I concluded that it was relevant to this Court's consideration of the *In re Aimster* appeal. I also concluded that the underlying briefing in the *Grokster* case, where the Plaintiffs raised many of the same arguments that they have raised in this appeal, would be useful to this Court. Accordingly, I began the process of seeking pro bono counsel to assist with the drafting of an amicus brief and soliciting the participation of other amici.

3. On May 15, 2003, after I had secured pro bono counsel to assist in drafting an amicus brief, I sent an e-mail to counsel of record for all parties informing them that we intended to file an amicus brief and asking for their consent. Attached hereto as Exhibit A and incorporated herein by this reference is a true and correct copy of my e-mail of May 15, 2003.

4. On the same day, May 15, 2003, I received a response from Mr. Mandell on behalf of the Plaintiffs/Appellees, stating that they planned to vigorously oppose further briefing at this late date due to the "many people who have arranged their schedule to accommodate the June 4 oral argument date." Attached hereto as Exhibit B and incorporated herein by this reference is a true and correct copy of Mr. Mandell's responsive e-mail of May 15, 2003.

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5. On May 23, 2003, I received consent of Defendant/Appellant to file an amicus brief. Attached hereto as Exhibit C and incorporated herein by this reference is a true and correct copy of the e-mail I received on May 23, 2003, indicating consent of Defendant/Appellant.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed on May 23, 2003 at San Francisco, California.

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Fred von Lohmann

**CERTIFICATE OF SERVICE**

An accurate copy of the foregoing was sent by Federal Express Priority Overnight

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