

Nos. 01-15899 & 01-15886

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GARY KREMEN,
Plaintiff-Appellee/Cross-Appellant,

v.

STEPHEN MICHAEL COHEN, an individual, OCEAN
FUND INTERNATIONAL, LTD., a corporation, YNATA
LTD., a corporation, SAND MAN INTERNACIONAL
LIMITED, S.A. de C.V., a corporation, and DOES 1-20,

Defendants-Appellants,

and

NETWORK SOLUTIONS, INC., a corporation,
Defendant-Cross-Appellee.

On Appeal From The United States District Court
For The Northern District Of California
The Honorable James Ware, Presiding

MOTION FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE
ELECTRONIC FRONTIER FOUNDATION

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The Electronic Frontier Foundation (“EFF”) is a non-profit, civil liberties organization working to protect rights in the digital world. EFF actively encourages and challenges industry and government to support free expression, privacy, and openness in the information society.

EFF is filing this motion and the attached brief as a friend of the court because the district court’s decision granting summary judgment in favor of Network Solutions, Inc. (“NSI”) is unsupported by the law and sets a dangerous precedent that could, if not reversed, seriously injure the rights to free expression that currently exist on the Internet.

NSI has enormous power to control the Internet, and therefore has a corresponding responsibility to use those powers fairly. By concluding that NSI owed no duties to Gary Kremen when he registered the domain name “sex.com,” and thus is not liable for its misconduct in improperly transferring the domain name, the district court eliminated NSI’s most reliable incentive to act properly and thus imperiled the very structure of the Internet. Without responsibility for its actions, the only thing standing between a functioning Internet and chaos are NSI’s “good intentions”. As discussed fully in the brief filed with this motion, good intentions simply are not enough. The proper functioning of the Internet requires

that this Court reverse the district court's decision and hold NSI, like other companies, accountable for failing to reasonably carry out its duties.¹

CONCLUSION

Because of the importance of the issues presented by this appeal, EFF respectfully requests that this Court grant this motion and consider the attached *amicus curiae* brief in support of Gary Kremen's appeal and arguments that the summary judgment in favor of NSI should be reversed.

Dated: January __, 2002

By _____
Robin Gross, Esq.
ELECTRONIC FRONTIER FOUNDATION
Amicus Curiae

¹ Rule 29 of the Federal Rules of Appellate Procedure, which generally requires a party to submit a proposed *amicus* brief within seven days after the principal brief of the party being supported is filed, allows the Court to grant leave for later filing. Although the recent holiday season prevented EFF from preparing the attached brief in time for filing within seven days of Kremen's brief, EFF respectfully requests that the Court grant EFF leave to file the brief and consider it because of the importance of the issues presented.

CERTIFICATE OF SERVICE

I hereby certify that an original and fifteen (15) copies of this motion were delivered by hand to the Clerk of the United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, California 94110-3939, and two (2) copies were sent, via United States mail, postage pre-paid to:

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Dated: January __, 2002

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