

No. 10-545

IN THE
Supreme Court of the United States

LAWRENCE GOLAN ET AL.,

Petitioners,

v.

ERIC H. HOLDER, JR. ET AL.,

Respondents.

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

**BRIEF OF *AMICUS CURIAE*
AMERICAN INTELLECTUAL PROPERTY
LAW ASSOCIATION
IN SUPPORT OF RESPONDENTS**

DAVID W. HILL
President

AMERICAN INTELLECTUAL
PROPERTY LAW
ASSOCIATION

241 18th Street South,
Suite 700
Arlington, Virginia
22202
(703) 415-0780

EDWARD R. REINES
Counsel of Record

MARK J. FIORE
JESSIE B. MISHKIN
JAIME D. LODA

WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, California
94065
(650) 802-3000
edward.reines@weil.com

Attorneys for Amicus Curiae

237475



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS	i
TABLE OF CITED AUTHORITIES	iii
STATEMENT OF INTEREST	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
I. THE TENTH CIRCUIT CORRECTLY FOUND THAT SECTION 514 DOES NOT VIOLATE THE FIRST AMENDMENT	3
A. Copyright Law and the First Amendment Fully and Rationally Coexist	4
B. Section 514 Does Not Alter the Traditional Contours of Copyright Law.....	5
C. Section 514 Is Entirely Consistent with Other Congressional Enactments	8
D. Section 514 Addresses a Substantial Governmental Interest and Is Narrowly Tailored.....	10

Table of Contents

	<i>Page</i>
II. CONGRESS HAS BROAD AUTHORITY TO PROMULGATE COPYRIGHT LAWS SUBJECT ONLY TO DEFERENTIAL REVIEW UNDER THE RATIONAL RELATIONSHIP TEST.....	12
A. Because the Constitution Expressly Allocates to Congress the Power to Make Laws Regarding Copyrights, Deferential Judicial Review Is Proper.....	12
B. There Is No “Public Interest” or “Progress” Test for Laws Promulgated Pursuant to the Copyright Clause	14
C. Section 514 Rationally Promotes “Progress” and the “Public Interest”	16
D. Petitioners’ “Limited Times” Argument Is an Unduly Narrow Interpretation of the Copyright Clause and Is Without Merit	19
CONCLUSION	21

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>American Geophysical Union v. Texaco Inc.</i> , 802 F. Supp. 1 (S.D.N.Y. 1992), <i>aff'd</i> , 60 F.3d 913 (2d Cir. 1994)	7
<i>Bonito Boats, Inc. v. Thunder Craft Boats, Inc.</i> , 489 U.S. 142 (1989)	12, 14
<i>Compeco Corp. v. Day-Brite Lighting, Inc.</i> , 376 U.S. 234 (1964)	12
<i>Eldred v. Ashcroft</i> , 537 U.S. 186 (2003)	<i>passim</i>
<i>Festo Corp. v.</i> <i>Shoketsu Kinzoku Kogyo Kabushiki Co.</i> , 535 U.S. 722 (2002)	19
<i>Golan v. Holder</i> , 609 F.3d 1076 (10th Cir. 2010)	17
<i>Gonzales v. Raich</i> , 545 U.S. 1 (2005)	13
<i>Graham v. John Deere Co. of Kansas City</i> , 383 U.S. 1 (1966)	15
<i>Harper & Row Publishers, Inc. v.</i> <i>Nation Enterprises</i> , 471 U.S. 539 (1985)	<i>passim</i>

Cited Authorities

	<i>Page</i>
<i>Luck’s Music Library, Inc. v. Gonzales</i> , 407 F.3d 1262 (D.C. Cir. 2005).....	20
<i>Mazer v. Stein</i> , 347 U.S. 201 (1954)	7
<i>Microsoft Corp. v. i4i Ltd. Partnership</i> , 564 U.S. ___, 131 S. Ct. 2238 (2011)	19
<i>Missouri v. Holland</i> , 252 U.S. 416 (1920)	11
<i>Sears, Roebuck & Co. v. Stiffel Co.</i> , 376 U.S. 225 (1964)	12
<i>Sony Corp. of America v.</i> <i>Universal City Studios, Inc.</i> , 464 U.S. 417 (1984)	13, 14, 15, 17
<i>Stewart v. Abend</i> , 495 U.S. 207 (1990)	13, 14
<i>Turner Broadcasting System, Inc. v. FCC</i> , 512 U.S. 622 (1994)	11
<i>Twentieth Century Music v. Aiken</i> , 422 U.S. 151 (1975)	7-8
<i>U.S. v. Comstock</i> , 560 U.S. ___, 130 S. Ct. 1949 (2010)	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.