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8 9	Attorneys for <i>Amicus Curiae</i> Electronic Frontier Foundation					
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11	LINITED STATES DI	STRICT COLI	рт			
12	UNITED STATES DISTRICT COURT					
13	NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION					
14	SAN JOSE D	IVISION				
15	COUPONS, INC.,	Case No. 5	:07-CV-03457 HRL			
16	Plaintiff,		OF MOTION AND MOTION			
17	V.	FOUNDA	LECTRONIC FRONTIER TION FOR LEAVE TO FILE			
18	JOHN STOTTLEMIRE and DOES 1-10,	SUPPORT	CURIAE BRIEF IN OF DEFENDANT'S			
19	Defendants.	MOTION '	TO DISMISS			
20		Date: Time:	April 22, 2008 10:00 A.M.			
21		Place: Judge:	Courtroom 2, 5th Floor Hon. Howard R. Lloyd			
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1	TO PLAINTIFFS, DEFENDANTS AND THEIR COUNSEL OF RECORD:			
2	PLEASE TAKE NOTICE that on April 22, 2008, at 10:00 AM in Courtroom 2 o			
3	the United States District Court for the Northern District of California, 280 South 1st Street, Sar			
4	Jose, California, proposed Amicus Curiae Electronic Frontier Foundation ("EFF") will, and			
5	hereby does, move for leave to appear and file the accompanying amicus curiae brief in the			
6	above-captioned case in support of Defendant John Stottlemire's pending Motion to Dismiss.			
7	This Motion is based on this Notice of Motion and the accompanying Declaration of Jennifer			
8	Lynch, submitted herewith.			
9	EFF is a member-supported, nonprofit public interest organization devoted to			
10	maintaining the traditional balance that copyright law strikes between the interests of copyright			
11	owners and the interests of the public. Founded in 1990, EFF represents more than 13,000			
12	contributing members including consumers, hobbyists, computer programmers, entrepreneurs,			
13	students, teachers, and researchers united in their reliance on a balanced copyright system that			
14	ensures adequate protection for copyright owners while ensuring access to information in the			
15	digital age.			
16	In working to ensure that the public's traditional rights are preserved as we move			
17	into the digital era, EFF has participated as counsel or amicus curiae in many of the leading			
18	cases testing the anticircumvention provisions of the Digital Millennium Copyright Act			
19	("DMCA"). EFF was counsel for amicus curiae Consumer's Union in Chamberlain v. Skylink,			
20	381 F.3d 1198 (Fed. Cir. 2004), which held that a consumer's right to use his automatic garage			
21	door trumped the manufacturer's right to lock in the consumer to a single brand of door opener,			
22	even when anti-circumvention measures were involved. EFF also participated in <i>Lexmark v</i> .			
23	Static Control Components, 387 F.3d 522 (6th Cir. 2004), which held that a consumer's right to			
24	use remanufactured toner cartridges for a computer printer was not abridged when the original			
25	cartridge manufacturer attempted to invoke the DMCA to protect the communication between			
26	the printer and the cartridge.			
27	Plaintiffs' Complaint is premised on a broad interpretation of what constitutes			
28	access and rights controls under 17 U.S.C. § 1201. Plaintiff alleges, incorrectly, that pure speech			

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1	should be treated as the distribution of a circumvention measure, as prohibited by § 1201.					
2	Plaintiff has also claimed additional causes of action under state law that are explicitly					
3	preempted by the Copyright Act in 17 U.S.C. § 301. Defendant is proceeding pro se. For these					
4	reasons, EFF believes the Court may be assisted by additional briefing, especially on these					
5	copyright and free speech issues.					
6	The parties have been informed of the filing of this amicus brief, and both parties					
7	have consented to the filing.					
8	For the reasons set forth above, EFF asks that this Court grant its Motion for leave					
9	to file the accompanying amicus curiae brief.					
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11	DATED: March 25, 2008	By:	/s/ Jennifer A. Lynch			
12			Jennifer A. Lynch			
13		Samuelson Law, Technology & Public Policy Clinic at U.C. Berkeley Law School				
14			Attorney for Amicus Curiae Electronic Frontier Foundation			
15			(Supervising Attorney)			
16						
17		By:	/s/ Domenic Ippolito			
18			DOMENIC IPPOLITO			
19		(Ap_{I})	Intern, Samuelson Clinic plication for Student Practice Pending)			
20						
21		Ву:	/s/ Hari O'Connell			
22			HARI O'CONNELL			
23		(Ap_{I})	Intern, Samuelson Clinic plication for Student Practice Pending)			
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