

ALERT

Supreme Court Determines Copying of Software API Can Constitute Fair Use

April 5, 2021

On April 5, 2021, the U.S. Supreme Court issued its much-awaited decision in *Google LLC v. Oracle America Inc.* (No. 18-956), finding that Google's use of software code was fair use under the U.S. Copyright Act. The Supreme Court reversed the appellate court and reinstated the jury's determination that Google did not infringe Oracle's copyrights when Google used pieces of a software language, known as the declaring code, to build Google's smartphone platform.

Oracle sued Google more than ten years ago asserting claims of copyright infringement based on Google's use of parts of Oracle's application programming interfaces (APIs) in Google's Android phones. Specifically, Oracle alleged that Google copied approximately 11,500 lines of code from the Java SE program. This code, which was part of the API, allowed developers who were familiar with Java SE to use commands to call up hundreds of different tasks within the millions of lines of code in the Android operating system. In defense, Google initially asserted that the portions of the API that it copied were not copyrightable. The Federal Circuit rejected this argument in 2014. In a subsequent trial, the jury found that Google's copying was fair use. The Federal Circuit again reversed, concluding as a matter of law that Google's copying was not a fair use.

In the 6-2 opinion authored by Justice Stephen Breyer, the Supreme Court agreed that Google's copying of a portion of the API was a fair use. The Court determined that "where Google reimplemented a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program, Google's copying of the Sun Java API was a fair use of that material

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as a matter of law." Because the Supreme Court determined that Google's use of the API was a fair use, the Court did not need to address the question of whether Oracle's software interface is entitled to copyright protection.

In a dissent, which was joined by Justice Samuel Alito, Justice Clarence Thomas argued that Oracle's Java SE code was copyrightable and that the majority erred by distinguishing between the declaring code and the implementing code. According to Justice Thomas, when the declaring code is properly understood to contribute to the value of the implementing code, Google's use of the implementing code cannot be found to be a fair use.

The Court's decision could have potentially far-reaching effects on Copyright Law and fair use if parties asserting a fair use defense argue that, similar to Google's use of Oracle's declaring code, the material they used "was the key that [they] needed to unlock . . . creative energies." It remains to be seen whether lower courts will construe the *Oracle* decision narrowly to APIs or allow for a broader application.

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