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SCOTUS Decision: Google v. Oracle

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On April 5, 2021, the U.S. Supreme Court ("the Court") ruled that the use of Oracle's Java interface by Google was fair use under copyright law.[1] This landmark decision overrules a previous 2018 ruling by the Federal Circuit that held in favor of Oracle, which Google appealed in 2019.[2] The significance of this case for copyright law and policy cannot be understated—it is a consequential case for the software industry, and it is the first copyright fair use merits case the Supreme Court has heard in 25 years.

By a 6–2 decision, with Justice Breyer writing for the Majority, the Court found that Google's use of 11,500 lines of the Java Standard Edition Application Programming Interface ("the Java API") to tailor its Android platform to mobile phone technology was fair use as a matter of law. Justice Breyer was joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Gorsuch, and Kavanaugh. Justices Thomas and Alito dissented. Justice Barrett, who had not yet been confirmed in October 2020 when the case was argued, did not participate.

The Supreme Court was presented with two principal questions to resolve: 1) whether the Java SE API declaring code at issue was copyrightable; and 2) whether Google's taking and use of the code constituted a "fair use," freeing Google of copyright infringement liability.

Copyrightability of APIs

The Majority did not answer the question of the copyrightability of APIs. Instead, it assumed "for argument's sake, that the material was copyrightable." Even though Congress rejected any categorical distinction between types of computer code (such as declaring code and implementing code) when including computer programs as copyrightable subject matter, the Majority went on to distinguish declaring code by stating that "if copyrightable at all," it is "further than are most programs (such as implementing code) from the core of copyright."[3] The Majority described the declaring code as providing a way for programmers to access prewritten computer code, and analogized declaring code to an "interface" like a gas pedal on a car or a QWERTY keyboard on a typewriter.

Fair Use Analysis

The Majority analyzed the four fair use factors to conclude 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 as a matter of law."[4] The four factors are derived from 17 U.S.C. § 107, and the Court found that Google's use of the Java SE API weighed in favor of fair use. The fair use factors analyzed were: (1) purpose and character of use; (2) nature of the work; (3) amount and substantiality of the use in relation to the work as a whole; and (4) effect of the use upon the value of and market for the work.[5]

The Court found the nature of the declaring code different than other types of code because the user

interface “is inherently bound together with uncopyrightable ideas (general task division and organization) and new creative expression (Android’s implementing code).” As a result, the nature of the use favored a fair use finding. As for the amount and substantiality of the portions of material used, the Court found that the lines of code taken constituted only 0.4 percent of the entire Java SE API at issue. Interestingly, rather than considering the sheer size of the declaring code by itself, the Court compared the size of the declaring code relative to the size of the combination of the implementing code and the declaring code. As for the purpose and character of the use, the Court found that Google’s limited copying was transformative because it allowed for the creative development of new software programs. This transformative use was creating a different task-related system, for a different device, that would create a new platform for consumers (Android). Transformative use is a vital component of the fair use analysis, and generally found to overcome commercial profit gained by use of a non-owner.[6] Finally, as for the effect on the market, the Court held that Android devices, in which Google was using the Java SE API, was not a market substitute of the API.

A significant aspect of the Court’s ruling with respect to fair use is its holding that copyright fair use issues can be decided as a matter of law on undisputed facts, and need not always be decided by a jury.

The Dissent primarily criticized the Majority’s analysis of what constitutes transformative use for software, the alleged inconsequential market effects of Android on Oracle’s commercial opportunities, and for evading the policy judgment of Congress to not distinguish among types of computer code.[7] Justice Thomas writes:

A copied work is quantitatively substantial if it could “serve as a market substitute for the original” work or “potentially licensed derivatives” of that work. The declaring code is what attracted programmers. And it is what made Android a “market substitute” for “potentially licensed derivatives” of Oracle’s Java platform. Google’s copying was both qualitatively and quantitatively substantial.[8]

Overall, the Court clarified that copying lines of code (at least “a bare minimum”) needed to reimplement and transform declaring code into a unique program on a different platform may be, and in this case was, fair use. The Court’s decision is significant in a number of respects. By not expressly acknowledging the copyrightability of declaring code in API’s, the Court has now created a distinction between computer code that is unquestionably copyrightable and code that is “further from the core of copyright” because it facilitates interoperability. The Court’s holding creates both risk and opportunity for software developers – the risk that costly software innovations can be appropriated by others, and the opportunity for appropriation of code to facilitate interoperability and the development of new software platforms.

Observations

The Court’s decision greatly affects the options developers have when seeking and enforcing copyright protection for their software creations. Software developers may be less incentivized now to innovate and develop APIs and related programs, knowing that bigger companies can appropriate certain of their content rather than pay for it (like Google did with Java SE). On the other hand, such software developers may still be able to license their APIs and related programs because the copyright status of at least incorporated declaring code is not conclusively resolved. Further, it may benefit the public by increasing software interoperability and not making software developers “reinvent the wheel” and spend time and money to create identical functionality when developing new API implementations.

Content providers will also be affected by the Court’s fair use analysis and decision. The impact may be similar to the *Google Books* decision of the Second Circuit, which equated the “public benefit” of digitizing books for greater access as transformative, creating another fair use opportunity to exploit copyrighted material.[9] Here, too, the Court found that Google’s use of parts of the Sun Java API to create a new Android platform was “use consistent with that creative ‘progress’ that is the basic constitutional objective of copyright itself.” Accordingly, the Supreme Court’s fair use ruling should and will influence copyright holders’ and litigants’ assessment of copyright infringement and fair use issues outside the software protection context.

[1] Google LLC v. Oracle America, Inc., 593 U.S. ____ (2021) (No. 18-956) *available at* https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf.

[2] Oracle America, Inc. v. Google Inc., 750 F.3d 1339 (Fed. Cir. 2014) (*reversed by* Oracle America, Inc. v. Google Inc., 886 F.3d 1179 (Fed. Cir. 2018)).

[3] 593 U.S. ____ (2021) (No. 18-956), at p. 24.

[4] *Id.* at p. 35.

[5] 17 U.S.C. § 107.

[6] *See* Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994).

[7] *See* 510 U.S. 569, at 578–79.

[8] 593 U.S. ____ (2021) (No. 18-956), p. 18.

[9] *See* Authors Guild v. Google, Inc., 804 F.3d 202 (2nd Cir. 2015).