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Supreme Court Holds that Google's Unauthorized Copying of Oracle's Copyrighted Java API is Fair Use

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In a 6-2 decision on April 5, 2021, and after a decade-long court battle, the U.S. Supreme Court held that the unauthorized copying by Google of Oracle's "declaring code" (its Java Application Programming Interface or "API" code) was fair use and therefore not prohibited under U.S. copyright law. In doing so, the Court reasoned that the copied declaring code is "part of an interface between human beings and a machine," which is distinguishable from implementing or source code.

Copyright law protects many forms of writings, including software code, and many other creative works. Copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, or discovery. Copyright law also accounts for "fair use" of a copyrighted work, and lays out a four-factor framework for determining whether a use made of a work is "fair use."

These four factors include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;**
- (2) the nature of the copyrighted work;**
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and**
- (4) the effect of the use upon the potential market for or value of the copyrighted work.**

In *Google LLC v. Oracle America, Inc.*, the Court pushed aside the issue of whether Oracle's declaring code is copyrightable and focused on whether Google's copying amounted to fair use. The Court started its fair use analysis

by looking at the second factor – nature of the copyrighted work. The Court explained that the lines of decoding code that were copied by Google are part of a user interface that provides access to prewritten computer code. The Court contextualized this by equating the declaring code to a filing cabinet with drawers and files, which provide organizational structure files (relating this to software, the folders include computer tasks). Computer tasks are executed using what is called “implementing code,” which is code that tells a computer *the way* to perform a particular task. The Court stated that ‘the way’ in which the task is performed (i.e., using specific implementing code) is more aligned with the core of what is copyrightable.

In its analysis under the first factor, the Court did acknowledge that declaring code, like other computer programs that are generally copyrightable, is functional. But the Court determined that declaring code is different from many other types of code that instructs the computer to execute a task (rather than manage the structure that facilitates execution of the task), and that Google’s copying of the declaring code likely would not undermine the copyright protection afforded to implementing code, which Google did not copy. The Court’s rationale, in part, is that the code copied by Google primarily derives its value from the investment of users (computer programmers) who make an effort to learn the system, and not from the way in which the code executes a task. As such, the Court found the second factor in favor of fair use.

The Court then analyzed whether the first factor (purpose and character of the use) leaned in favor of fair use. As part of its analysis, the Court considered whether the copying was transformative – whether the copier’s use “adds something new, with a further purpose or different character.” Google copied the declaring code to establish a new platform - the Android (smartphone) operating system, which the court explained is similar to reimplementing an interface for a different purpose. As such, the Court determined that the purpose and character of Google’s copying was transformative to the point where the first factor also weighed in favor of fair use.

The Court also considered the third and fourth factors. Regarding the third factor (amount and substantiality of the portion used in relation to the copyrighted work as a whole), the Court reasoned that copying 11,500 lines of code, which is 0.4 percent of the 2.86 million total lines of code, is generally insubstantial, especially in situations, like here, where “the amount of copying was tethered to a valid, and transformative, purpose.” The Court also found that the fourth factor (effect of the use on the potential market for or value of the copyrighted work) leaned in favor of fair use based on the rationale that Google’s Android smartphone platform is not a market substitute for Oracle’s Java SE, and that enforcing a copyright under the facts presented would risk “creativity-related harms to the public.”

The Dissent takes issue with the Majority opinion primarily for pushing aside the question of whether the declaring code that Google copied is copyrightable. In the Dissent’s view, this question precedes the fair use analysis and, because the Dissent views the code as copyrightable based on facts presented in the case (Google first sought a license to the declaring code), Google’s copying was “anything but fair.”

Takeaways

The Majority’s alleged leapfrog of the ‘copyrightable’ question certainly leaves the door open for future debate over whether declaring code is, in fact, copyrightable. But the case is significant for several reasons, including its longevity and potential damages at stake, and offers some takeaways.

- Seek multi-faceted protection for software. Continue to use copyright protection and register copyrights, but also consider whether patent protection may be available for certain aspects of the software and the systems via and in which the software is implemented.
- Be careful relying on fair use as a defense. While the Majority found fair use (based on all four factors), the Dissent found that three of the four factors weighed “decidedly against Google” and that the sole factor that possibly favored Google – the nature of the work – “cannot by itself support a determination of fair use.”
- *Google* implicates two limitations in the Copyright Act. First, the Act provides that copyright protection cannot extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery...” 17 U. S. C. §102(b). Second, the Act provides that a copyright holder may not prevent another person or entity from making a “fair use” of a copyrighted work. §107. Because the code copied by Google was like a “system” of calling pre-assigned tasks, the copied portion may not be copyrightable. It is likely that the Court dismissed the ‘copyrightable’ question because, ultimately, the issue of fair use would be the final platform on which the fight between Google and Oracle would be decided if the ‘copyrightable’ question is answered in the affirmative.

Related People

John Hocker

Associate

jphocker@michaelbest.com

T 202.747.9590

Aaron Nodolf

Partner

aknodolf@michaelbest.com

T 262.956.6536

Derek Stettner

Partner

dcstettner@michaelbest.com

T 414.225.4947