



U.S. Supreme Court Decision Google LLC v. Oracle America, Inc., No. 18-956

Recently, the United States Supreme Court, the Nation's highest Court, resolved a reported \$8 billion dispute in favor of tech conglomerate Google over its competitor Oracle. The issue before the Court was whether Google's copying of 11,500 lines of code from the Java SE, a computer platform using Java programming language, was a "fair use" of Oracle's Java SE copyright. In a 6-2 decision, the Court sided with Google. Before delving into what is a "fair use," let's first define copyright.

A copyright arises when an author creates an original expression in art, literary works, film, music and the like. The iconic Hope poster depicting former President Obama, the timeless Star Wars movies/shows/video games or the latest ubiquitous Apple Iphone advertisements create copyrights. Copyrights grant the author a right to publish, copy and make new versions of the original work. Unauthorized publishing, copying or new renditions of a work is infringement. When that occurs, an author sues the culprit for copyright infringement. In its defense, however, the culprit may argue that he/she is merely engaging in the "fair use" of the copyright.

The so-called "fair use" doctrine permits limited, reasonable uses of copyrighted material, even without the author's permission. Candidly, what is "reasonable" can be a moving target. Yet, courts employ a series of factors to assess "fair use," such as the nature of the work, the purpose of the use and its effect on the copyrighted work, the amount and importance of the material used, and the user's intent. In all accounts, the "fair use" doctrine is flexible.

In the Google case, the U.S. Supreme Court grappled with whether Google's copying of tens of thousands of Oracle's programming code (Application Programming Interface or API) was "fair use." In its approval of Google's practices, the Court opined that the code Google utilized, or API, was so essential to computer functions that it was "inherently bound together with uncopyrightable ideas." In other words, the API instructs the computer on how to complete tasks, and no one party should retain such information for themselves. Further, the Court stated that Google only used a limited amount of code (merely 0.4% of the entire API), rather than the whole code, to serve its purpose; namely, its first foray into the Android smartphone platform. Such copying was transformative, rather than a full cloth mimic of the original code. Finally, the Court reasoned the Android smartphone was not a replacement for Java SE; in fact, the incorporation of Java in a differing application bolstered creativity – one of the tenets behind copyrightable rights. Thus, the Court sided with Google after years of litigation (and much more in attorneys' fees).

Although the conversation of API or computer code in general may be obscure, there are a few take-aways that all creators of original works should grasp:

- 1. Register your works with the U.S. Copyright Office. The U.S. Supreme Court in the Google case avoided the question on whether APIs themselves were copyrightable and instead delved into the issue of "fair use." Yet, Oracle could have benefitted from seeking copyright protection with the U.S. Copyright Office at the start.*
- 2. Monitor for and protect against unwanted copying. As expressed, one of the benefits of copyright protection is the right to copy one's work. An owner should continually do its diligence in monitoring competitors for unpermitted copies or reproductions of their works.*
- 3. Enforce your copyright rights. The most efficient way to enforce your rights is sending a Cease and Desist correspondence to an unauthorized copier or reproducer. Enforcing your rights often and early could potentially preserve much time and resources, staving unwanted and protracted litigation.*

Because this area of law can be onerous, the Corporate & Intellectual Property attorneys at Kaufman, Dolowich and Voluck LLP are ready to assist you in all your intellectual property needs.