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Supreme Court Finds Google's Copying of Oracle's APIs a Fair Use

The Bottom Line

- In light of the Supreme Court's decision in *Google v. Oracle*, it is clear that not all copying of copyrighted code will subject a developer to liability.

- The safest course for developers is to ensure that they have a license or are authorized to use API packages in accordance with the rights owner's terms and conditions, even if that code is being used in a different device or environment.

- If the Fair Use defense needs to be raised in connection with API copying, it is always advisable to first seek the advice of legal counsel.

A recent Supreme Court decision has finally put an end to the longstanding fight between Oracle and Google concerning Google's use of Oracle's copyrighted Java Application Programing Interfaces (APIs). The Supreme Court's decision held that, contrary to the decision by the Federal Circuit Court of Appeals which was discussed in our previous alert, Google's use of Oracle's APIs was protected by the copyright defense of Fair Use. This decision is likely to create greater opportunities for developers to use copyrighted API code.

Oracle's Java Platform

Oracle owns the widely-used Java platform and Java programming language. The Java platform is available for free in certain circumstances under an open source license to be used to write and run programs that use the Java programming language, and it can run those programs across different types of hardware without having to rewrite the program for each different type. Oracle does, however, charge a licensing fee to developers who want to use its APIs in a competing platform or electronic device. By 2008, Java included 166 API packages.

In programming languages like Java, an API is essentially a coding shortcut. It is a "label" that is used to call up the actual code necessary to implement a given function (implementation code). By using these labels, programmers can use existing code to implement a function rather than

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having to write new code to implement that function for each new platform or system. This allows programmers to write code in a new environment without having to learn an entirely new coding language.

Oracle v. Google

In this case, Google copied 37 Java API packages and wrote its own implementation code underlying those API packages for use by developers on its Android operating system. Google hoped that by allowing Java developers to code using the same API shortcuts with which they were already familiar, they would attract developers to work on the Android system. Google had initially approached the original owner of Java, Sun Microsystems, prior to Oracle acquiring them, to pay a licensing fee for the use of these APIs on its competing Android platform, but those negotiations broke down and Google moved forward with using the APIs without a license.

Oracle filed a lawsuit against Google, claiming that by copying the 37 APIs, Google infringed Oracle's copyrights in that code. Previously in the action, the Court of Appeals for the Federal Circuit held that the structure, sequencing and organization of Java API packages were entitled to copyright protection. The Court of Appeals subsequently considered whether Google's use of Oracle's APIs was nonetheless excused by the defense of Fair Use, which operates as a limited exception to copyright infringement and allows the copying of a copyrighted work in limited circumstances. In considering the issue, the Court of Appeals held that the Fair Use defense was not applicable. Google then sought to appeal that decision to the Supreme Court, which agreed to take on the issue.

The Decision of the Supreme Court

In its decision, the Supreme Court overruled the Court of Appeals, and held that Google's use of the Java API packages was a Fair Use. The Copyright Act provides four non-exclusive factors to be considered when deciding whether the use of a copyrighted work is Fair Use:

1. The purpose and character of use, including whether the use was commercial in nature and whether the use was transformative;

2. The nature of the copyrighted work;

3. The amount and substantiality of the portion of the copyrighted work used; and

4. The effect of the use on the market for or value of the copyrighted work.

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The Supreme Court first considered the second factor, and found that the APIs were further than most computer programs from the "core of copyright," including because the copyrightable features of the APIs were functional and inherently bound together with ideas that could not be copyrighted, the APIs' value derives in significant part from computer programmers investing their own time to learn the API system, and also because the value relies upon Google's programmers learning and using Java in order to use other programs that Google did not copy.

Turning next to the first factor, the Court found that the purpose and character of Google's use of the APIs was transformative because Google programmers used the APIs to develop new products for its Android smartphones, and that the use of APIs furthered the development of these new products. The Court also considered that Google's use of the APIs was undoubtedly commercial, but found that this was not dispositive of this factor, especially in light of the "transformative role" that the use of Oracle's APIs played in developing the Android system.

Third, the Court looked to the amount and substantiality of the portion of the copyrighted work used, and noted that Google had copied only 11,500 lines of code out of 2.86 million lines, and noted that the amount used was "tethered" to the transformative purpose of the use, which weighed in favor of Fair Use.

Finally, the Supreme Court found that the market effects factor also weighed in favor of Fair Use in light of the uncertainty of Sun's ability to compete with Android in the smartphone business (given that Java Se's primary market was laptops and desktops), that Google's desire to use Java stemmed more from programmers' familiarity with the APIs as opposed to Sun's investment in creating the APIs, and that enforcing Oracle's copyright claim would risk harm to the public by limiting the future creativity of new programs.

Based on the foregoing analysis, the Supreme Court held that Google's use of Oracle's API packages constituted Fair Use as a matter of law.

For More Information

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