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Locke Lord QuickStudy: Google LLC v. Oracle America, Inc. ?

Locke Lord LLP

WRITTEN BY

Glenn G. Pudelka

On April 5, 2021, the United States Supreme Court held that Google did not infringe on Oracle's copyrights by copying 11,500 lines of Oracle's Java SE API code.

This suit was first filed in the Northern District of California in 2011, when Oracle alleged Google infringed on its patents and copyrights in Java SE API code. The District Court initially split the allegations into three different proceedings; one for copyright, one for patent, and a third in the event of damage calculations. While a jury rejected the since-dropped patent claims, the copyright claims persisted. Lower courts clashed on whether Google's use qualified as a "fair use," precluding a finding of infringement. After the Federal Circuit held that Google infringed and remanded the case to decide damages, Google filed a petition for certiorari and the Supreme Court heard arguments in early October 2020.

The Supreme Court addressed two main questions. First, whether the Java API source code was eligible for copyright protection. Much to the dismay of Justice Thomas (who authored the dissent), the majority did not rule on the copyrightability of the Java API and instead assumed for argument's sake that the Java API was copyrightable for purposes of its decision.

Focusing on the second question, a majority of the Supreme Court ruled that Google's use was a "fair use" under copyright law. Fair use is determined by weighing the four factors codified in §107 of the Copyright Act. The Court began their analysis with the second factor, the nature of the copyrighted work. Java API is an interface where programmers control task-performing computer programs from a menu of commands. The code intrinsically combines features that are not copyrightable or functional, with those that are protectable. Thus, the Court held the nature of the code is not at the center of copyright because of this combination and the factor weighs in favor of fair use. Additionally, the Court noted that Java API's value comes from those who do not hold the copyright in the code– the programmers that invested in learning the code language.

Next, the Court analyzed the first factor, the purpose and character of the allegedly infringing use. Under this factor, Courts determine if the new use transforms the original the work, adding something new that altered the original with a new expression, meaning, or message. Google's use of Java API was to expand the code's use to mobile phones. This involved creating entirely new sections of code designed to operate in "distinct and different computing environment" and Google kept only the Java API code needed to allow programmers to continue using a familiar programming language without the need to create or learn a new code language. The Court stated that industry standards indicate that API code is often reused so programmers do not need to constantly learn new code languages. Commerciality and good faith are additionally considered under the first factor. The Court held

that commercial use does not necessarily negate fair use, stating that weighed with the inherently transformative use by Google, the commerciality of the use had little effect on the factor overall. The Court declined to rule on good faith and subsequently found the first factor pointed towards fair use.

The third fair use factor is the "amount and substantiality of the work used" in the alleged infringing work. Google copied 11,500 lines or 0.4% of the 2.86 million lines of the Java API code. Overall, this is a relatively small amount of the entire code. Even a small amount of copying can, however, be considered infringing. The Court found that Google copied only the amount needed for their programmers to continue to build off the code language they already knew. Moreover, the third factor generally weighs in favor of fair use where the amount of copying is tied to a valid and transformative purpose. Google's basic objective was to allow programmers to use their knowledge to create new programs for smartphones on the Android platform. The Court expressed concern that, if Google had not used the copied Java API code to create its new program, it may have been prohibitive to create the Android smartphone system, which goes against copyrights purpose of promoting the process of science and the useful arts. Thus the Court held that the copied code was needed to allow programmers to create and improve innovative Android systems.

Finally, the fourth factor focuses on the market effects of copying. The court held that Oracle, and Sun before, were unlikely to have entered the smartphone market due to previous failures. Sun's former CEO admitted in court that their failure to enter such market was not attributable to Google. Google's platform is part of a distinctly different market from that of the Java API, which focuses on laptop and desktop computers. The Court noted that investment from programmers in learning the Java API language had more to do with Android's success than Oracle's investment in creating Java API in the first place. Again, the Court focused on the cost of creation of a new code language–instead of building off the Java API–would hinder copyright's basic creativity objectives because the "reimplementation of a user interface allows creative new computer code to more easily enter the market." The Court found this factor weighs in favor of fair use.

Conclusion:

This decision is a big win for Google—the company was facing billions in damages against them. It also once again highlights the difficulties courts have when dealing with copyright protection for source code when weighing it against commercial and technological progress.

The Supreme Court's opinion is captioned *Google LLC* v. *Oracle America, Inc.*, No. 18-956 (April 5, 2021).

The Trademark, Copyright & Advertising Group at Locke Lord LLP is experienced at helping companies and clients with all their copyright questions. If you would like further information, please contact the author.

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