

Supreme Court Holds That Google's Use Of Oracle's Java Software Interface Is Fair Use

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Google LLC v. Oracle America, Inc., No. 18-956

Today, the Supreme Court held 6-2 that Google's use of the Java interface in the Android platform falls within the fair use doctrine.

Background:

Sun Microsystems launched the Java platform in the 1990s to allow software developers to write and run applications in the Java programming language. The Java platform includes pre-written code to perform a number of common functions (e.g., calculating an arithmetic mean), which software developers can incorporate directly into their own applications through the use of the Java software interface. By using Java's software interface in their applications, developers avoid having to compose the underlying, functional code themselves.

Google launched its Android operating system in 2008. Like Java, Android includes pre-written code to perform certain common functions, making it easier for developers to create applications for Android. Although the code used by Android to perform these functions is entirely original, Android used portions of Java's software interface. By doing so, Google allowed developers to create applications for Android using the same interface that they use to create applications for Java. In all, Android uses 11,330 lines (or 0.4 percent) of Java's software interface.

After acquiring Java from Sun Microsystems, Oracle sued Google for copyright infringement based on Android's use of the Java software interface. The district court concluded that copyright protection did not extend to the Java software interface, but the Federal Circuit reversed, concluding that Java's software interface is protectable under copyright law and that the merger doctrine, which bars copyright protection when there are only a few ways to express a function, was inapplicable. On remand, a jury found that Google's use of the Java software interface was protected under the fair use doctrine, but the Federal Circuit again reversed.

Issue:

Does the Copyright Act protect a software interface and, if so, does Android's use of the Java software interface constitute fair use?

Court's Holding:

The Court assumed, "purely for argument's sake," that the Java interface is protected by copyright, and held that Google's use of that interface in the Android platform falls within the fair use doctrine.

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"We reach the conclusion that in this case, 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."

Justice Breyer, writing for the Court

What It Means:

- The Court clarified that "fair use" is a mixed question of law and fact. Reviewing courts should appropriately defer to the jury's findings of underlying facts, but the ultimate question whether those facts show a fair use is a legal question for judges to decide *de novo*.
- The Court explained that the fair use doctrine is particularly important when applying copyright law to computer programs because they almost always serve functional purposes and are bound up with uncopyrightable material. "[F]air use can play an important role in determining the lawful scope of a computer program copyright" because it provides a context-based check that can help to keep a copyright monopoly within its lawful bound.
- The application of fair use in this case does not undermine the general copyright protection Congress provided for computer programs because the declaring code at issue, "if copyrightable at all," is further than most computer programs are from "the core of copyright." This is because, as part of a user interface, the declaring code's use "is inherently bound together with uncopyrightable ideas (general task division and organization) and new creative expression (Android's implementing code)." Moreover, its value (1) derives from the value that computer programmers invest of their own time and effort to learn the API's system and (2) lies in its efforts to encourage programmers to learn and to use that system so that they will use Sun-related implementing programs.
- Despite Google having copied portions of the Java interface "precisely," the Court held that its use was nonetheless "transformative" because Google used the code to "create a new platform that could be readily used by programmers." Google's use was therefore "consistent with that creative 'progress' that is the basic constitutional objective of copyright itself."
- Commercial use does not necessarily tip the scales against fair use. The Court explained that, even though Google's use was a commercial endeavor, that is not dispositive of the "purpose and character of use" factor, particularly because Google's use was transformative.
- The Court's fair use ruling will make it easier for platform developers to reuse software interfaces when creating new platforms. This may lead to the development of less-expensive competing versions of applications, but may also disincentivize research and development of new software platforms or languages.
- The question whether the Copyright Act protects software interfaces remains unanswered. "Given the rapidly changing technological, economic, and business-related circumstances," the Court explained, "[the Court] should not answer more than is necessary to resolve the parties' dispute." The Court therefore assumed, "purely for argument's sake," that the Java interface is protected by copyright.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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