

Copyright: Legal Issues and Policy

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## Google vs. Oracle, Inc.

### THE FACTS:

Google, Inc. is the prominent manufacturer and servicer of an eponymous search engine, among other ventures. They also are the manufacturer of an operating system called Android, for mobile phones and devices. This operating system utilizes an application program interface (hereafter referred to as API), which instructs a given application as to how outside applications are to interact with the device proper. This interface is a common feature of computer programming.

Oracle, Inc. is the creator and developer of a programming language called Java. Google duplicated the API of Java with the aim of making the Android system available to developers using Java. Oracle alleged in a 2010 lawsuit that Google, by duplicating Java's API, was infringing on their patent in that language, and sought damages of one billion dollars (US).<sup>1</sup> A judgement was made in May of 2014 in favor of Google, but overturned by an appeals court in favor of Oracle in October of that year.<sup>2</sup> In January of 2015, Google made an inquiry to the Supreme Court of the United States to hear their case on appeal, who then inquired to the Obama administration as to how they should decide it.<sup>3</sup>

This case is unique in that Google has argued their case not on fair use, but on what they perceive to be an unfair limitation on innovation of earlier work. Their statement in January of

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<sup>1</sup> "6 Copyright Cases More Important Than 'Blurred Lines'", Jonathan Bailey, Plagiarism Today, April 23, 2015.

<sup>2</sup> "Google asks Supreme Court to decide Oracle's Android case," James Niccolai, PC World, October 8, 2014.

<sup>3</sup> "Google vs. Oracle: Supreme Court Seeks Guidance on Case", Clayton Browne, ValueWalk, January 12, 2015.

2015 reads as thus: “If the Federal Circuit’s holding had been the law at the inception of the Internet age, early computer companies could have blocked vast amounts of technological development by claiming 95-year copyright monopolies over the basic building blocks of computer design and programming.”<sup>4</sup> Oracle responded otherwise: “Google was free to write its own code to perform the same functions as Oracle’s [...] Instead, it plagiarized.”<sup>5</sup> Oracle went so far as to request that the Supreme Court not hear Google’s appeal.<sup>6</sup>

### IS IT A FAIR USE?

In the many writings on the matter, fair use is not brought up; however this case is unique in that Google, were it to argue fair use before the Court, would have strong arguments in meeting the four factors (purpose, nature, amount, and market share) that determine whether something is fair use or not. First, Google’s purpose was to create an API that was compatible with Java-based programming languages. This is neither a commercial or transformative purpose, but rather a purpose of access. In Google’s situation it would appear the nature of the Java programming language allegedly duplicated is commonplace in other languages, yet one has not heard of other lawsuits lodged as a result. To that end, if Oracle’s suit holds any weight, upholding their appeal on the basis of infringement without considering fair use would set a dangerous precedent that privileges them and other developers to take legal action over commonplace elements that are generally agreed to be standard essentials in programming and software. It can be likened to say, Kodak suing Fuji because their motion picture film has sprockets, just like Kodak’s, and the same number as well in order to run it through a projector successfully.

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<sup>4</sup> Browne, “Google vs. Oracle”.

<sup>5</sup> Browne, “Google vs. Oracle”.

<sup>6</sup> Browne, “Google vs. Oracle”.

Having considered purpose and nature, now the amount supposedly infringed must be taken into account. The amount is an interface not only essential to Java, but to multiple programming languages to allow for compatibility between devices and applications<sup>7</sup> (in the initial judicial decision, it was determined that APIs are not protected by copyright, however the appeals court overturned it)<sup>8</sup>. In terms of the amount being utilized under fair use, the commonplace availability of an API qualifies it as such since it is required to allow devices and applications to operate successfully within a range of operating systems.

The market share should first be assessed in terms of the damages Oracle is seeking (US \$1 billion). Of course, if ultimately decided in favor of Oracle, Google would have to pay that in addition to attorney's fees. However, there is a piece of information that undermines Oracle's claim for damages, as well as showing that their market share and further profit from its API is not harmed by Google's dissemination of it. In viewing their annual revenue from 2011 to 2015, Oracle showed a steady increase in sales and revenue from US \$35.62 billion to \$38.23 billion. In terms of gross income after expenses have been factored in, the amount ranged from \$24.8 to \$28.55 billion. The net income over that same five year period showed an increase after expenses between \$8.55 and \$10.96 billion between 2011 and 2014, only decreasing to \$9.94 billion in 2015<sup>9</sup>, five years after Oracle alleged infringement.

When all factors are summarily considered, Google's alleged infringement of Oracle's patents should be considered as a fair use, owing to the commonplace availability of APIs in programming languages outside of Java, as well as the lack of evidence that shows damage to Oracle's market share or future profit from Java.

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<sup>7</sup> Bailey, "6 Copyright Cases".

<sup>8</sup> Niccolai, "Google asks Supreme Court".

<sup>9</sup> "ORCL Annual Income Statement: Oracle Corp." October 27, 2015.

## FAIR USE IN THE ARCHIVES

During my volunteer work at the Fort Lee Museum in Fort Lee, NJ, I helped assess and organize their moving image collection. Of note were film elements belonging to a historian named Thomas Hanlon. These pertained to a documentary created by him entitled “Before Hollywood, There Was Fort Lee, NJ” (1964). The documentary was commissioned by the Borough of Fort Lee, and the film elements were given to the Fort Lee Museum.

The documentary most certainly has a copyright notice, so looking up whether the copyright was renewed or it is now public domain is a matter of contacting the Copyright Office for the pertinent information. This impacts any claims to be made under fair use as it needs to be determined whether Hanlon had any survivors who lay claim to the rights to this material. Also complicating this is the fact that a DVD showcasing this documentary was released, which appears to be registered to an organization called Film Preservation Associates. Before fair use can be argued for exhibition or preservation/archiving purposes, it is imperative that the issue of rights and rights holders must be addressed.