

All Is Fair in Google and Oracle: Supreme Court Says Google's Copying Was Fair Use in Landmark Copyright Case

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Was it fair for Google to copy 11,500 lines of Oracle's copyrighted Java Application Programming Interface (API) simply to make it easier for programmers already familiar with Java to develop apps for Google's Android smartphone without having to learn a new programming language? The Supreme Court answered yes, Google's copying was a fair use and thus not copyright infringement, thereby ending a ten-year legal battle between the two technology giants. This case has enormous consequences for the software industry, both in terms of how companies should protect the intellectual property in their software and in how software developers can build on the work of others to create new products.

More specifically, Google copied roughly 11,500 lines of so-called declaring code, a portion of an API that associates a command with the files in the software program that contain the particular code to implement that command. Oracle then sued Google for copyright infringement. The first trial court held the declaring code from the API was not copyrightable because it was "a system or method of operation," which is not capable of being protected under copyright law. Oracle appealed that decision, which was overturned and remanded for another trial. The second trial resulted in a jury verdict in favor of Google, finding that its copying of the Java API was fair use and thus not an infringement. On a second appeal, the appellate court overturned the jury verdict and held that Google's copying of the declaring code was copyright infringement.

The Supreme Court ultimately overturned the appellate court's decision, finding that Google's copying was fair use. Although the Supreme Court could have decided the case by ruling that the declaring code in the API is not copyrightable, it saved that issue for another day, assuming for the sake of argument that the Java API is copyrightable.

Instead, the Court focused on fair use, which is a defense to copyright infringement. Whether copying is a fair use depends on four factors. The Court found that all four factors weighed in favor of Google. The first factor—the nature of the work at issue—favored a finding of fair use because the value of the lines of code are connected to the programmers' existing familiarity with that API, which was broadly in use for desktop and laptop computing systems. In analyzing this factor, the Court seemed to suggest that whatever copyright protection the declaring code merits was thin at best because that code was more functional than expressive. (Copyright protects the expression of an idea rather than the idea itself.)

The second factor—whether the copying was transformative—weighed in favor of fair use because Google copied only the portion of the code necessary to create software for a new medium, namely smartphones. In other words, Google's use of the copied declaring code was transformative.

The third factor—the proportion of copying to the overall copyrighted work—also supported fair use. Google copied roughly 11,500 lines of code. At first blush, that seems like a lot of code. But Oracle’s copyright extended to the entire API, which comprised 2.86 million lines of code. The copied portion was only about 0.4 percent of the total API. Thus, rather than looking at the total copied lines of code in the abstract, the Court viewed the copied portion in the context of the entire work.

The fourth factor—the effect of the use on the market for the copyrighted work—also supported fair use because Google’s Android smartphone operating system is not a substitute for, and does not compete with, Oracle’s Java computer programming software. Oracle’s Java API was used mostly for desktop PCs and laptops, not for smartphones, and Oracle itself had been unable to penetrate the smartphone market.

This long-awaited decision clears up some issues that have greatly troubled technology industry participants as they contemplated Google’s multibillion-dollar exposure. Use and reuse of APIs is integral for the interoperability of software and innovation in software technology. This point was emphasized in the many amicus briefs submitted to the Supreme Court. This Court recognized that giving very strong copyright protection to APIs would stifle innovation, particularly as software evolves and moves from older platforms to newer ones. However, this ruling is also cautionary in that Oracle was in many ways the victim of its own success by making a system that was so widely known as to become a *de facto* standard available to programmers working on a different class of devices.

The case is *Google LLC v. Oracle America, Inc.*, No. 18-956. The Supreme Court’s opinion can be accessed at the following link: https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf.