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## **Google LLC v. Oracle America - A Case Comment**

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### **Introduction**

Copyright law and its ramifications for software copying, usage, and re-purposing are a relatively new phenomenon. Computer programmes are considered literary works in the United States (*Apple v. Franklin*, 17 U.S.C. 101). Copyright law protects not only the computer's 'literal elements,' but also the 'non-literal' elements of the computer, such as code sequence, control structure usage, and unique or inventive methods of applying normally utilitarian methods, objects, functions, variable or proprietary aspects of a given OS environment or computer language as an expression of the programmer's original ideas. In the case of *Google LLC v. Oracle America Inc.* (2021)<sup>1</sup>, given the fast-changing technical, economic, and business-related conditions, the court decided not to answer any questions beyond those required to resolve the parties' disagreement. The court assumed, but only for the purpose of argument, that the complete Sun Java API comes under the definition of what might be copyrighted, but instead asked whether Google's use of a portion of that API was a "fair use." Unlike the Federal Circuit, they came to the conclusion that it was. The "fair use" concept was developed by the courts as a "equitable rule of reason" that "allows courts to defer rigorous enforcement of the copyright act when, on occasion, it might stifle the very innovation that the law is intended to nurture." (*Stewart v. Abend*, (1990)). The doctrine's statutory enactment, u/s 107, informs rather than prescribes how courts should interpret it.

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<sup>1</sup>141 S. Ct. 1183 (2021), [https://www.supremecourt.gov/opinions/20pdf/18-956\\_d18f.pdf](https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf) (last visited May 21, 7:08PM).

## **What Is Fair Use?**

A fair use is any copying of copyrighted material done for a restricted and “transformative” purpose, such as to remark on, critique, or parody a copyrighted work in its broadest sense. Without the authorization of the copyright owner, such uses are permissible. To put it another way, fair use is a defense to a copyright infringement lawsuit. Your usage would not be regarded an infringement if it qualified as a fair use. In some circumstances, fair use is a legal notion that encourages freedom of expression by allowing the unauthorized use of copyright-protected works.

So, what exactly is a “transformative” application? If this definition appears imprecise or vague, keep in mind that millions of dollars have been spent on legal expenses to try to clarify what constitutes a fair use. Because the courts and legislators who created the fair use exemption did not seek to limit its meaning, there are no hard-and-fast standards, simply basic principles and a variety of court rulings.

## **The Fair Use Doctrine In The United States- An Overview**

In section 107 of the Copyright Act of 1976, the United States Congress formalized an exemption to copyright protection: the Fair Use Doctrine. The Fair Use Theory was already a judicially constructed doctrine at the time, having been first referenced in *Folsom v. Marsh* in 1841. In that instance, the defendant had illegally utilized George Washington’s private letters to produce a fabricated history of the President. The court decided that using the letters without authorization did not violate the owner’s copyright. According to the court, the usage in question involved just a minor percentage of the letters and was for semi-scholarly reasons. In short, we must often, in deciding questions of this sort, look at the nature and purposes of the choices made, the amount and value of the materials utilised, and the extent to which the usage may jeopardise the sale or profits of the original work, or replace the original work’s objectives. The court stated in finding the use fair. These requirements remain the fundamental elements for Fair Use.

In the case of *Storm Impact, Inc. v. Software of the Month Club*, the court observed that “The greatest approach to improve public good via the abilities of authors and inventors is to stimulate individual effort through personal benefit. However, in order for advancement to occur, people must be allowed to build on and refer to the works of previous thinkers. As a result, there is an inherent conflict between the need to safeguard copyrighted work while still

allowing others to build on it.” When determining whether a use is fair, courts must consider the four elements outlined in Section 107. The first criteria, “the aim and nature of the work,” differentiates between commercial and nonprofit usage and inquires as to how much the new works differ from the original (transformative use). The second criteria, “the character of the copyrighted work,” is interpreted by courts to suggest that the more inventive the original work, the greater copyright protection it receives. As a result, the copyright protection of derivative works or compilations is weaker than that of original and creative works. The third criteria is “the amount and substantiality of the piece utilized,” and the test courts employ is how much of the “heart of the copyrighted work” has been exploited. Finally, the fourth consideration, “the influence on the market value for the original,” is regarded as the most significant of the four. The defendant must demonstrate that the new work has no effect on either the current or future market.

### **Facts Of The Case (Google LLC V. Oracle America Inc.)**

Oracle America, Inc. owns the rights to Java SE, a computer platform that uses the popular Java programming language. Google bought Android in 2005 with the intention of developing a new software platform for mobile devices. Google borrowed around 11,500 lines of code from the Java SE program to allow millions of programmers familiar with the Java programming language to work with its new Android platform. The copied lines are part of a program known as an Application Programming Interface (API). An API enables programmers to use pre-written computational jobs in their own systems. Lower courts have explored a variety of issues over the course of lengthy litigation.<sup>2</sup>

1. Whether the proprietor of Java SE could copyright the copied lines from the API, and,
2. Whether Google’s copying constituted a legal “fair use” of that content, thereby exempting Google from copyright liability.

#### ***Oracle claim-***

Oracle originally filed a copyright infringement lawsuit in 2010, shortly after it brought Sun Microsystems alleging that Google had breached the API’s and 11,500 lines of code’s copyright. The judge ruled in Oracle’s favour in the First District Court Trial, finding that Google had infringed on Oracle’s copyright with a nine-line range Check function, SSO (Structure, Sequence, and Organization) of API and code, and finally establishing that APIs are

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<sup>2</sup><https://www.lexisnexis.com/community/casebrief/p/casebrief-google-llc-v-oracle-am-inc>(last visited May 21, 6:08PM).

copyrightable. The parties then took their case to the First Appellate Court, which upheld the District Court's decision and remanded the issue to the District Court for a new finding on fair use of the APIs and Code.<sup>3</sup>

Since the Federal Circuit Court ruled in the first appeal that APIs are copyrightable, a new trial in the District Court has begun to determine whether Google's usage of the APIs and code is constituted as fair use. In this case, the jury decided that fair use justified the re-implementation of 37 Java APIs. Oracle, dissatisfied with the verdict, filed an appeal with the Federal Circuit Court, which ruled in Oracle's favour, stating that "by the question of law and fact, it is clear that Google copied the APIs and code," and that "by the question of law, the court held that it did not satisfy any of the criteria in the four-factor test for fair use and asserted that Android makes use of APIs and does so commercially.

### ***Google claim-***

According to Google, it did this to ensure software interoperability and to attract current developers to their platform so that they would feel comfortable utilizing a familiar coding environment. Google's certiorari petition raises two issues. The first concerns the copyrightability of Java's API. It urges to look at two legislative sections, one that allows copyrighting of computer programmes and the other that prohibits copyrighting, e.g., "process(es), "system(s), and "method(s) of operation." The API's declaration code and organization, according to Google, fall within these latter categories and are thus specifically exempt from copyright protection. The second question to evaluate if Google's API usage was "fair."

## **The Four Factors To Determine Fair Use**

### **-Nature and the work**

Nature of the copyrighted work: This criterion examines how closely the work utilized relates to copyright's goal of stimulating creative expression. As a result, claiming fair use for a more artistic or imaginative work (such as a novel, movie, or song) is less likely than claiming fair use for a factual work (such as a technical article or news item). Furthermore, it is less probable that the use of an unpublished work will be judged fair.

Google copied the lines of code which was a part of a "user interface" that allows programmers or developers to access a computer prewritten code by using simple instructions. Resultantly, this code differs from many other codes, for example a code that tells the computer how to do

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<sup>3</sup><https://www.intepat.com/blog/copyright/copyright-infringement-case-google-llc-v-oracle-america-inc/>;Tadhg A.J. Dooley &David Roth, *Supreme Court Update: Google LLC v. Oracle America, Inc. (No.18-956)*, Volume XII Issue 172, The National Law Review, June 21, 2022, <https://www.natlawreview.com/article/supreme-court-update-google-llc-v-oracle-america-inc-no18-956>(last visited May 21, 6:08PM).

or perform a task. Google copied lines are inextricably linked to uncopyrightable concepts (the API's overall organization) and the production of fresh creative expression as part of an interface (the code independently written by Google). Unlike many other computer programmes, the repeated lines' value is derived in part from the investment of users (in this case, computer programmers) who have learned the API's structure.

### **-Purpose and character**

Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes: Courts look at how the party claiming fair use is employing the copyrighted work, and nonprofit educational and noncommercial uses are more likely to be found fair. This isn't to say that all nonprofit educational and noncommercial uses are fair, or that all commercial uses aren't; rather, courts will weigh the purpose and nature of the use against the other considerations listed below. Furthermore, "transformative" applications are more likely to be seen favorably.

The question of whether the copying in question was "transformative," that is, if it "adds something new, with a further purpose or different character," is crucial to the investigation into "the purpose and character" of the usage. Google's restricted API copying is a transformative application. Google just copied what was needed to allow programmers to work in a new computing environment without having to leave a significant portion of their current programming language. Google's objective was to create a new task-related system for a new computing software (smartphones), as well as a platform to help them achieve and popularise that goal (the Android platform). Re-implementing an interface can help in the development of computer applications in a number of ways, as it is evident. As a result, Google's purpose was in keeping with copyright's primary constitutional goal of promoting creative innovation.<sup>4</sup>

### **-The substantiality factor**

The size and importance of the fraction utilized in proportion to the entire copyrighted work: Courts consider both the amount and quality of the copyrighted material utilized in this aspect. Fair use is less likely to be found if the use incorporates a considerable percentage of the copyrighted work; fair use is more likely if the user uses just a small amount of copyrighted

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<sup>4</sup>Jeffrey W. Gluck, *Oracle v. Google, the never ending case finally ends*, Panitch Intellectual Property Law Schwarze, April 21 at 3:09PM, <https://www.panitchlaw.com/oracle-v-google-the-never-ending-case-finally-ends/>; *Google LLC v. Oracle America, Inc.*, 135 Harv. L. Rev. 431, Nov. 10, 2021, <https://harvardlawreview.org/2021/11/google-llc-v-oracle-america-inc/> (Last visited April 23 at 4:00PM).

material.

Google took over 11,500 lines of declaring code from the API. However, these 11,500 lines copied by google account for barely 0.4 percent of the entire 2.86 million lines in the API in question. When considering “the amount and substantiality of the portion utilized” in this instance, the 11,500 lines of code should be viewed as a tiny component of a much bigger total mentioned. The copied lines of code are interwoven with other lines of code that programmers can access through an interface. These lines were stolen by Google because they would allow programmers to adapt their skills to a new smartphone computing environment, not because that they are creative. When the quantity of copying is linked to a meaningful, transformative objective, as it is here, the “substantiality” requirement will usually support fair use.

#### **-Effect on the potential market**

The impact of the usage on the copyrighted work’s potential market or value: Courts consider whether and to what degree the unauthorised use undermines the copyright owner’s original work’s current or future market. Courts evaluate whether the use is harming the present market for the original work (for example, by displacing sales of the original) and/or whether the use has the potential to cause considerable harm if it becomes widespread when analyzing this factor. The fourth statutory factor focuses upon this vide §107(4).

The findings showed that Google's new smartphone platform isn't a good substitute for Java SE. The record also disclosed that the owner of the Java SE copyright would profit if the interface was reimplemented in a new market. Finally, enforcing the copyright on these facts risks jeopardising the public's ability to innovate. When all of these factors are evaluated, it is clear that the fourth criterion, market impacts, also favours fair usage.

Because computer programs are largely functional, conventional copyright notions are difficult to apply in that modern environment. The Court concludes that Google’s copying of the API to reimplement a user interface, taking only what was needed to allow users to put their accrued talents to work in a new and transformative program, constituted a fair use of that material as a matter of law, based on the principles of the Court’s precedents and Congress codification of the fair use doctrine. The Court does not reverse or amend its previous decisions regarding fair use in reaching this conclusion.

## **The Utilitarian Public Policy- ‘Scope Of Grant’**

In Google’s vision, the new Android platform would be free and open, allowing software developers to utilize the platform’s capabilities to create an increasing number of Android-based apps, increasing the marketability of Google’s handsets. Because the Java platform was well-known and used by millions of programmers, Google contemplated licensing the complete Java platform from Sun Microsystems (Oracle’s predecessor) to help assure that a critical mass of programmers would interact with the platform. However, those discussions fell through, and Google chose to construct its own platform instead, employing a big team of Google engineers who spent years writing millions of lines of code. However, because Google wanted Java engineers to be able to work quickly with the new Android platform, it copied around 11,500 lines of code from Sun’s Java SE software.

In this modern period, the courts’ application of copyright protection may differ from case to case, depending on the situation. When the copyrighted content is fiction rather than fact, when it is a motion picture rather than a news broadcast, or when it has an artistic rather than a practical role, Copyright’s protection may be stronger. Similarly, courts have ruled that copyright protection is “thin” in other cases, such as when copyrightable content is bundled with uncopyrightable material. Computer programs, unlike novels, films, and many other “literary creations,” nearly always have a useful purpose. Because of these and other discrepancies, some courts have complained that “applying copyright law to computer programs is like putting together a jigsaw puzzle with pieces that don’t quite fit.”

Because of these distinctions, Congress debated whether or not to provide copyright protection to computer programs. Congress formed the *National Commission on New Technological Uses of Copyrighted Works* (CONTU) in 1974 to investigate the issue after realizing that computer programs had distinct characteristics. It said that copyright “should not offer anybody more economic power than is essential to meet the motivation to produce,” in order to avoid “unduly burdening users of programs and the general public. “And it believed that copyright’s existing doctrines (e.g. Fair use), applied by courts on a case-by-case basis, could prevent holders from using copyright to stifle innovation. Congress then wrote computer programs into law.<sup>5</sup>

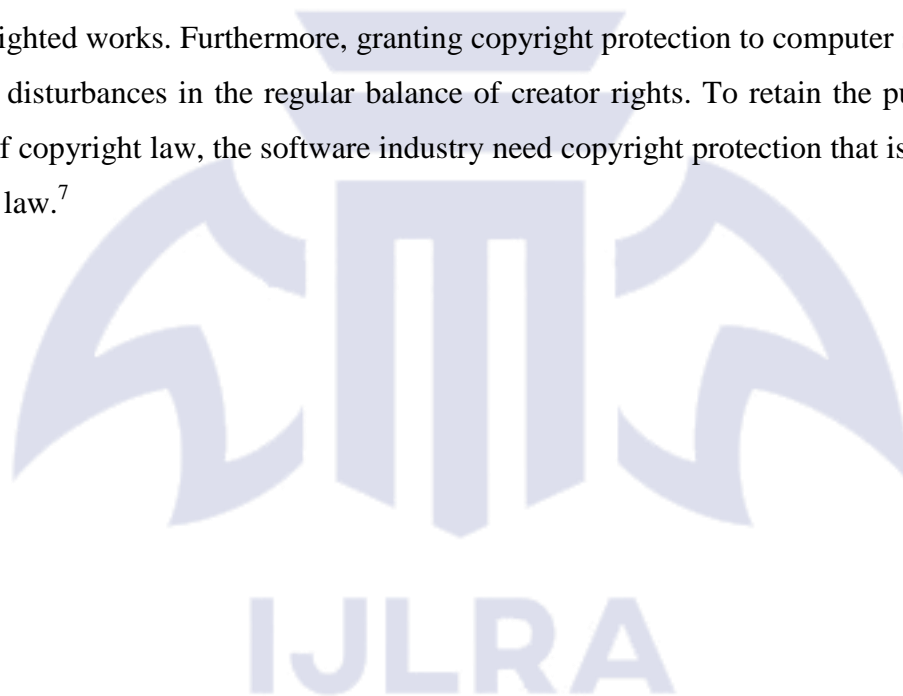
Fair use can be crucial in evaluating the legal extent of a copyright for a computer program, such as the copyright at issue here. It can aid in the differentiation of technologies. Where expressive and functional elements of computer code are intermingled, it can tell the

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<sup>5</sup><https://www.oyez.org/cases/2020/18-956> (last visited June 21, 6:08PM).

difference. It can concentrate on the legitimate requirement to incentivize the creation of copyrighted content while also analyzing the extent to which further protection creates unrelated or illegitimate damages in other markets or the development of new goods.

The abuse of the fair use concept can take two forms. The first happens when there is an antitrust infringement, as antitrust rules prohibit conditions that can stifle fair competition. Another viewpoint claims that intellectual property laws have struck a balance between the rights provided to creators and those granted to the general public, and that this balance has served to limit the extension of creators' rights beyond the boundaries of the Intellectual Property Rights. As a result, the 'scope of the grant' is unaffected by antitrust factors like market power.<sup>6</sup> Software, on the other hand, has attributes that give it more market power than other copyrighted works. Furthermore, granting copyright protection to computer software may cause extra disturbances in the regular balance of creator rights. To retain the public purpose rationales of copyright law, the software industry need copyright protection that is unrestrained by antitrust law.<sup>7</sup>



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<sup>6</sup>James A.D. White, *Misuse or fair use: that is the software copyright question*, Vol. 12, No. 2 (1997), Berkeley Technology LawJournal, 251-310, <https://www.jstor.org/stable/24122386?seq=22> (last visited June 12, 7:08PM).

<sup>7</sup>*Ibid.*

## Conclusion

On April 5, 2021, a 6-2 majority of the court ruled in favor of Google, stating that it met all four-factor requirements for fair use of Java APIs. The software industry employs common APIs across all of its programs to ensure interoperability. While the United States Supreme Court establishes a broad definition of fair use for API copyrights. More license-free APIs are desired by the software industry in order to combine applications built in various languages in a harmonic manner. While the Supreme Court's ruling in this case permits current software development to proceed unaffected, the inability to enforce copyright on proprietary APIs discourages developers who have worked on them for years.

The courts have interpreted this provision to mean that the list of factors it contains is not exhaustive (note the words "include" and "including"), that the examples it provides do not exclude other examples (note the words "such as"), and that some factors may be more important in some contexts than others. (*Campbell v. Acuff-Rose Music, Inc.*, (1994); *Harper & Row, Publishers, Inc. v. Nation Enterprises*, (1985))<sup>8</sup> "The elements are not a score card that guarantees victory to the majority winner." In a nutshell, we interpret the clause to establish basic principles, the execution of which needs judicial balance based on relevant circumstances, such as "major technological advances." (*Sony Corp. of America v. Universal City Studios*, (1984)),<sup>9</sup> The Copyright Act must be understood in light of its essential objective when technological development has rendered its literal wording confusing."

Congress formed the National Commission on New Technological Uses of Copyrighted Works (CONTU) in 1974 to investigate the issue after realizing that computer programs had distinct characteristics. It said that copyright "should not offer anybody more economic power than is essential to meet the motivation to produce," in order to avoid "unduly burdening users of programs and the general public." And it believed that copyright's existing doctrines (e.g. Fair use), applied by courts on a case-by-case basis, could prevent holders from using copyright to stifle innovation. Congress then wrote computer programs into law.

When determining the lawful scope of a copyright for a computer programme, such as the copyright at issue here, fair use might be critical. It can help with technology distinction. It can recognize the difference between expressive and functional aspects of computer code when they are mixed together. It can focus on the legitimate need to encourage the creation of copyrighted content while simultaneously examining the extent to which further protection

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<sup>8</sup><https://fairuse.stanford.edu/overview/fair-use/cases/> (last visited June 12, 7:08PM).

<sup>9</sup> *Ibid.*

causes unrelated or illegitimate harm in other markets or the development of new goods.

This decision is a major win for Google, which had been facing billions in damages. It also highlights the difficulties that courts have in balancing copyright rights for source code with economic and technical progress. The Supreme Court deferred a decision on whether functional aspects of computer software are copyrightable to a later date. Nonetheless, the Court's acknowledgment of the general significance of fair usage in software proceedings is commendable, as it serves the public interest by allowing designers, developers, and other users to apply their knowledge and experience with software interfaces to future platforms.

