

Colossal win for Google as SCOTUS affirms ‘fair use’

The protracted legal battle between software giant Oracle America Inc. (“Oracle”) and technology behemoth Google LLC (“Google”) has truly been one for the ages. The Supreme Court of the United States of America (“SCOTUS”) on 05 April 2021 delivered its judgment in the writ of Certiorari filed by Google against Oracle. The core issues were:

- Copyrightability of copied lines of the Java SE Application Programming Interface (“API”) which were proprietary to Sun Microsystems (“Sun”), later acquired by Oracle;
- Legitimacy of Fair Use defence by Google, absolving them of copyright liability.

The present case deals with computer code and copyright law (US Code Title 17) wherein Google admitted to using the APIs (developed originally by Sun) for initial versions of its Android operating system but argued that their usage was well within the scope of ‘Fair Use’.

Oracle claimed that Google had replicated the structure, sequence and organization of the code for thirty-seven packages in its APIs, which perform fundamental computing operations such as mathematical computations, file and string manipulation and database connectivity.

Though Oracle had originally claimed patent and copyright protection, the District Court rejected Oracle’s patent claims and found only limited copyright infringement.

Google actually copied around 11,500 lines of the APIs (amounting to 0.4 %) out of a total of 2.86 million lines. This 0.4 % is the crux of Oracle’s allegations and claims.

Material Dates

- 13 August 2010: Oracle sued Google at the District Court arguing APIs were copyrightable, seeking US\$ 8.8 billion in damages. Google presented the ‘fair use’ defence, the Judge confirmed APIs as not copyrightable¹;
- 09 May 2014: Oracle appealed the decision and the Federal Circuit reversed the District Court’s verdict stating that the structure, sequence, and organization of the APIs are entitled to copyright protection²;
- In October 2014 Google filed a writ before the SCOTUS – which was denied by the Solicitor General³;
- 09 May 2016: the case was remanded for a second trial before the District Court on damages, the jury sided with Google on its ‘fair use’ of the APIs⁴;
- In 2018, the Federal Circuit again overturned the decision, concluding “Google’s use of the APIs was not fair as a matter of law” as the same was commercial and did not fulfil the pre-requisites of ‘fair use’⁵;
- Google then petitioned the SCOTUS in 2019 through a writ of Certiorari to review both copyright infringement and fair use rulings against it. The matter was heard by the SCOTUS via teleconference on 16 March 2020 and 07 October 2020 in light of Covid-19 related restrictions;

¹ 872 F. Supp. 2d 974 (N.D. Cal. 2012)

² 750 F. 3d 1339, 1349 (Fed. Cir. 2014)

³ 576 U.S. 1071 (2015)

⁴ No. 3:10-cv-03561 2070 (N.D. Cal. 2016)

⁵ 886 F.3d 1179 (Fed. Cir. 2018)

- 05 April 2021: SCOTUS granted certiorari, wherein Justice Breyer along with five other judges formulated the majority view in favour of Google. Justice Barrett (Justice Ginsburg's replacement) did not provide any opinion in this case. Citing US Congress' considered policy, Justices (Thomas and Alito) expressed dissenting opinions and alleged the majority's analysis of fair use as "fundamentally flawed" - thereby making it a 6-2 verdict against Oracle⁶.

Key observations

Many technology giants, industry experts, IP scholars and even some of Google's rivals such as Microsoft, Red Hat, Mozilla, IBM as well as other influential organizations (*inter alia* Computer & Communications Industry Association and the Internet Association) have filed supporting briefs backing Google's claims. The Trump administration, on the other hand had provided firm support to Oracle and attempted to tilt the decision in their favour⁷.

Oracle's victory however, would have been a setback not just for the upper echelons of corporate management of Google, but also supporters of Android and advocates of Open Source Software. In effect, it could have resulted in massive disruption, as Oracle (and others claiming exclusivity over proprietary software) would have been enabled to prevent re-implementation or interoperability achieved with their APIs - essentially leading to a possible oligopoly or potential abuse of dominant position.

Interestingly, the District Court had already rejected Oracle's alleged patent claims and found only limited copyright infringement by Google. This was further substantiated by the SCOTUS' decision, applying the following determining factors in assessing Google's defence which was essentially based on the underlying Doctrine of Fair Use:

- Copyright serves to promote progress of Science and useful arts (transformative purpose);
- Fair Use doctrine is flexible, accounting for changes in technology (Nature of the APIs);
- Fair Use comprises elements of both facts and the law (0.4% of the entire code copied);
- Effect of the use upon the potential market for value of the copyrighted work

Conclusion

APIs formulate the fulcrum of software interoperability - providing the specifications for different software programs to communicate and interact with each other. Keeping APIs open, means that they are available or shared through partnership enabling developers to freely build applications that work together and contribute to an enhanced experience for end-users through integrated platforms. The SCOTUS' decision is not only pragmatic but progressive as well, with widespread reverberations across the technology and software industries. The damages involved will surely attract the attention of all and sundry, not that Google is in dire need of attention.

6 593 U.S. ____ (2021) Docket No. 18-956

7 <https://www.reuters.com/article/idUSKCN1S51CQ>