

Kluwer Copyright Blog

Three Surprises in the Supreme Court's Google v. Oracle Decision

Pamela Samuelson (Berkeley Law School) · Monday, April 12th, 2021

The decade-long titanic battle between Oracle and Google over whether copyright law forbids unlicensed reimplementations of parts of the Java Application Program Interface (API) in a smartphone platform is finally over. In a blockbuster opinion for a 6-2 majority for the U.S. Supreme Court, Justice Stephen Breyer decisively supported Google's fair use defense.



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The biggest surprise in the *Google* opinion is how much weight the Court gave to the interests of programmers who had learned to use Java declarations so they could develop apps for various types of devices. The Court accepted Google's claim that it had decided to reimplement certain classes of Java API declarations to enable experienced Java programmers to take advantage of their skills when writing apps that could run on the Android platform. The Court viewed Google as having thereby unleashed their creativity. This consideration pervaded every fair use factor the Court considered.

In discussing the nature-of-the-work factor, for instance, the Court noted that the value of the declarations "in significant part derives from the value that those who do not hold copyrights, namely computer programmers, invest in their own time and effort to learn the API's system."

The purpose-factor discussion likewise focused on Google's intent "to enable programmers to call up implementing programs that would accomplish particular tasks." Allowing app developers to "put their basic skills to use" by creating new programs for the Android platform was consistent with copyright's overall objective of promoting new creativity.

In assessing the amount-and-substantiality factor, the Court granted that Google's reuse of 11,500 declarations might seem substantial, but those declarations represented only 0.4% of the Java API overall. Google copied them "because programmers had already learned to work with the Sun's Java API system." The declarations were "the key [Google] needed to unlock the programmers' creative energies."

The Court's market-harm discussion acknowledged that Google had made large profits from the phenomenal success of the Android platform, but it attributed much of that success to the large number of programmers who had developed a wide array of apps for the Android platform. To allow reimplementations of program interfaces "allows creative new computer code to more easily enter the market." The Court declined to enforce Oracle's claim against Google because this "would make the Java API declaring code a lock limiting the future creativity of new programs." This would "interfere with, not further, copyright's basic creative objectives."

A second surprise was the Court's conclusion that Google's reimplementations of these declarations was "transformative." This consideration has weighed heavily in fair use cases since the Supreme Court's 1994 *Campbell v. Acuff-Rose Music Corp.* decision. The Court in *Campbell* ruled that 2LiveCrew's rap parody of Roy Orbison's "Pretty Woman" song was likely fair use because it was transformative by "add[ing] something new, with a further purpose or different character, altering the first with new expression, meaning, or message."

When courts find a challenged use to be transformative, this not only weighs in favor of fair use, but it usually has spillover effects on how courts view the other fair use factors. The market-harm factor, for instance, in transformative use cases considers whether the challenged use will supplant market demand for the original. The amount-taken factor also tends to focus on whether the taking was reasonable in light of the transformative purpose.

The Supreme Court's *Google* decision repudiated the CAFC's narrow interpretation of "transformativeness." The CAFC had concluded that Google's use was non-transformative because it hadn't commented on the Java API declarations and it was using them for the same intrinsic purpose as that for which they had originally been developed.

The Court viewed the Android smartphone platform to be transformative because it was "a highly creative and innovative tool" that enabled many programs to be created to run on it. Google's reimplementations of the Java declarations for a smartphone platform used them in a very different context than laptops and desktops for which the Java API had originally been developed, which reinforced the Court's transformation conclusion.

Google had taken only as many of the declarations as were needed to "create a different task-related system for a different computing environment (smartphones) and to create a platform that would help achieve and popularize that objective." The amount copied was "tethered to a valid, and transformative, purpose."

The Court was unpersuaded by Oracle's argument about Google having harmed Oracle's licensing market by taking 37 Java API packages after license negotiations with Sun fell apart. This was belied by evidence that those negotiations had been about much greater use of Java technologies. Equally unpersuasive were Oracle's claims of having suffered actual or potential harm to its entry or licensing in smartphone markets. Sun's former CEO had testified that Sun's failure to build a market for its Java SE for smartphones was not due to Google's development of Android. Sun's various efforts to port Java to the mobile phone market were also failures.

A third surprise was the Court's statements in the market-harm section that courts should consider the "public benefits that the copying will likely produce" as well as risks that enforcing copyrights might sometimes harm the public. It perceived Oracle as trying to put a lock not only on Google's, but also on millions of Java programmers', creativity.

The Court's penultimate sentence succinctly states its conclusion: "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."

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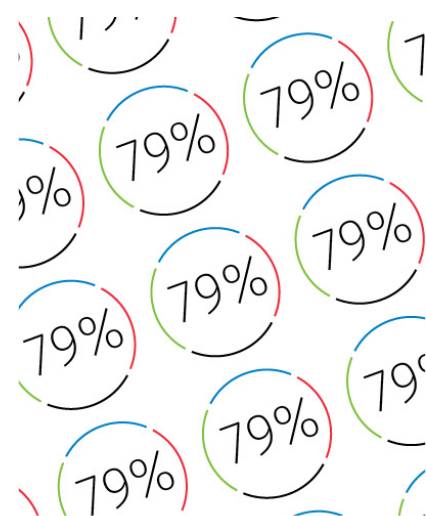
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