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Oracle v. Google: A Look at the Future of the Tech Industry

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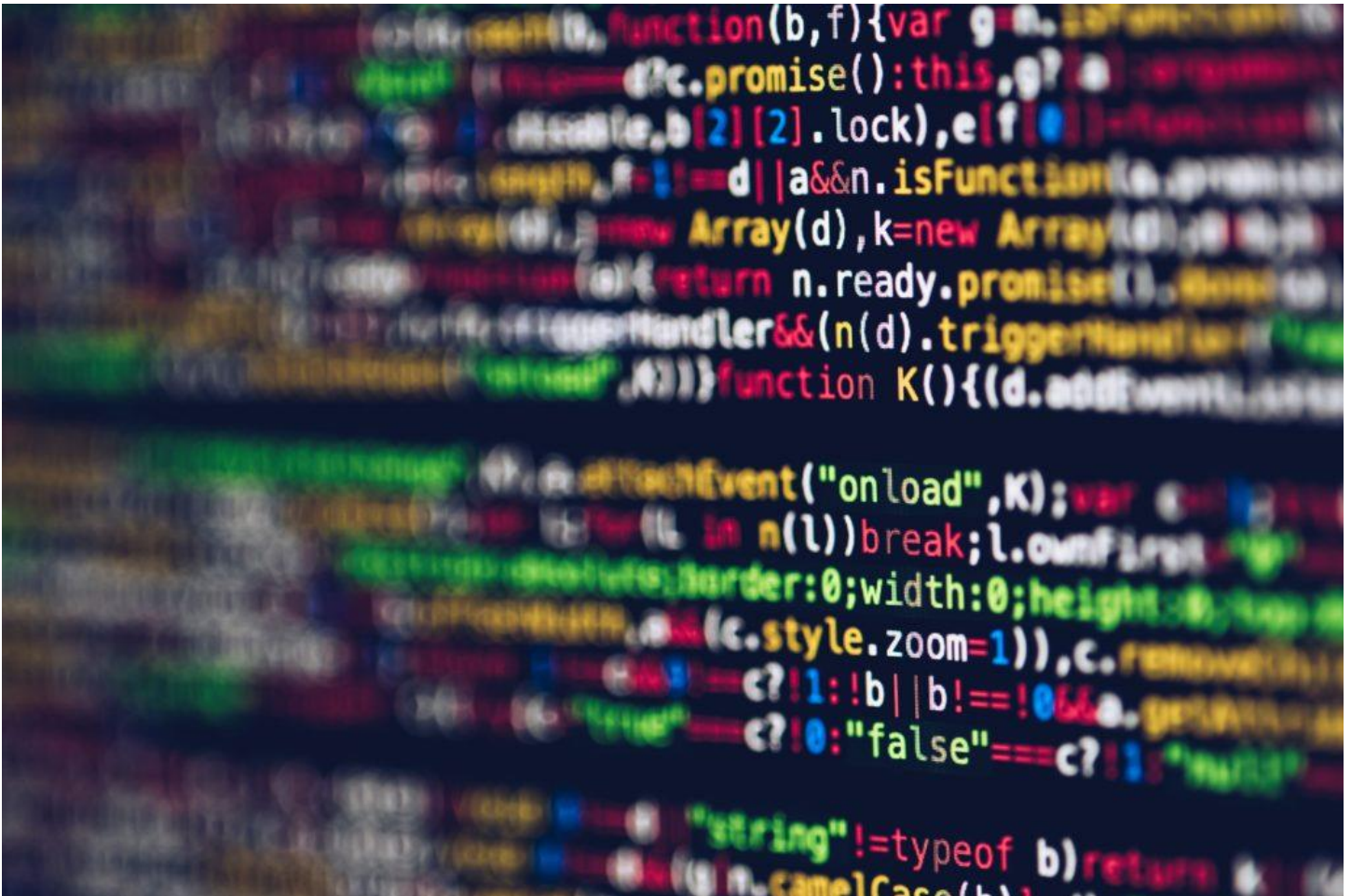
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The Supreme Court has granted certiorari to review the merits of the case, *Google, Inc. v. Oracle America, Inc.* and will be hearing arguments this upcoming March. This case has been followed closely by the tech industry (as well as other industries that deal mainly with intellectual property such as the film industry) as the Supreme Court's decision will have enormous ramifications on the future of the tech industry and creative licensing in general.[1] The Supreme Court will be ruling on the scope of the merger doctrine and fair use analysis as it pertains to software technology.[2]

Oracle, Inc.'s ("Oracle") lawsuit concerns Google, Inc.'s ("Google") use of the Java programming language and more specifically, Google's use of Java's application programming interfaces ("API") in their Android operating system.[3] Originally developed by Sun Microsystems in 1990, Java was released to the public in 1995 with the goal in mind to have the programming language give developers the ability of interoperability between any machines as Java allowed developers to run code on any computing platform through the use

of their Java virtual machine and APIs.[4] After initial discussions to license the Java libraries failed, Google continued anyway with their development of the Android operating system using Java software.[5] Despite the failure to come to an agreement, Sun Microsystems' President, Johnathon I. Schwartz, congratulated and supported Google on their release of Android (which was noted to include Java technology) as it marked a major step forward in terms of innovation for the tech industry.[6] Oracle then acquired Sun Microsystems in 2010 and soon after sued Google for copyright violation for their development of Android without a Java license.[7] The case has been ongoing since then and finally, will be heard by the Supreme Court.

The potential impact of this decision cannot be understated. Firstly, the Supreme Court will likely have to come to a decision to solve the circuit split over the issue of merger doctrine and the idea-expression distinction in copyright.[8] The basic legal idea behind the merger doctrine is that some ideas can only be expressed in a limited number of ways and because of that, the expression merges with idea and is not copyright protected.[9] Though this idea is applicable in many fields, it has had an important impact on software, as logical efficiency and similar structural economies are essential in creating the most useful software and technology.[10] As stated in a report by the Commission on New Technological Uses of Copyrighted Works ("CONTU") in regards to copyrighted program code, "[W]hen specific instructions, even though previously copyrighted, are the only and essential means of accomplishing a given task, their later use by another will not amount to infringement."[11] The ability to freely use program language between different developers has been an essential part of the growth of the tech industry.

The case also will force the Supreme Court to come to a decision regarding the fair use doctrine that Google claims behind their use of the code. If Google's merger doctrine argument fails, they will argue that their use of the code was transformative and used it in an innovative way for a field that Oracle was not a part of (the smartphone operating system industry).[12]

The Supreme Court's ruling will also have a significant impact on other creative fields as well. Several companies and associations from film and publishing industries have filed their own amici briefs in favor of Oracle as it is clear that the decision will have an impact on them as well.[13] Their argument boils down to the fourth factor of the fair use doctrine, the effect of the use of the work on a potential market.[14] These industries are worried that a Supreme Court decision in favor of Google's "transformative" argument will lead to the allowance of infringement of creative works such as writing and film due to the resulting infringement having social value.[15]

Another party that has a significant interest in the outcome of the case is the multitude of developers using the open-source Linux operating system. Though Linux itself is open-sourced, it borrows the API's of the Micro Focus's Unix operating system.[16] Linux is an

operating system with the goal of being open-source and interoperable between different platforms. A potential decision in Oracle's favor could open the door for Micro Focus to seek damages against multitudes of Linux-based developers who were operating with the assumption that the programming was free to use.

Google argues that their use of Oracle's APIs is akin to having the same file cabinets as one another.[17] Rather than strictly copying the other, Google is saying that the two companies are using similar access systems for their own creative works.[18] Though Google's metaphor is undeniably strange and not a perfect metaphor, it does get to the larger issue with the case. APIs are used as outside libraries of programming software that are referenced through different programming languages to allow for function across different operating systems. In this sense, the use of APIs is strictly utilitarian as it is a tool available to software developers to create their own creative expressions. Even if the Court does not view APIs this way, ruling in favor of Oracle will have disastrous effects across the tech industry, as it will not only prevent the use of an important tool for developers, but it will also open the door for future litigation over similar systems, stifling the creative surge that has been prevalent in the industry over the last several decades. A decision for Oracle is a decision against interoperability and pro-consumer focused computer applications. Though Congress has included software as part of copyrightable material, the Supreme Court's decision will ultimately decide if it fits more into the field of science and functionality or arts and creativity.[19] This decision will have a marked impact on the future use of programming language between developers. Ultimately, it will either allow the for further creative growth of the field through the freedom of interoperability or will stifle it through the need of licensing agreements. The current trends in the software industry have been focused on allowing applications to communicate with one another across different platforms, to create a better user experience and improving system communications.[20] If the Supreme Court affirms the Circuit Court's decision, it will not necessarily stop this focus, but it will create a new monetary barrier that could potentially place a barrier on the level of accessibility for developers.

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[1] *Oracle v. Google*, Elotronic Frontier Foundation (Accessed on Feb. 26, 2020) https://www.eff.org/cases/oracle-v-google.

[2] *Id.*

[3] Steven J. Vaughan-Nichols, *A Google Android and Java history lesson*, ZDNet (Sep. 8, 2011), https://www.zdnet.com/article/a-google-android-and-java-history-lesson/.

[4] Jon Byous, *Java Technology: The Early Years*, Sun Developer Network (April 2003), https://web.archive.org/web/20080530073139/http://java.sun.com/features/1998/05/birthday.html.

[5] *Id.*

[6] Vaughan-Nichols, *supra* note 3.

[7] Paul Krill, *After a decade, open source Java is still controversial*, InfoWorld (Nov. 11, 2016), https://www.infoworld.com/article/3138505/open-source-java-at-10-big-benefits-but-detractors-remain.html.

[8] Justin Cho, *Google v. Oracle: SCOTUS to Determine How Copyright Laws Apply to APIs*, Jolt Digest (Dec. 1, 2019) https://jolt.law.harvard.edu/digest/google-v-oracle-scotus-to-determine-how-copyright-laws-apply-to-apis.

[9] *Id.*

[10] *Computer Associates International v. Altai, Inc.*, 982 F.2d 693 (2d Cir. 1992).

[11] *Scope of Copyright in* Programs, Commission on New Technology Uses of Copyrighted Works, 20 (1978).

[12] Rachel Kim, *Oracle v. Google: Preserving Fair Use and Creators' Rights*, Copyright Alliance (Mar. 29, 2018), https://copyrightalliance.org/ca_post/oracle-v-google-preserving-fair-use-and-creators-rights/.

[13] Eriq Gardner, *Movie Studios Back Oracle in Supreme Court Fight Over Computer Code*, Hollywood Reporter (Feb. 19, 2020), https://www.hollywoodreporter.com/thr-esq/movie-studios-back-oracle-supreme-court-fight-computer-code-1279929.

[14] *Id.*

[15] *Id.*

[16] *The Oracle-Google Case Will Decide the Future of Software*, WIRED (May 23, 2016), https://www.wired.com/2016/05/oracle-google-case-will-decide-future-software/.

[17] Michael Byrne, *What an API Is and Why It's Worth Fighting For*, VICE (May 9, 2016), https://www.vice.com/en_us/article/3dakwk/oracle-vs-google-what-an-api-is-and-why-its-worth-fighting-for.

[18] *Id.*

[19] Gardner, *supra* note 13.

[20] Adi Robertson, *Some of Google's biggest rivals are taking its side in a Supreme Court battle*, The Verge (Jan 14, 2020), https://www.theverge.com/2020/1/14/21059180/oracle-google-supreme-court-copyright-lawsuit-amicus-brief-filings.