

## Court Overturns “Grossly Excessive” \$1.3 Billion Copyright Infringement Award

By Keli Johnson

Last November, a court awarded Oracle record copyright-infringement damages in the amount of \$1.3 billion against SAP’s TomorrowNow for allegedly making thousands of unauthorized copies of Oracle software and downloads. However, on September 1, U.S. District Judge Phyllis Hamilton granted SAP’s motion to overturn the award, reducing it to \$272 million.

The Court ruled that the maximum possible damages based on evidence of copyright infringement presented at trial could not exceed \$272 million, and she ordered a new trial on damages if Oracle refuses to accept the new monetary award. The Copyright Act allows an owner of a valid copyright to recover monetary damages for infringement of its copyrighted work. The plaintiff in a case may choose whether to ask the court for statutory damages, which, in the court’s discretion, can reach \$150,000.00 per work infringed in cases of willful infringement, or it may request its proven, actual damages coupled with any profits derived by the defendant as a result of the infringement.

In this case, Oracle opted for an award of actual damages, which it argued should be measured, in part, based on the amount of a hypothetical license fee that it would have charged SAP in order to allow the level of unauthorized copying and downloading that had occurred. However, SAP successfully argued that Oracle never would have granted such a license to a competitor, so damages should be calculated solely based on the profit that Oracle lost and SAP gained as a result of the infringement. Oracle has indicated that it will not accept the reduced damages and will pursue the original award through a new trial for damages.

Damages in cases involving unlicensed software – especially on the scale in question here – can be extremely complicated to estimate. Businesses facing any claims of copyright infringement based on software usage need to work closely with counsel in order to help ensure that any amount eventually paid to resolve those claims is consistent with the facts of the situation and with what is allowed under U.S. copyright law.



### About the author Keli Johnson:

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

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