

SHARE:



[Join Our Email List](#)



[View as Webpage](#)



April 14, 2021

Supreme Court Rules in Google's Favor in Copyright Dispute with Oracle Over Android Software

By **Brandon M. Hartman**

After the Supreme Court's April 6 decision in *Google LLC v. Oracle America, Inc.*, 141 S.Ct. 1183 (2021), the computer software and programming industry can breathe a tentative sigh of relief and perhaps sleep more soundly. This case, lasting more than 10 years and going two rounds through the District and Federal Courts of Appeal, has been the focus in an ongoing battle over the scope of copyright protection and fair use for software interfaces and their underlying code.

Click [here](#) to read the entire article.

Keeping Up with Privacy Legislation: Easier Said than Done

"The passage of the Virginia Consumer Data Protection Act earlier this year will offer a range of new rights to the residents of the Old Dominion."

Why this is important: Virginia has become the second state (and technically the first commonwealth) to enact a comprehensive data privacy law -- the Virginia Consumer Data Protection Act ("Virginia CDPA"). While some provisions of the Virginia CDPA align closely with California's privacy scheme and the GDPR in Europe, the Virginia Act differs in some key ways, including the way it defines consumers (individuals acting in an individual or household context), specifications about what it means to "sell data" (exchange data for monetary consideration), limiting what falls under the term "sensitive personal information" when compared to California, exempting entire entities based on type (as opposed to exempting types of data held), and not including a revenue component in the applicability of the Virginia Act. Like most privacy schemes, the Virginia CDPA enumerates a consumer's rights to access their information, to correct incorrect information, to delete their information, to opt out of having their information shared, and the right to appeal decisions. Like other schemes, the Virginia CDPA also requires controllers of consumer data subject to the Act to minimize the data they collect to what is actually needed, limit the use of the data collected to what it was collected for, provide reasonable data security, including ongoing assessments, contracting with vendors, compliance with the entities own privacy policies, and compliance with anti-discrimination laws. There are also some requirements for

processors to maintain the security of the data they access. The enforcement of the Virginia CDPA will be by the Attorney General's office, and in contrast to California, the Virginia Attorney General will give the noncomplying entities 30 days to remedy violations before initiating formal enforcement actions for statutory damages. The provisions are scheduled to come into enforcement on January 1, 2023, so now is the time for entities subject to the new Act to begin the work to ensure their compliance. --- [Risa S. Katz-Albert](#)

Justice Department Announces Court-Authorized Effort to Disrupt Exploitation of Microsoft Exchange Server Vulnerabilities

"Action copied and removed web shells that provided backdoor access to servers, but additional steps may be required to patch Exchange Server software and expel hackers from victim networks."

Why this is important: It was discovered earlier this year that certain hacking groups had exploited zero-day vulnerabilities in thousands of Microsoft Exchange Servers in order to install backdoors allowing for persistent, unauthorized access. Many of those backdoors now have been removed, and the vulnerabilities patched, but not all. That's where the Department of Justice stepped in, obtaining a court order on behalf of the Federal Bureau of Investigation to access many of the remaining affected servers and remove the vulnerability. What is fascinating here is that this was done under the auspices of a search warrant, without any notice to the administrators until the process is complete. Equally fascinating is that the FBI did not patch the underlying vulnerability, leaving these servers open to re-exploitation. An imperfect comparison might be a secret FBI search of your home to turn off a malfunctioning device, with notice coming only weeks later of the need to repair it. Whatever the national security benefit that the DOJ and FBI have relied upon here for justification, this will receive as much or more attention for the significant privacy concerns. --- [Joseph V. Schaeffer](#)

West Virginia FinTech Regulatory Sandbox Act

"As amended, relating to allowing the Division of Financial Institutions enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative financial product or service available in West Virginia, under the program available under the West Virginia FinTech Regulatory Sandbox Act, to make their products or services available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make innovative financial products and services available in West Virginia under the standards provided in the West Virginia FinTech Regulatory Sandbox Act."

Why this is important: This bill expands on the enactment last year of the West Virginia FinTech Regulatory Sandbox Act, which allows individuals who create innovative financial products or services to test those products or services for 24 months during which time they, generally speaking, will not be subject to West Virginia laws regulating financial products or services. This new bill, which was signed into law by the Governor and takes effect on June 17, 2021, expands the Act to now include reciprocity with other states, the federal government, or foreign agencies. Under this new amendment to the Act, the West Virginia Division of Financial Institutions may enter into agreements with other states, the federal government, or foreign agencies to allow individuals who provide innovative financial products or services under the Act to make those products and services available in other jurisdictions and to allow individuals providing the same types of products or services in their jurisdictions to make those products and services available in West Virginia. The passage of this amendment is another example of West Virginia's focus on business. With new ventures like Virgin's Hyperloop coming to the Mountain State, and the Ascend West Virginia program that provides financial incentives to new residents to "Work From Home" in West Virginia, the state is looking to a new chapter in economic prosperity. --- [Nicholas P. Mooney II](#)

Novartis is Shutting Down Colorado Plant, Laying Off 400 Employees After Overestimating Gene Therapy Demand

"The facility opened primarily to produce Zolgensma, Novartis' gene therapy to treat newborns with spinal muscular atrophy."

Why this is important: This may be the precursor of things to come, as one of the more promising developers of potential gene therapy is cutting back. In order to understand this, we need to consider the history. In 1995, a physical map of the human genome was completed. In 1999, the team originally formed by the NIH completed sequencing the human genome. Many companies, universities and nonprofits were working on identifying therapies using this new knowledge. An effective delivery system for these therapies presented a challenge. A virus, stripped of its symptoms, seemed promising, because viruses enter the cell and are well designed to affect the genes. The University of Pennsylvania did a study squirting a viral vector up the nose of volunteers, and then monitoring them. One student volunteer, Jesse Gelsinger, had a reaction and died. Gene therapy quickly became unpopular with both regulators and biotechs. Move forward 15 years, and many large biotechs were studying gene therapy again. Novartis was one. Now, Novartis appears to be stepping back from this technology. In fairness, other technologies, such as mRNA used to develop COVID-19 vaccines, in some cases accomplish more specific changes than gene therapy. --- [Hugh B. Wellons](#)

Coinbase IPO: Everything You Need to Know About the 'Watershed Moment' in Crypto

"That said, investing in Coinbase is not for the faint of heart, as the business—and the stock—will likely see dramatic, potentially protracted, swings," MoffettNathanson's Ellis writes."

Why this is important: Today, the largest cryptocurrency platform in the U.S. goes public through a direct listing on NASDAQ. Some who are bullish on cryptocurrencies see this as a moment of validation for the crypto markets. Others say it will bring pressure to the entire industry and stop the recent price rally that investors have enjoyed. These opposing viewpoints will play out in the coming months. Leading up to today, commentators have disagreed and debated what they see as the correct valuation for Coinbase. That also will play out very soon. For now, the excitement of Coinbase (the largest U.S. cryptocurrency platform and the second largest in the world) becoming a publicly traded company is the talk of Wall Street. --- [Nicholas P. Mooney II](#)

Facebook Data Dump Likely to Bring Regulatory Scrutiny, Lawsuits

"The Federal Trade Commission is likely to investigate whether the social media giant had reasonable defenses to guard against such a leak and could fine Facebook if its security is deemed insufficient, according to former FTC officials."

Why this is important: A user in a hacking forum published sensitive personal data (such as names, phone numbers, locations, dates of birth, and in some cases, their email addresses) of hundreds of millions of Facebook users from more than 100 countries. Facebook has indicated that they had found a vulnerability in 2019 and patched it, thus the data is several years old. However, the data points published tend to be the information that rarely changes for most consumers, and could be used to impersonate them to gain access to accounts. The FTC is expected to investigate whether Facebook's security systems were reasonable to defend against such an attack, and state Attorneys General in the U.S. and/or enforcement agencies abroad may seek to hold Facebook accountable for the breach. Additionally, there are several potential claims that Facebook users could bring, individually or as a class, under state statutes and unfair trade practices enforcement. Also of particular interest, Facebook is still under the terms of its settlement with the FTC for the 2016 Cambridge Analytica breach, and there is a possibility this breach could violate the settlement terms. There is also some protection for Facebook for incidents similar to the 2016 breach that occur before June 12, 2019, so timing of the initial data scrape may become a critical factor. --- [Risa S. Katz-Albert](#)

NBA Team Sacramento Kings to Offer Players the Option of Getting Salary Paid in Bitcoin

"The Sacramento Kings team chairman Vivek Ranadivé reportedly said that everyone in his organization could receive their salary in as much bitcoin as they want."

Why this is important: The Sacramento Kings will allow all employees, including the players, to have their salaries paid in Bitcoin should they choose to do so. The Kings are not new to the cryptocurrency

space. In January 2014, they "became the first NBA team to accept bitcoin as a payment option in the arena." Professional sports teams are becoming increasingly accepting of cryptocurrency. The Miami Dolphins began accepting Litecoin in 2019 and the Dallas Mavericks began accepting Dogecoin last month. By endorsing cryptocurrency use, professional sports teams likely will have a positive impact on how the public perceives cryptocurrency. It will be interesting to see if the athletes or teams make their own crypto coin. You never know, a LeBron James coin might just be in the works. --- [Kellen M. Shearin](#)

US Court Authorizes IRS to Summon Cryptocurrency User Records from Circle and Poloniex

"The tax authority wants records identifying crypto users who conducted \$20,000 or more in crypto transactions during the years 2016 to 2020 as well as other documents relating to their crypto transactions."

Why this is important: The IRS has been given authorization from a federal court to serve a John Doe summons on the Circle and Poloniex cryptocurrency exchanges. The summons seeks records identifying all U.S. citizens who engaged in cryptocurrency transactions totaling at least \$20,000 during the years 2016 to 2020. The purpose for this is, of course, to determine whether individuals are accurately reporting their cryptocurrency gains and losses on their income tax returns. This isn't the first time the IRS has served a summons like this. It previously served a similar summons on Coinbase, which created a legal battle between the two that resulted in the scope of the summons being reduced and Coinbase providing information in response. The takeaway here is to expect that gains made through cryptocurrency transactions may be reportable on income tax returns and to consult with a tax professional if you have questions about whether your transactions subject you to tax liability. --- [Nicholas P. Mooney II](#)

The Philly Startup Using Biosensors to Combat Food Waste and Improve Supply Chains

"Strella Biotechnology monitors an increase in ethylene production in fruit, signaling when produce needs to get to consumers before spoiling."

Why this is important: The National Resources Defense Council has stated that uneaten food forms the largest single part of municipal solid waste and accounts for a large portion of methane emissions in the United States. A new technology under development by Strella Biotechnology could help provide an important tool to implement in the food supply chain that will help eliminate such waste from produce spoilage. Strella has developed a sensor that monitors ethylene gas levels, the gaseous compound most fruit gives off as it ripens, in stored fruits to aid in the determination of what stage the fruit is in its maturation process. This, in turn, can assist in predicting the best time for shipment. It has been estimated that \$5 billion in fresh fruits and vegetables went to waste in the first month of the COVID-19 pandemic due to the rapid changes in consumer habits. This only reinforces the need to develop more efficient and sustainable supply chains for fresh produce. Strella's technology will be one important tool in realizing these changes. --- [Brandon M. Hartman](#)

Topps Debuts Its First NFT Baseball Card Collection

"The MLB-approved cards are 'digitally enhanced and creatively reimagined' from their physical counterparts, including themed animated backdrops and 3D team cubes."

Why this is important: Baseball card collecting used to be the thing of cardboard cards, stale bubble gum, wax wrappers, and shoeboxes. That model certainly has not gone away—in fact, it is experiencing a resurgence during the COVID-19 pandemic—but it is being supplemented by a new model hosted on the blockchain. Likely spurred by the success of the NBA and its "Top Shot" platform, Major League Baseball has partnered with Topps to introduce NFT baseball cards. These NFT cards will share some similarities to their physical counterparts, but will take advantage of the digital platform by including animated backdrops and 3D team cubes. What remains to be seen is whether these NFT baseball cards will achieve the same popularity as their physical counterparts. An earlier attempt by MLB to release a blockchain-based bobblehead collectible failed to take off, but MLB is undoubtedly hoping that this new offering will benefit from the significant attention now surrounding NFTs. --- [Joseph V. Schaeffer](#)

China Creates Its Own Digital Currency, a First for Major Economy

"A cyber yuan stands to give Beijing power to track spending in real time, plus money that isn't linked to the dollar-dominated global financial system."

Why this is important: Readers of *Decoded* will remember that we've talked in the past about China experimenting with a digital yuan by providing an amount of it to every resident in a town and monitoring how they make use of it. This article discusses some of the implications a digital yuan will create. (If you'd rather listen than read the article, the Journal's 4/9/21 podcast episode does a nice job discussing the same issues.) China struggles to deal with a world monetary system when, what the article calls "China's enemy" (The U.S.), controls the world's currency -- the dollar. China has attempted to obtain buy-in from other countries to replace that currency with the yuan, but those attempts haven't gone far. Now, China is ahead of the U.S. and other countries in creating a digital version of its country's fiat currency. Not only will this allow China to position the digital yuan for use internationally, but there are a number of other potential consequences from this. One is that a digital yuan would increase the speed and reduce the friction of China providing payments to its citizens, if for example it wanted to distribute relief funds to a group of them after a natural disaster. Another is the obvious ability of its government to monitor how its citizens spend their digital currency. If you think the U.S. is insulated from these issues, think again. The frequency of Chinese tourists coming to the U.S. provides strong incentive for merchants here to accept the digital yuan. In the end, projects to create a digital dollar have already been under way. A digital yuan may quicken their pace. --- [Nicholas P. Mooney II](#)

USDA Definitions Around Biotechnology Need Some Crucial Updating

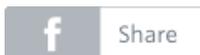
"For each product and new technical advancement, like the CRISPR-Cas9 technique, an inquiry was necessary because there were no clear rules in the legal text guiding the treatment of gene-edited products."

Why this is important: It is not important, unless you are a policy nerd, which many of us are. This discusses how outdated definitions of terms, especially in the biotech industry, interfere with effective administration by the government. For example, "genetic engineering" was defined to only include products containing foreign genes. Products including genes from the same species, no matter how rare, were not "genetically engineered." But, that's just one example. As I said, a bit nerdy, but possibly important. Definitions matter! --- [Hugh B. Wellons](#)

Couple Gets Married on Ethereum Blockchain for \$587 in Transaction Fees

"A Californian couple has used tokenized rings to immortalize their marriage on the Ethereum blockchain."

Why this is important: Love is in the air. A Coinbase employee recently wrote a smart contract on the Ethereum blockchain that he used to issue non-fungible token ("NFT") rings to his fiancée and himself in a wedding ceremony that cost about \$587 in transaction fees. Readers of *Decoded* will remember that we've talked in the past about the recent explosion in popularity of NFTs. Everything from digital art to digital trading cards, sport highlight videos, a flying Pop-Tart-bodied cat (nyan cat), and more are being made into NFTs and, in some instances, are being sold for millions of dollars. Couple that popularity with the versatility of smart contracts and the prediction for their ubiquity and unique applications like this may be more common in the future. --- [Nicholas P. Mooney II](#)



understanding that the author, publisher and distributor are not rendering legal or other professional advice on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use.

Responsible Attorney: Michael J. Basile, 800-967-8251