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California Jury Finds the Google Mobile Software Infringes Oracle Copyrights, but Fails to Decide if Google's Use is Protected Under the "Fair Use" Doctrine

Intellectual Property Client Alert

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On Monday, a California jury found that the Google, Inc. Android mobile device software infringed Oracle Corp. copyrights that cover their Java product. Oracle acquired Java from Sun Microsystems several years ago and sued Google in 2010, alleging that its Android mobile platform infringed copyrights and platforms to Java. *Google, Inc. v. Oracle Corp.*, No. 3:10-3561 (N.D. Cal.). Although the Android platform is distributed for free, Google generates advertising revenue by customers' use of the platform.

The jury, upon an instruction from the Judge to assume the software was copyrighted, found that Android's overall structure, sequence and organization infringed upon Oracle copyrights. The open question which remains is whether the Java software in this case, called Application Programming Interface or APIs, is copyrightable, which the Judge may decide as a matter of law. Judge Alsup has requested both sides comment on the May 2, 2012 European Court of Justice opinion, where the European Union held that the functionality of a computer program and the programming language is not copyright protected. *SAS Institute, Inc. v. World Programming Ltd.*, No. C 406/10 ([here](#)). The European Union ruled that the software functionality, programming language and data file format is not a "form of expression" sufficient to enjoy copyright protection.

The jury was deadlocked over whether Google's use was protected under the "fair-use" doctrine. The doctrine of fair use allows a third party limited use to a copyright without requiring the copyright holder's authorization. Whether a work is fair use depends on factors such as the purpose and character of the use, the nature of the copyrighted work, the whole or substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use on the potential market for or value of the copyrighted work. [17 U.S.C. § 107](#).

Although Google was found to infringe upon the Oracle copyrights, Oracle is unlikely to receive substantial damages. The next phase of the trial is to determine if the Google Android platform infringed Oracle patents.

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