

**PRESENTED AT**

**34<sup>th</sup> Annual Technology Law Conference**

**May 26-28, 2021**

**Live Webcast**

## **The Supreme Court's Decision in *Google v. Oracle***

**Van Lindberg**

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**GOOGLE LLC *v.* ORACLE AMERICA, INC.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT**

No. 18–956. Argued October 7, 2020—Decided April 5, 2021

Oracle America, Inc., owns a copyright in Java SE, a computer platform that uses the popular Java computer programming language. In 2005, Google acquired Android and sought to build a new software platform for mobile devices. To allow the millions of programmers familiar with the Java programming language to work with its new Android platform, Google copied roughly 11,500 lines of code from the Java SE program. The copied lines are part of a tool called an Application Programming Interface (API). An API allows programmers to call upon prewritten computing tasks for use in their own programs. Over the course of protracted litigation, the lower courts have considered (1) whether Java SE’s owner could copyright the copied lines from the API, and (2) if so, whether Google’s copying constituted a permissible “fair use” of that material freeing Google from copyright liability. In the proceedings below, the Federal Circuit held that the copied lines are copyrightable. After a jury then found for Google on fair use, the Federal Circuit reversed, concluding that Google’s copying was not a fair use as a matter of law. Prior to remand for a trial on damages, the Court agreed to review the Federal Circuit’s determinations as to both copyrightability and fair use.

*Held:* Google’s copying of the Java SE API, which included only those lines of code that were needed to allow programmers to put their accrued talents to work in a new and transformative program, was a fair use of that material as a matter of law. Pp. 11–36.

(a) Copyright and patents, the Constitution says, serve to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Art. I, §8, cl. 8. Copyright encourages the production of works that others might cheaply reproduce by granting the

## Syllabus

author an exclusive right to produce the work for a period of time. Because such exclusivity may trigger negative consequences, Congress and the courts have limited the scope of copyright protection to ensure that a copyright holder's monopoly does not harm the public interest.

This case implicates two of the limits in the current Copyright Act. First, the Act provides that copyright protection cannot extend to "any idea, procedure, process, system, method of operation, concept, principle, or discovery . . ." 17 U. S. C. §102(b). Second, the Act provides that a copyright holder may not prevent another person from making a "fair use" of a copyrighted work. §107. Google's petition asks the Court to apply both provisions to the copying at issue here. To decide no more than is necessary to resolve this case, the Court assumes for argument's sake that the copied lines can be copyrighted, and focuses on whether Google's use of those lines was a "fair use." Pp. 11–15.

(b) The doctrine of "fair use" is flexible and takes account of changes in technology. Computer programs differ to some extent from many other copyrightable works because computer programs always serve a functional purpose. Because of these differences, fair use has an important role to play for computer programs by providing a context-based check that keeps the copyright monopoly afforded to computer programs within its lawful bounds. Pp. 15–18.

(c) The fair use question is a mixed question of fact and law. Reviewing courts should appropriately defer to the jury's findings of underlying facts, but the ultimate question whether those facts amount to a fair use is a legal question for judges to decide *de novo*. This approach does not violate the Seventh Amendment's prohibition on courts reexamining facts tried by a jury, because the ultimate question here is one of law, not fact. The "right of trial by jury" does not include the right to have a jury resolve a fair use defense. Pp. 18–21.

(d) To determine whether Google's limited copying of the API here constitutes fair use, the Court examines the four guiding factors set forth in the Copyright Act's fair use provision: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. §107. The Court has recognized that some factors may prove more important in some contexts than in others. *Campbell v. Acuff-Rose Music, Inc.*, 510 U. S. 569, 577. Pp. 21–35.

(1) The nature of the work at issue favors fair use. The copied lines of code are part of a "user interface" that provides a way for programmers to access prewritten computer code through the use of simple commands. As a result, this code is different from many other types of code, such as the code that actually instructs the computer to

Also available as part of the eCourse

[The Supreme Court's Decision in Google v. Oracle](#)

First appeared as part of the conference materials for the  
34<sup>th</sup> Annual Technology Law Conference session

"The Supreme Court's Decision in *Google v. Oracle*"