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# SCOTUS Rules in Favor of Google in Landmark Copyright Case

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On April 5, the US Supreme Court held, in a 6-2 decision, that Google's copying of the Sun Java API declaring code and the API's organizational structure qualified as a fair use and therefore did not infringe Oracle's copyright rights. This decision in *Google v. Oracle* will have important implications, both for the software industry and future fair use analysis.

## Is Sun Java API code protected by copyright?

The Court was originally asked to consider two questions in the case: whether the API material copied by Google was eligible for copyright protection and, if it was, whether Google's copying was a permissible fair use. The majority opinion, authored by Justice Stephen Breyer, expressly deferred a decision on the issue of copyright eligibility. Rather, the Court assumed, for the sake of argument, that the copied API content was protected by copyright law. Thus, definitive guidance on the scope of copyright protection for API code and other relatively functional computer programming must await another case. Nevertheless, the decision hints that copyright protection for largely "functional" software code will be thin at best.

## Fair use analysis

The Court concluded that all four statutory fair use factors favored a finding of fair use in this case. Google benefitted from the finding that it "reimplemented" a popular user interface/platform and a language that many computer programmers had already learned, and that it did so not to compete with the original market for the code, but for a new "transformative" purpose. This transformative purpose was to allow many independent programmers to put their talents to work to create new and innovative products and content, without reinventing a common language that millions of programmers already use as shorthand. While Google has undoubtedly made money from Android phones, the platform itself is open source. It was not clear before the decision that the Court would conclude that Google's copying was for a "transformative" purpose, and this finding was very important in the fair use analysis.

Moreover, the Court concluded that the API declaring code was highly functional, not particularly creative or expressive, and that it was inextricably bound up with other unprotectable content and ideas in the API. This made the declaring code more susceptible to a fair use finding than other, more expressive types of copyrighted works. In addition, the Court found that while Google's taking was, from one perspective, extensive – Google took approximately 11,500 lines of code – Google took no more than what it reasonably needed for its transformative purpose, and it represented a tiny fraction of the Sun Java API (0.4%) and a tiny fraction of the millions of lines of code Google and its developers wrote to create the Android platform.

Finally, the Court concluded that the "public interest," as perceived by the Court, dictated a decision for Google. More than in most fair use analyses, the Court focused on what it described as the basic objectives of the copyright law – i.e., goal of promoting creativity and innovation, including the creation of innovative products and content. Here, Google's taking helped foster robust innovation by many programmers in connection with Google's Android mobile operating system.

The dissent, written by Justice Clarence Thomas and joined by Justice Samuel Alito, criticized most aspects of the majority opinion, especially the Court's refusal to address whether the API code was entitled to copyright protection. The dissent argued that the majority devalued the significant copyright protection to which computer code is entitled. Justice Amy Coney Barrett did not participate.

# Key takeaways

The fair use doctrine lies at the center of the tension in copyright law between the competing goals of protection for copyrighted works and their owners versus the rights of users to build upon, comment on, and otherwise use third-party works in creating new works. This is a pro-fair use decision that will help users of copyrighted content, including users of copyrighted software code, in the future, especially where they can show that their use promotes innovation and progress in a way that serves the public interest.

- **Copyright protection for computer code and other works** – The opinion suggests that relatively "functional" computer code (and of course much computer code is designed to be functional) seems to be more susceptible to unlicensed taking than was previously thought – either under a theory that it is not protected by copyright law or under traditional fair use analysis. This is particularly the case where the defendant can show it took the code to promote further innovation and creativity. But, the Court cautioned, that the facts and circumstances will always matter in fair use analyses, and cautioned in particular that this decision should not be read too broadly, especially outside the software context – e.g., with respect to artistic and other "non-functional" creative works.
- **Public interest and progress** – The Court was concerned that a finding in Oracle's favor would make the Sun Java API's declaring code a lock limiting the future creativity of new programs, that Oracle alone would hold the key, and that this would interfere with, not further, copyright's basic creativity objectives. The decision injects a much more explicit discussion of the "public interest" than is typical in fair use cases. The Court stressed that copyright law should not be the enemy of progress, a view not always emphasized in the balance of traditional copyright law, given that copyright law generally confers a property right (admittedly limited) on owners to stop third parties from unauthorized copying, distribution, and other use of their copyrighted content.
- **Hollywood and "harm to the public"** – Hollywood and the motion picture industry have been concerned about expansion of the fair use doctrine in general and about this case in particular. In fact, the majority's view that allowing "enforcement of Oracle's copyright here would risk harm to the public" may create a greater wedge to allow unlicensed use of Hollywood's copyrighted works for the sake of the public interest in developing markets and the increased flow of new and additional creative works. While the Court did stress that the fair use analysis for functional API code would not govern the analysis of more creative works, this decision will increase anxiety in Hollywood that a copyright owner's control over its works may face erosion.
- **Likely effects on future fair use jurisprudence** –
    - The Court's emphasis on the "transformative" nature of Google's use rebuts recent arguments that the role of transformative use analysis is receding in importance in current fair use jurisprudence.
    - Similarly, the Court viewed the second fair use factor – the nature of the copyrighted work – as quite significant to the analysis. That approach is in contrast to recent fair use case law, which has often appeared to treat the second factor as the least important of the four statutory factors.
    - The Court was not overly concerned by the commercial, for-profit nature of Google's use. Some recent fair use jurisprudence has treated the commercial nature of the defendant's use as a significant negative factor in the fair use analysis. In contrast, the Court noted that while a non-commercial use would indeed be a positive factor, a commercial use would not necessarily always count as a negative factor, especially where, as here, the use was transformative.
    - Finally, Google originally negotiated with Sun over licensing the code but ultimately used the code without a license. Just as in the Supreme Court's 1994 decision in *Campbell v. Acuff-Rose Music, Inc.,* the fact that the defendant sought but did not obtain a license did not harm the defendant's fair use defense.

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