

GOOGLE V. ORACLE: BACKGROUND AND CONSEQUENCES OF THE CASE

On March 24, the Supreme Court will hear oral arguments in *Google LLC v. Oracle America, Inc.*, which is expected to set the standard for how thoroughly computer code is protected by copyright. If Google's copying of more than 11,300 lines of Oracle's Java code in building the Android operating system is allowed to stand, that protection will be weakened and the incentives for innovation in the software industry will be diminished. *A victory for Oracle is important for promoting both the rule of law, including a textualist reading of the Constitution and statutes, and the protection of property rights.*

CASE BACKGROUND

In 2010, Oracle sued Google for copyright infringement based on Google's use of Oracle's software code, known as Application Programming Interface (API), that allows Java (a general-purpose computer programming language) to interface or communicate with other software in devices. The case first focused on whether the code in question is protected under copyright. After a lengthy litigation and appeals process, in May 2014 the Federal Circuit held that the code in question is copyrightable. The case was heard again in the Northern District of California, but this time on Google's claims that its copying of the API code was "fair use". In May 2016, a jury found in favor of Google. Oracle then appealed to the Federal Circuit on the fair use question. In March 2018, the Federal Circuit reversed the district court's decision, finding that Google's copying of the code was not a fair use.

Google filed a cert petition with the Supreme Court in January 2019. The Court called for the views of the Solicitor General. The Solicitor General recommended the Court deny the petition, saying that the Federal Circuit was correct and further review was not warranted. In November 2019, the Supreme Court granted Google's cert petition. The questions presented are: (1.) Whether copyright protection extends to a software interface, and (2.) Whether, as the jury found, petitioner's use of a software interface in the context of creating a new computer program constitutes fair use.

KEY ISSUES

- © *Under a straightforward analysis of the text, Oracle's code is copyrightable.* The text of the Copyright Act makes no mention of the exceptions Google is trying to create when it argues that the code is unprotected and that its copying was necessary to ensure that the Android operating system would be interoperable with other systems.
- © The strong protection of intellectual property in the Constitution and Copyright Act has helped to make the United States the world's most prosperous society, and intellectual property protection of new technologies is particularly vital.
- © Because the law is on Oracle's side, Google's arguments to the Court rely heavily on public policy arguments. *The rule of law requires that such policy arguments be entertained, instead, across the street in Congress, which can amend the Copyright Act.*

Committee for Justice Amicus Brief:

<http://bit.ly/OracleBrief> (PDF). You can also find it on our website at committeeforjustice.org.